

## ***Judicial Officers' Fraud and Corruption Workshop***

### **Solomon Islands**

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#### **Chapter 1: Similarities and differences of provisions across all jurisdictions**

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This chapter outlines the similarities and differences between fraud and corruption offences across PJIP partner court jurisdictions. The two most prevalent fraud and corruption offence categories defined by the region<sup>1</sup> are: fraud and bribery.

##### ***Fraud***

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In most jurisdictions, the Fraud regime is complex and there is significant overlap with various other provisions. The provisions annexed below are those with which a public officer could be charged, who embezzled public funds. Six jurisdictions (Fiji, Kiribati, Nauru, Republic of Marshall Islands, Solomon Islands, and Tonga) have provisions that specifically target fraud or embezzlement by public servants. In the other six jurisdictions, recourse must be had to general provisions (present in all jurisdictions) dealing with fraudulent misappropriation of property. These offences may be variously referred to as "theft", "cheating", "obtaining by false pretences", "obtaining by deception", or "fraudulent conversion". Palau is the only jurisdiction to have a specific offence of theft of government property that can be committed by a private individual.

Kiribati and Solomon Islands have identical provisions dealing with the following:

- Frauds and breaches of trust by persons employed in the public service<sup>2</sup>
- Theft, including taking by trickery or despite knowledge of a mistake on the part of the person defrauded
- Larceny and embezzlement by public servants
- Obtaining by false pretences

Vanuatu has provisions dealing with theft and obtaining by false pretences which are substantially similar to those in the three aforementioned jurisdictions. However, it lacks any provisions dealing specifically with frauds by public servants. The other eight jurisdictions have substantially different regimes.

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<sup>1</sup> As outlined in the PJIP Judicial Officer Needs Assessment Survey Report, June 2022

<sup>2</sup> Fiji has a similarly worded provision



There is a degree of practical commonality among the fraudulent misappropriation or theft offences in all jurisdictions. There are three main elements of which most jurisdictions include at least two. These are that the taking of a thing is done:

- Dishonestly, or by fraud or deceit;
- Without a good faith claim of right (some jurisdictions (Federated States of Micronesia, Fiji, and Nauru) merely include the weaker proposition that the property belongs to another); and
- With intent to permanently deprive the owner of the thing.

Kiribati, Nauru, Solomon Islands, Tonga and Vanuatu include all three elements; Palau, Republic of Marshall Islands, Samoa and Tokelau include the first and third; and Papua New Guinea and Federated States of Micronesia include the second and third.

## Bribery

All jurisdictions except Nauru focus on bribery in official and political matters, with relevant bribery being bribery of public officials to act in a certain way in the course of their official duties. Nauru, by contrast, focuses on the dishonest provision/receipt of a bribe with the intention of gaining/providing a favour. All jurisdictions address both directions of bribery, that is, provision and receipt. Papua New Guinea and Fiji both have provisions that address bribery of judicial officials. The most detailed provision is that in the Marshall Islands. Fiji also has specific bribery legislation.<sup>3</sup>

## Offence provision/s by jurisdictions

Unless otherwise specified, all references to statutory provisions are to the following Crimes Acts:

- **Federated States of Micronesia:** [Code of the Federated States of Micronesia](#) ;
- **Fiji:** [CRIMES ACT 2009 - Laws of Fiji](#); [Prevention of Bribery Act 2007](#) (For offences committed prior to 1/2/2010 see [Laws of Fiji Chapter 17 \(Penal Code\)](#));
- **Kiribati:** [Penal Code 1977](#);
- **Nauru:** [Crimes Act 2016](#);
- **Palau:** [Penal Code of the Republic of Palau](#);
- **Papua New Guinea:** [Criminal Code Act 1974](#);
- **Republic of Marshall Islands:** [Marshall Islands Revised Code 2014 Title 31 Chapter 1](#);
- **Samoa:** [Crimes Act 2013](#);
- **Solomon Islands:** [Penal Code 1963](#);
- **Tokelau:** [Crimes, Procedure and Evidence Rules 2003](#)
- **Tonga:** [Laws of Tonga Chapter 18 \(Criminal Offences\)](#)
- **Vanuatu:** [Penal Code 1977](#)

	Fraud	Bribery
<b>Federated States of Micronesia</b>	s 601(9) s 602	s 516
<b>Fiji</b>	ss 4, 200, 290, 291, 292, 293, 317, 318, 319(1)(b), 323, 324, 325, 327, 328, 329, 330	s 4, 133, 134, 135, 136, 137, 138  <b><u>Prevention of Bribery Act</u></b> ss 2, 3, 4, 5, 6, 8
<b>Kiribati</b>	ss 121, 251, 266	s 85

