

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

### **Tonga**

#### **Table of Contents**

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**Chapter 1:** Similarities and difference of provisions across all jurisdictions

**Chapter 2:** Tonga - Summary of Elements of the Offences

**Chapter 3:** Tonga - Elements of the Defences

**Chapter 4:** Evidentiary issues

**Annex A:** Offence provision/s by jurisdictions

**Annex B:** Evidence provision/s and rules by jurisdictions

#### **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

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



<b>Kiribati</b>	ss 121, 251, 266	s 85
<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>	ss 129, 258, 273, 308	s 91
<b>Tokelau</b>	ss 27, 31, 73(1)	s 72 (1), 72 (2)
<b>Tonga</b>	<a href="#">ss 53, 143, 144, 145, 164</a>	<a href="#">ss 50, 51</a>
<b>Vanuatu</b>	ss 122, 123, 124, 125	s 73



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

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Under the two offence categories, the below offences pursuant to the [Laws of Tonga Chapter 18 \(Criminal Offences\)](#), 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.

### **Fraud: s53. Fraudulent Conversion by Government Servant**

Every person who being employed as or acting in the capacity of a Government servant fraudulently converts to his own use or to the use or benefit of any other person or in any manner fraudulently disposes of any money valuable security or thing of any description whatever or any part thereof which has been entrusted to or received by him by virtue of his employment as a Government servant shall be liable to imprisonment for any period not exceeding 10 years.

### **s 143. Definition of Theft**

Theft is the dishonest taking without any colour of right of anything (which by [section 144](#) is declared capable of being stolen) with intent either-

- (a) to deprive the owner permanently of such thing, or
  - (b) to deprive any other person permanently of any lawful interest possessed by him in such thing,
- and with the intention of converting such thing to the use of any other person without the consent of the owner or person possessing such interest therein as aforesaid. "theft" and "steal" shall be construed accordingly.

### **s 144. Things capable of being stolen.**

- (1) Every animate thing which is the property of any person is capable of being stolen.
- (2) Every inanimate thing which is the property of any person is capable of being stolen:  
Provided that-
  - (a) it is moveable; or
  - (b) it is capable of being made moveable and has been made moveable even though it has been made moveable only in order to steal it.

### **s 145. Punishment for theft.**

Every person who commits theft is liable-

- (a) if the value of the thing stolen does not exceed \$500 to imprisonment for any period not exceeding 2 years; (Amended by Acts 13 of 1943, 13 of 1969 and 26 of 1984.)
- (b) if the value of the thing stolen exceeds \$500 to imprisonment for any period not exceeding 7 years.

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



**s 164. Obtaining by false pretences**

Every person who by any false pretence causes or induces any person to execute, make, accept, endorse or destroy the whole or any part of any valuable security shall be liable to imprisonment for any period not exceeding 4 years.

**S 50. Acceptance of bribe by government servant.**

Every person employed as or acting in the capacity of a Government servant who shall demand or accept any money or valuable consideration of any description whatever as an inducement to do or abstain from doing any act in the execution of his duty as such Government servant or as an inducement for showing favour or disfavour to any person shall be liable to imprisonment for any period not exceeding 3 years.

**s 51. Bribery of government servant.**

Every person who shall give or offer any money or valuable consideration of any description whatever to any person in the service of the Government as an inducement to do or abstain from doing any act in the execution of his duty as a Government servant or as an inducement to show favour or disfavour to any person shall be liable to imprisonment for any period not exceeding 3 years.