<sup>3</sup> Prevention of Bribery Act 2007



<b>Nauru</b>	ss150, 153, 166-168, 179	s 173
<b>Palau</b>	ss 2600, 2614, 2615	s 4100
<b>Papua New Guinea</b>	s406, s365 s 383A, s403, s404, s405	ss 87, 97B, 119, 120
<b>Republic of Marshall Islands</b>	ss 223.0, 223.3, 240.7	s 240.0 s 240.1
<b>Samoa</b>	s 172	s 138
<b>Solomon Islands</b>	<a href="#">ss 129</a> , <a href="#">258</a> , <a href="#">273</a> , <a href="#">308</a>	<a href="#">s 91</a>
<b>Tokelau</b>	ss 27, 31, 73(1)	s 72 (1), 72 (2)
<b>Tonga</b>	ss 53, 143, 144, 145	ss 50, 51
<b>Vanuatu</b>	ss 122, 123, 124, 125	s 73



## Chapter 2: Solomon Islands - Legislative Provisions and Elements of the Offences

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Under the two offence categories, the below offences pursuant to the [Penal Code 1963](#), have been identified as falling within the scope of “*corruption*”. Power is used corruptly if it has been “used to obtain some private advantage or for any purpose foreign to the Power”.<sup>4</sup> For the purposes of this program, “*corruption*” refers to the abuse of entrusted power by public servants, with particular reference to the dishonest pursuit of gain. ALTERNATIVELY: we have used this term in its generic meaning opposed, to its legal connotation.

### **Fraud: s 129. Frauds and breaches of trust by persons employed in the public service**

Any person employed in the public service who, in the discharge of the duties of his office, commits any fraud or breach of trust affecting the public, whether such fraud or breach of trust would have been criminal or not if committed against a private person, shall be guilty of a misdemeanour.

### **Fraud: s 258. Definition of Theft**

A person steals who, without the consent of the owner, fraudulently and without a claim of right made in good faith, takes and carries away anything capable of being stolen with intent, at the time of such taking, permanently to deprive the owner thereof: Provided that a person may be guilty of stealing any such stealing thing notwithstanding that he has lawful possession thereof, if, being a bailee or part owner thereof, he fraudulently converts the same to his own use or the use of any person other than the owner.

The expression "takes" includes obtaining the possession-  
by any trick;

by intimidation;

under a mistake on the part of the owner with knowledge on the part of the taker that possession has been so obtained; or

by finding, where at the time of finding the finder believes that the owner can be discovered by taking reasonable steps.

The expression "carries away" includes any removal of anything from the place which it occupies, but in the case of anything, attached, only if it has been completely detached.

The expression "owner" includes any part owner, or person having possession or control of, or a special property in, anything capable of being stolen.

### **Fraud: s 273. Larceny and embezzlement by clerks or servants**

Any person who -

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<sup>4</sup> *State v Gamato* [2021] PGNC 485, 136 (Berrigan J).



- (a) being employed in the public service of Her Majesty -
    - (i) steals any chattel, money or valuable security belonging to or in the possession of Her Majesty or entrusted to or received or taken into possession by such person by virtue of his employment; or
    - (ii) embezzles or in any manner fraudulently applies or disposes of for any purpose whatsoever except for the public service any chattel, money or valuable security entrusted to or received or taken into possession by him by virtue of his employment; or
  - (b) being appointed to any office or service by or under a Town Council or other local government council or other public body-
    - (i) fraudulently applies or disposes of any chattel, money or valuable security received by him (whilst employed in such office or service) for or on account of any Town Council or other local government council or other public body or department, for his own use or any use or purpose other than that for which the same was paid, entrusted to, or received by him; or
    - (ii) fraudulently withholds, retains, or keeps back the same, or any part thereof, contrary to any lawful directions or instructions which he is required to obey in relation to his office or service aforesaid,
- is guilty of a felony, and shall be liable to imprisonment for fourteen years.

**Fraud: s 308. False Pretences**

Any person who by any false pretence -  
with intent to defraud, obtains from any other person any chattel, money or valuable security, or causes or procures any money to be paid, or any chattel or valuable security to be delivered to himself or to any other person for the use or benefit or on account of himself or any other person; or  
...  
is guilty of a misdemeanour, and shall be liable to imprisonment for five years.

**Bribery: s 91. Official Corruption**

Any person who-

- (a) being employed in the public service, and being charged with the performance of any duty by virtue of such employment, corruptly asks for, solicits, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by him in the discharge of the duties of his office; or
- (b) corruptly gives, confers, or procures, or promises or offers to give or confer, or to procure, or attempt to procure, to, upon, or for any person employed in the public service, or to, upon, or for any other person, any property or benefit of any kind on account of any such act or omission on the part of the person so employed,

is guilty of a felony and shall be liable to imprisonment for seven years.



Partner Court / Topic	Fraud	Bribery
<b>SOLOMON ISLANDS</b>	<a href="#"><i>Penal Code 1963</i></a>	
<b>Legislative Provisions</b>	<p><b>s 129 Frauds and breaches of trust by persons employed in the public service</b></p> <p><b>s 258 Definition of Theft</b></p> <p><b>s 273 Larceny and embezzlement by clerks or servants</b></p> <p><b>s 308 False Pretences</b></p>	<b>s 91 Official Corruption</b>
<b>Elements of the Offence</b>	<p><b>s129 Frauds and breaches of trust by persons employed in the public service</b></p> <ol style="list-style-type: none"> <li><b>A</b> is employed in the public service</li> <li><b>A</b> commits any fraud or breach of trust affecting the public (whether or not it would have been criminal if committed against a private person)</li> <li><b>A</b> did so in the discharge of the duties of his office</li> </ol> <p><b>s 258 Definition of theft</b></p> <ol style="list-style-type: none"> <li><b>A</b> takes or carries away anything capable of being stolen</li> <li><b>A</b> does so without the consent of the owner</li> <li><b>A</b> does so fraudulently</li> <li><b>A</b> does so without a claim of right made within good faith</li> <li><b>A</b> does so with intent to permanently deprive the owner of the thing</li> </ol> <p><b>s 273 Larceny and embezzlement by clerks or servants</b></p> <ol style="list-style-type: none"> <li><b>A</b> is a clerk or servant or employed (or acting in the capacity thereof)</li> <li><b>A</b> steals any chattel, money or valuable security belonging to, or in the possession or power of his master or employer</li> </ol> <p>ALTERNATIVELY</p> <ol style="list-style-type: none"> <li><b>A</b> is a clerk or servant or employed (or acting in the capacity thereof)</li> <li><b>A</b> embezzles the whole or part of any chattel, money or valuable security delivered, received or taken into</li> </ol>	<p><b>s 91 Official Corruption</b></p> <ol style="list-style-type: none"> <li><b>A</b> is employed in the public service</li> <li><b>A</b> asks <b>X</b> for a benefit as consideration for doing something in the duties of <b>A</b>'s office</li> <li><b>A</b> does so corruptly</li> </ol> <p>ALTERNATIVELY</p> <ol style="list-style-type: none"> <li><b>X</b> is employed in the public service</li> <li><b>A</b> gives any benefit to <b>X</b> on account of <b>X</b> doing something in the duties of <b>X</b>'s office</li> <li><b>A</b> does so corruptly</li> </ol>



	<p>possession by him for or in the name or on the account of his master or employer</p> <p>3. <b>A</b> does so fraudulently</p> <p><b>s 308 False Pretences</b></p> <p>1. <b>A</b> obtains, procures or causes any chattel, money, or valuable security of any other person to be delivered or paid to himself for the use, benefit or on account of himself or any other person</p> <p>2. <b>A</b> does so by false pretences (s 307)</p> <p>3. <b>A</b> does so with intent to defraud</p> <p>ALTERNATIVELY</p> <p>1. <b>A</b> causes or induces <b>X</b> to</p> <ul style="list-style-type: none"> <li>• execute, make, accept, endorse, or destroy the whole or any part of any valuable security; OR</li> <li>• write, impress, or affix his name or the name of any other person, or the seal of any body corporate or society, upon any paper or parchment in order that the same may be afterwards made or converted into, or used or dealt with as, a valuable security</li> </ul> <p>2. <b>A</b> does so by false pretences (s 308)</p> <p>3. <b>A</b> does so with intent to defraud or injure any person</p> <p>4. <b>A</b> does so fraudulently</p>	
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### Chapter 3: Solomon Islands - Elements of the Defences

Under the two offence categories, the below common defences have been identified across each jurisdiction. The **offence** is highlighted by **orange font**; the **common defence** is identified by **pink font** and the **elements of the defence** in **blue font**.