Partner Court / Topic	Fraud	Bribery
<b>TONGA</b>	<a href="#"><i>Laws of Tonga Chapter 18 (Criminal Offences)</i></a>	
<b>Legislative Provisions</b>	<p><b>s 53 Fraudulent conversion by government servant</b>  <b>s 143 Definition of Theft</b>  <b>s 145 Punishment for theft</b></p>	<p><b>s 50 Acceptance of bribe by government servant</b>  <b>s 51 bribery and attempted bribery of government servant</b></p>
<b>Elements of the Offence</b>	<p><b>s 53 Fraudulent conversion by government servant</b></p> <ol style="list-style-type: none"> <li>1. <b>A</b> is employed or is acting in the capacity of a Government servant</li> <li>2. <b>A</b> either:               <ol style="list-style-type: none"> <li>a) Coverts to his own use of the use or benefit of another person or</li> <li>b) disposes of, any money valuable security or thing of any description or any part thereof which has been entrusted to or received by him by virtue of his employment as a Government servant</li> </ol> </li> <li>3. <b>A</b> does so fraudulently</li> </ol>	<p><b>s 50 Acceptance of bribe by government servant</b></p> <ol style="list-style-type: none"> <li>1. <b>A</b> is acting in the capacity of a Government servant</li> <li>2. <b>A</b> demands or accepts valuable consideration</li> <li>3. <b>A</b> does so as an inducement to               <ol style="list-style-type: none"> <li>a) engage in any conduct in the execution of <b>A</b>'s duty as a Government servant, or</li> <li>b) show favour or disfavour to any person</li> </ol> </li> </ol> <p>ALTERNATIVELY</p> <ol style="list-style-type: none"> <li>1. <b>X</b> is acting in service of the Government</li> <li>2. <b>A</b> gives or offers valuable consideration to <b>X</b></li> </ol>



	<p><b>s 143 Definition of Theft</b></p> <ol style="list-style-type: none"> <li>1. <b>A</b> took anything</li> <li>2. <b>A</b> did so without color of right</li> <li>3. <b>A</b> did so dishonestly</li> <li>4. <b>A</b> did so with intent either to             <ol style="list-style-type: none"> <li>a) deprive the owner permanently of such thing; or</li> <li>b) deprive any other person permanently of any lawful interest possessed by him in such thing</li> </ol> </li> <li>5. <b>A</b> did so with intent to convert (without the consent of the owner or possessor of the relevant interest) such thing to the use of any person</li> </ol> <p>N.B. re the 5<sup>th</sup> element, it is unclear whether there must be an intention to convert the thing without consent; or whether there must merely be an intent to convert the thing, the lack of consent being an additional (objectively verified) 6<sup>th</sup> element.</p>	<ol style="list-style-type: none"> <li>3. <b>A</b> does so as an inducement to <b>X</b> to             <ol style="list-style-type: none"> <li>a) engage in any conduct in the execution of <b>X</b>'s duty as a Government servant, or</li> <li>b) show favour or disfavour to any person</li> </ol> </li> </ol> <p><b>s 51 bribery and attempted bribery of government servant</b></p> <ol style="list-style-type: none"> <li>1. <b>A</b> gives or offers any money or valuable consideration to any person <b>X</b> in the service of the Government</li> <li>2. <b>A</b> does so:             <ol style="list-style-type: none"> <li>a) as an inducement for <b>X</b> to do or abstain from doing and act in the execution of his duty as a government servant; or</li> <li>b) as an inducement for <b>X</b> to show favour or disfavour to any person</li> </ol> </li> </ol>
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### Chapter 3: Tonga - 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>TONGA</b>	
<p><b>Common defences</b></p> <p><b>s 16 (criminal liability of children)</b></p> <ul style="list-style-type: none"> <li>- &lt;7 year = nothing deemed an offence</li> <li>- &gt;7 and &lt;12 years = no offence unless such person has attained sufficient maturity of understanding to be aware of the nature and consequences of his conduct</li> </ul> <p><b>s 17 (person suffering from mental disease)</b></p> <ul style="list-style-type: none"> <li>- at the time of act or omission, person is proved to be insane</li> <li>- to be insane, person suffering from such a state of mental disease to deprive them of capacity to understand:               <ul style="list-style-type: none"> <li>(a) physical nature and quality of act or omission;</li> <li>(b) that such act or omission was wrong</li> </ul> </li> </ul> <p><b>s 21 (intoxication)</b></p> <ul style="list-style-type: none"> <li>- the person at the time of the act or omission complained of, did not know that such act or omission was wrong or did not know what he was doing</li> <li>- state of intoxication caused without consent by malicious or negligent act of another person</li> <li>- person charged was by reason of intoxication temporarily or otherwise at the time of act or omission</li> </ul>	
<p><b>s 53 (fraudulent conversion by government servant)</b></p> <ul style="list-style-type: none"> <li>- No express defences</li> </ul>	<p><b>s 50 (acceptance of bribe by government servant)</b></p> <ul style="list-style-type: none"> <li>- No express defences</li> </ul>
<p><b>s 143 (false receipt issue of, by government servant)</b></p> <ul style="list-style-type: none"> <li>- No express defences</li> </ul>	<p><b>s 51 (bribery of government servant)</b></p> <ul style="list-style-type: none"> <li>- No express defences</li> </ul>