Fraud	Bribery
<b>SOLOMON ISLANDS</b>	
<p><b>Common defences (similar to Kiribati's criminal code common defences)</b></p> <p>s 8 (bona fide claim of right)</p> <p>s 9 (offence occurs by accident, or the result intended to be caused by act/omission is immaterial)</p> <p>s 10 (honest and reasonable mistake of fact not responsible to any greater extent than if the real state of things had been such as he believed to exist)</p> <p>s 12 (insanity)</p> <p>s 13(2) (intoxication without consent, or insane by reason of intoxication)</p> <p>s 14 (immature age)</p> <p>s 15 (judicial officer in the exercise of his judicial functions)</p> <p>s 16 (compelled by another to do act)</p> <p>s 19 (married women coerced by husband)</p> <p>s 20 (cannot be punished twice for same offence)</p>	
<p>s 129 (fraud and breaches of trust by persons employed in the public service)</p> <p>- No express defences</p> <p>s 258 (definition of threat)</p> <p>- No express defences</p> <p>s 273 (larceny and embezzlement by clerks or servants)</p> <p>- No express defences</p> <p>s 308 (false pretences)</p> <p>- No express defences</p>	<p>s 91 (official corruption)</p> <p>- No express defences</p>





## Chapter 4: Evidentiary issues

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From the PJIP needs assessment and ongoing discussions with Partner Courts, the following evidentiary issues were identified.

A summary of the similarities and differences between the jurisdictions are discussed below.

### Exceptions to Hearsay – Bankers’ books & business records

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In all jurisdictions, there are statutory or common law exceptions to the rule against hearsay evidence. Most jurisdictions (Federated States of Micronesia, Kiribati, Palau, Republic of Marshall Islands, Samoa, Solomon Islands, Tonga, Fiji and Papua New Guinea) have statutory provisions pertaining to the admissibility of business records or bankers’ books. In six jurisdictions (Federated States of Micronesia, Palau, Republic of Marshall Islands, Samoa, Solomon Islands and Tonga) these provisions are framed as exceptions to the rule against hearsay evidence. In Fiji and Papua New Guinea, the relevant legislation contains provisions regarding the admissibility of trade or business records more generally. However, it is likely that hearsay evidence would be admitted pursuant to these provisions.

The Federated States of Micronesia, Palau and the Republic of Marshall Islands have provisions which are almost identical. For the exception to apply to business records, two conditions must be established by the testimony of the custodian of the records, another qualified witnesses or, in the Republic of Marshall Islands only, a permitted certificate submitted to the court. First, the records were kept in the course of a regularly conducted business activity. Second, it was the regular practice of that business to make those records. Similar conditions are required in Fiji, Papua New Guinea, Samoa, Solomon Islands and Tonga.

In addition to these requirements, three jurisdictions (Fiji, Tonga, and Samoa) specify that witnesses must not be available before the business records can be admitted. In Fiji, the person who supplied the statement in the record must be either dead, unfit to give evidence as a witness, missing or cannot be reasonably expected to have any recollection of the matters dealt contained in the record. Samoa’s legislation contains similar provisions and two additional alternatives. Specifically, that the Judge may consider first, that the witness would not be useful to the proceedings as the person cannot be reasonably expected to recollect the matters dealt with in the record or secondly, it would cause undue expense or delay if the person were required to be a witness.

Papua New Guinea’s provisions specify that the court is not required to admit business records if, having regarding to all of the relevant circumstances, it would not be in the interests of justice to do so. Papua New Guinea also has provisions in relation to bankers’ books; however, the legislation does not specify any rules in relation to admissibility of hearsay evidence.

We have been unable to identify any relevant statutory provisions in Tokelau and Vanuatu. Consequently, in these jurisdictions hearsay contained in business records is not admissible because there is no such exception at common law.<sup>5</sup>

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<sup>5</sup> Further research into the case law will need to be undertaken to determine the position adopted in each jurisdiction.



## Expert Evidence

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In all jurisdictions, expert opinion evidence is admissible as an exception to the rule against the admissibility of opinion evidence. Generally, expert opinion testimony is admissible at common law if the witness is qualified as an expert by knowledge, skill, experience, training or education and the expert's opinion will assist the court to understand a fact or issue relevant to the matter. Some jurisdictions (Federated States of Micronesia, Palau, Republic of Marshall Islands, Samoa, Solomon Islands, Tokelau and Tonga) have provisions in their statutes or court rules pertaining to the qualification of experts or competency of witnesses more generally. In these jurisdictions, except Tokelau, the common law exception is codified in the relevant statute (Samoa, Solomon Islands, Tonga) or court rules (Federated States of Micronesia, Palau, Republic of Marshall Islands).

In the Federated States of Micronesia, Palau and Republic of Marshall Islands the specific rules are almost identical. In those jurisdictions, a court may require an expert to disclose underlying facts or data prior to testifying or during cross-examination. Facts or data which an expert relies upon to form an opinion do not need to be admitted as evidence if that evidence is of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject. Testimony which is admissible is not objectionable if it relies upon a contested fact which is to be determined by the ultimate decision maker. In the Republic of Marshall Islands and Palau, facts or data which are relied on by an expert that are inadmissible do not need to be disclosed to the jury unless the court determines that the probative value of evidence, in assisting the jury to evaluate the expert's opinion, substantially outweighs their prejudicial effect.

We have been unable to identify any relevant statutory provisions in Fiji, Kiribati, Nauru, Papua New Guinea, Tokelau and Vanuatu. However, it is our understanding that the common law exception exists in all of these jurisdictions.<sup>6</sup>

## Evidence Admissible Against Co-accused Defendants

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Two jurisdictions (Papua New Guinea and Vanuatu) contain statutory provisions regarding accessorial liability. We have been unable to identify provisions in nine jurisdictions (Fiji, Kiribati, Nauru, Palau, Republic of Marshall Islands, Samoa, Solomon Islands, Tokelau and Tonga).<sup>7</sup>

Regarding the admissibility of evidence against a co-accused, the common law position applies in most jurisdictions.<sup>8</sup> At common law, the co-conspirator's rule permits acts or statements of a co-accused in furtherance of a conspiracy to be admissible against a co-accused.

We have been able to identify provisions in five jurisdictions (Papua New Guinea, Samoa, Solomon Islands and Tonga).

The Solomon Islands and Samoa have provisions which specify that the common law position in relation to the admissibility of statements by co-conspirators prevails. In the Solomon Islands, this is only in relation to confessions. The statute also provides that a co-accused is considered a competent and

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<sup>6</sup> Further research into the case law will need to be undertaken to determine the position adopted in each jurisdiction.

<sup>7</sup> Further research into the case law will need to be undertaken to determine the position adopted in each jurisdiction.

<sup>8</sup> Further research into the case law will need to be undertaken to determine the position adopted in each jurisdiction.



compellable witness. They may also offer propensity evidence only if that evidence is relevant to the defence raised or proposed to be raised by the accused.

Comparatively, in Papua New Guinea, a person charged with an offence shall not be called as a witness in any legal proceedings in connection with the offence. Notwithstanding this, where a person charged with an offence is a witness they may be asked any questions in cross-examination.

## Electronic Evidence

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We have been unable to identify any provisions regarding the evidentiary rules applicable to electronic evidence generally in all jurisdictions except for Papua New Guinea and Tonga. In Papua New Guinea, the *Electronic Transactions Acts 2021* specifies that the evidential requirements of admissibility and weight provided by the *Evidence Act* apply to electronic records or data messages. In Tonga, the *Evidence Act* contains provisions regarding the admissibility, standards and authentication of electronic evidence generally.

Some jurisdictions specify that forms of evidence include electronic records or documents stored electronically. The Federated States of Micronesia, Palau and Republic of Marshall Islands specify that writings and records includes electronic recordings. In Samoa, the meaning of ‘documents’ includes ‘information electronically recorded or stored, and information derived from that information’. In Kiribati, the *Evidence Act 2003* contains a provision regarding the ‘[a]dmissibility of statements produced by computers’.

Some jurisdictions have specific evidentiary rules or exceptions in relation to electronic evidence. For example, in the Solomon Islands section 122(1) of the *Evidence Act 2009* provides that the hearsay rule does not apply to a representation contained in a document recording a message that has been transmitted by electronic mail, fax, telegram, letter gram or telex.

## Relevance of Evidence

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Five jurisdictions (Federated States of Micronesia, Palau, Republic of Marshall Islands, Solomon Islands, Tonga) have provisions in either their statutes or court rules regarding the relevancy of evidence. In all of these jurisdictions relevant evidence is generally admissible.

In the Federated States of Micronesia, Palau and Republic of Marshall Islands, relevant evidence is defined as ‘evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence’. Comparatively, in Tonga, any evidence which is admissible under the relevant provisions is deemed relevant.

Some jurisdictions (Papua New Guinea and Samoa) specify in their statutes that the relevancy of evidence can be questioned during later stages of criminal proceedings, such as during cross-examination or following the end of submissions.



Unless otherwise specified, all references to statutory provisions and rules are to the following:

- **Federated States of Micronesia:**
  - [Code of the Federated State of Micronesia Title 6, Chapter 13 - Evidence](#)
  - [Rules of Evidence for the Trial Division of the Supreme Court of the Federated States of Micronesia](#)
- **Fiji:**
  - [Evidence Act 1944](#)
- **Kiribati:**
  - [Evidence Act 2003](#)
- **Nauru:**
  - [Criminal Procedure \(Amendment\) Act 2020](#)
- **Palau:**
  - [Rules of Evidence for the Courts of the Republic of Palau](#)
- **Papua New Guinea:**
  - [Evidence Act 1975](#)
  - [Electronic Transactions Act 2021](#)
  - [Criminal Practice Rules – Fraud & Corruption Related Offences 2013](#)
- **Republic of Marshall Islands:**
  - [Title 28 – Evidence Act of 1989](#)
- **Samoa:**
  - [Evidence Act of 2015](#)
- **Solomon Islands:**
  - [Evidence Act 2009](#)
- **Tokelau:**
  - [Crimes, Procedure and Evidence Rules 2003](#)
- **Tonga:**
  - [Evidence Act 2020](#)
- **Vanuatu:**
  - [Chapter 136 - Criminal Procedure Code](#)

	Exceptions to Hearsay	Expert Evidence	Evidence Against Co-accused	Electronic Evidence	Relevance of Evidence
<b>Federated States of Micronesia</b>	Rules 801, 802, 803	Rules 601, 602, 702, 703, 704, 705, 706	N/A	Rule 1001	Rules 401, 402, 403
<b>Fiji</b>	s 4	N/A	N/A	N/A	N/A
<b>Kiribati</b>	ss 32, 33, 34	N/A	N/A	s 28	N/A
<b>Nauru</b>	ss147A, 176	N/A	N/A	N/A	N/A
<b>Palau</b>	Rules 801, 802, 803	Rules 702, 703, 704, 705	N/A	Rule 1001	Rules 401, 402, 403

<b>Papua New Guinea</b>	s61, 91, 92, 93, 94 (Evidence Act)	N/A	s 9, 14 (Evidence Act)	s 12 (Electronic Transactions Act) ss 64, 65, 66, 67 (Evidence Act)	s 26 (Evidence Act)
<b>Republic of Marshall Islands</b>	s3 Rules 803, 902	s3 Rules 702, 703, 704, 705	N/A	s3 Rule 1001.	s3 Rules 104, 401, 402, 403
<b>Samoa</b>	ss 9, 10, 11	ss 2, 16	s 6	s 2	s 70, 83
<b>Solomon Islands</b>	<a href="#">ss 102, 103, 117, 118, 120</a>	<a href="#">ss 24, 30, 129, 130</a>	<a href="#">s 39, 40, 172</a>	<a href="#">s 122</a>	<a href="#">ss 20, 21, 22, 23</a>
<b>Tokelau</b>	ss 163, 175	ss 164, 175	s 175	N/A	N/A
<b>Tonga</b>	ss 88, 89	s24, 25	s 4	ss 2, 54A, 54C, 54D, 54E, 54F	s 14
<b>Vanuatu</b>	N/A	s86	N/A	N/A	N/A

## Exceptions to Hearsay – Bankers’ books & business records

### **s 120. Exception – Business documents**

(1) This section applies to a document that –

(a) either –

- (i) is or forms part of the records belonging to or kept by a person, body or organisation in the course of, or for the purposes of, a business; or
- (ii) at any time, was or formed part of such a record; and

(b) contains a previous representation made or recorded in the document in the course of, or for the purposes of, the business.

(2) The hearsay rule does not apply to the document (so far as it contains the representation) if the representation was made –

- (a) by a person who had or might reasonably be supposed to have had personal knowledge of the asserted fact; or
- (b) on the basis of information directly or indirectly supplied by a person who had or might reasonably be supposed to have had personal knowledge of the asserted fact.

(3) Subsection (2) does not apply if the representation –

- (a) was prepared or obtained for the purpose of conducting, or for or in contemplation of or in connection with, a proceeding in Solomon Islands or another country; or
- (b) was made in connection with an investigation relating or leading to a criminal proceeding.

(4) The hearsay rule does not apply to evidence that tends to prove that there is no record kept, in accordance with a system, or the occurrence of an event, if –

- (a) the occurrence of the event of a particular kind is in question; and
- (b) in the course of a business, the system has been followed of making and keeping a record of the occurrence of all events of that kind.



**s 102. Evidence of banker's record**

(1) A bank or officer of a bank shall not, in any proceeding other than proceedings instituted by or against the bank, be compelled to produce any banker's record the contents of which can be proved under this section, or to appear as a witness to prove the matters, transactions or accounts in such record except –

- (a) in civil proceedings, by order of a court made for special cause;
- (b) in criminal proceedings, by order of the court of trial.

(2) In any proceeding, the matters referred to in subsection (1)(a) and (b) in relation to a banker's record may be proved, orally or by affidavit, by an officer of the bank.

(3) Any affidavit in subsection (2) shall, on its production without further proof, be admitted in evidence and may include –

- (a) an explanation of the contents of the copy of any entry or matter recorded in such banker's record which is tendered in evidence; or
- (b) any abbreviations, symbols or other markings appearing in such copy that may be relevant in the proceeding; and
- (c) a description of the banker's record, its nature and use, and the procedures followed in keeping it.

(4) Any matter to be stated in an affidavit under this section may be made to the best of the knowledge and belief of the person making the affidavit.

**s 103. Obtaining copies of banker's records**

(1) On the application of any party to any proceedings the court or a judge may order that such party be at liberty to inspect and take copies of any entries in banker's record for any of the purposes of such proceedings.

(2) An order under this section may be made either with or without summoning the bank or any other party, and shall be served on the bank five clear days before the same is to be obeyed, unless the court or judge otherwise directs.

(3) The costs of any application to the court or judge under or for the purposes of this section, and the costs of anything done or to be done under an order of the court or judge made under or for purposes of this section, shall be in the discretion of the court or judge, who may order the same or any part thereof to be paid to any party by the bank, where the same have been occasioned by default or delay on the part of the bank.

(4) Any such order against a bank may be enforced as if the bank were a party to the proceeding.

**s 117. Hearsay**

A hearsay statement is not admissible except as provided by this Act or other law.

**s 118. General admissibility of hearsay**

(1) A hearsay statement is admissible in any proceeding if –

- (a) the circumstances relating to the statement provide reasonable assurance that the statement is reliable; and
- (b) either –
  - (i) the maker of the statement is unavailable as a witness; or
  - (ii) in any case where the court considers that undue expense and delay would be caused if the maker of the statement were required to be a witness.





- (2) In a criminal proceeding, no hearsay statement may be offered in evidence unless –
- (a) the party proposing to offer the statement has given reasonable notice of the intention to rely on the statement; or
  - (b) a other party has waived the requirement for notice; or
  - (c) the court dispenses with the requirement for notice in the interest of justice.
- (3) If an accused in a criminal proceeding does not give evidence, the accused may not offer his or her hearsay statement as evidence in the proceeding.
- (4) In this section, 'circumstances', in relation to the statement by a person who is not a witness, includes –
- (a) the nature of the statement; and
  - (b) the contents of the statement; and
  - (c) the circumstances that relate to the making of the statement; and
  - (d) the circumstances that relate to the truthfulness of the person; and
  - (e) any circumstances that relate to the accuracy of the observation of the person.
- (5) For the purposes of this section, a person is unavailable as a witness in a proceeding if the person –
- (a) is dead; or
  - (b) is outside Solomon Islands and it is not reasonably practicable for him or her to be a witness; or
  - (c) is unfit to be a witness because of age or physical or mental condition; or
  - (d) cannot with reasonable diligence be identified or found; or
  - (e) is not compellable to give evidence.
- (6) Subsection (1) does not apply to a person whose statement is sought to be offered in evidence by a party who has caused the person to be unavailable in order to prevent the person from attending or giving evidence.

## Expert Evidence

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### **s 24. General competency**

- (1) A person is presumed to be competent to give evidence in all proceedings.
- (2) Subject to this Act, a person who is competent to give evidence about a fact is compellable to give evidence in all proceedings.

### **s 30. Determination of competency**

- (1) Whenever the question arises as to whether a witness in criminal proceedings is competent to give evidence in the proceedings, whether raised by a party or the court, shall be determined by the court in accordance with this section.
- (2) Once a court accepts that the issue of competence is properly raised, it is for the party calling the witness to satisfy the court that, on the balance of probabilities, the witness is competent to give evidence in the proceedings.



(3) In determining competency, the court shall treat the witness as having the benefit of any of its directions that may be made in relation to the taking of his or her evidence.

(4) Any questioning of the witness in relation to competency shall be conducted by the court in the presence of the parties.

(5) For the purpose of determining a question arising under this section, the court may inform itself as it thinks fit, including by information from a person who has relevant specialised knowledge based on the person's training, study or experience.

**s 130. Expert evidence opinion**

(1) An opinion by an expert that is part of expert evidence offered in a proceeding is admissible if the fact-finder is likely to obtain substantial help from the opinion in understanding other evidence in the proceeding or in ascertaining any fact that is of consequence to the determination of the proceeding.

(2) An opinion by an expert is not inadmissible simply because it is about –  
(a) an ultimate issue to be determined in a proceeding; or  
(b) a matter of common knowledge.

(3) Subject to subsection (4), if an opinion by an expert is based on a fact that is outside the general body of knowledge that makes up the expertise of the expert, the opinion may be relied on by the fact-finder only if that fact is or will be proved or judicially noticed in the proceeding.

(4) If expert evidence that includes an opinion about the sanity of a person also includes a statement that the person made to the expert about the state of mind of the person, then –  
(a) the statement of the person is admissible to establish the facts on which the expert's opinion is based; and  
(b) neither the hearsay rule nor the prior inconsistent statements rule applies to evidence of the statement made by the person.

**s 129. General admissibility of opinion**

A witness may state an opinion in evidence in a proceeding if that opinion is necessary to enable the witness to communicate, or the fact-finder to understand, what the witness saw, heard or otherwise perceived.

## **Evidence Admissible Against Co-accused Defendants**

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**s 172. Admissions by co-accused**

The common law relating to the admissibility of a confession by one accused against another should prevail.

**s 39. Propensity of evidence against co-accused**

(1) An accused in a criminal proceeding may offer propensity evidence against a co-accused only if that evidence is relevant to the defence raised or proposed to be raised by the accused.

(2) An accused in a criminal proceeding who proposes to offer propensity evidence about a co-accused must give notice in writing to that co-accused and another co – accused of the proposal to offer that evidence unless the requirement to give notice is waived –





- (a) by all of the co-accused persons; or
  - (b) by the court in the interest of justice.
- (3) A notice must –
- (a) include the contents of the proposed evidence; and
  - (b) be given sufficient time before the hearing to provide all the co-accused persons with a fair opportunity to prepare to meet that evidence.

**s 40. Circumstances when co-accused is compellable**

- (1) Where an accused is charged with an offence jointly with any other person, the accused shall be a competent and compellable witness for the prosecution against the other person, and without the consent of that other person or for the defence of the other person at a stage of the proceedings, if –
- (a) the proceedings against the accused have been stayed, or the information against the accused withdrawn or dismissed; or
  - (b) the accused has been acquitted of the offence; or
  - (c) the accused has pleaded guilty to the offence; or
  - (d) the accused is being tried separately.
- (2) When two or more persons are jointly charged with any offence, the evidence of any person called as a witness for the prosecution or the defence under this section may be received as evidence either for or against any of the persons so charged.

## **Electronic Evidence**

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**s 122 Exception – Telecommunication**

- (1) The hearsay rule does not apply to a representation contained in a document recording a message that has been transmitted by electronic mail or by a fax, telegram, letter gram or telex so far as the representation is a representation as to –
- (a) the identity of the person from whom or on whose behalf the message was sent; or
  - (b) the date on which or the time at which the message was sent; or
  - (c) the message's destination or the identity of the person to whom the message was addressed.
- (2) Before relying on evidence of such a representation, the court must take into account the possibility of such a representation being false, whether deliberately or not.

## **Relevancy of Evidence**

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**s 20. Relevant evidence is admissible**

- (1) All relevant evidence is admissible in a proceeding except evidence that is –
- (a) inadmissible under this Act or any other law; or
  - (b) excluded in accordance with this Act or any other law.
- (2) Evidence that is not relevant is not admissible in a proceeding.
- (3) Evidence is relevant for the purposes of this Act if it has a tendency to prove or disprove anything as a result of the determination of a proceeding.

**s 21. Admission by agreement**

- (1) In a proceeding, the court may –



- (a) with the consent of all parties, admit relevant evidence that is not otherwise admissible; and
  - (b) admit evidence offered in any form or way agreed by all parties.
- (2) In a criminal proceeding, an accused may admit any fact that is not in dispute so as to dispense with proof of that fact.
- (3) In a criminal proceeding, the prosecution may admit any fact that is not in dispute so as to dispense with proof of that fact.

**s 22. Provisional relevance**

- (1) If the determination of the question whether evidence adduced by a party is relevant depends on the court making another finding (including a finding that the evidence is what the party claims it to be), the court may find that the evidence is relevant –
- (a) if it is reasonably open to make that finding; or
  - (b) subject to further evidence being admitted at a later stage of the proceeding that will make it reasonably open to make that finding.
- (2) Without limiting subsection (1), if the relevance of evidence of an act done by a person depends on the court making a finding that the person and one or more other persons had, or were acting in furtherance of, a common purpose (whether to effect an unlawful conspiracy or otherwise), the court may use the evidence itself in determining whether the common purpose existed.

**s 23. Inference as to relevance**

- (1) If a question arises as to the relevance of a document or thing, the court may examine it and may draw any reasonable inference from it, including an inference as to its authenticity or identity.
- (2) Subsection (1) does not limit the matters from which inferences may properly be drawn.