## 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 Act 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

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

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

### s 88. Definition of hearsay

Where it is sought to prove any fact by evidence of an oral or written statement made by any person not called as a witness, such evidence is called hearsay evidence.

### s 89 (f). Exceptions

The Court shall not admit hearsay evidence except in the following cases —

#### Exceptions

....

- (f) where the statement refers to a fact in issue or a fact relevant to a fact in issue and is contained in any official book, register or record and was made by a public servant in discharge of his official duty or by any other person in performance of a duty enjoined by the law of the country in which such book, register or record is kept;
- (g) where the statement was made in the ordinary course of business by a person since dead and is an account or record of some act done by that person which it was both his duty to do and to record or near the time of its being done;

....

## Expert Evidence

### s 24. General Rule

- (1) Where the Court has to form an opinion as to the identity or genuineness of handwriting, or upon any point of foreign law, or of science, art, trade, manufacture, or any other subject requiring special knowledge or skill, evidence of their opinions may be given by any persons who, in the opinion of the Court, are possessed of special knowledge or skill in the particular subject under consideration.

**Written statement may be admitted.**

- (2) In any proceedings in which expert evidence is to be adduced, a statement by such expert containing —
- (a) his qualifications and experience;
  - (b) such facts as are within his own knowledge;
  - (c) such facts as have been communicated to him by others, identifying the sources of such facts;
  - (d) his opinion; and
  - (e) his signature,

may, at the discretion of the Court, be admitted and shall be prima facie evidence of (a), (b), (d) and (e) herein:

Provided that a copy of the statement has been served on the accused in sufficient time for him to give effective notice that he requires the expert to attend for cross examination:

Provided further that if an accused person who has given such notice is convicted he may be ordered to pay the costs of the attendance of the expert.

**s 25. Expert may refer to books and writings**

An expert in giving his opinion may refer to books or writings in support of such opinion and the Court may consider and construe such books and writings in conjunction with his evidence.

## Evidence Admissible Against Co-accused Defendants

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**s 4. Evidence of fellow conspirator**

Where in the opinion of the Court there is reasonable ground to believe that two or more persons have conspired together to commit an offence or civil wrong, evidence may be given against each of such persons of anything said, done, or written by any one of them in furtherance of their common purpose.

## Electronic Evidence

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**s 2 Interpretation**

In this Act —

...

“**electronic record**” means data that is recorded or stored on any medium in or by a computer system or other similar device that can be read or perceived by a person or a computer system or other similar device including a display, printout or other output of that data;

“**electronic record system**” includes the computer system or other similar device by or in which data is recorded or stored, and any procedures related to the recording and preservation of electronic records.

**s 54A General admissibility**

Nothing in the rules of evidence shall apply to deny the admissibility of an electronic record in evidence on the ground that it is an electronic record.

**s 54C Authentication**

The person seeking to introduce an electronic record in any legal proceeding has the burden of proving its authenticity by evidence capable of supporting a finding that the electronic record is what the person claims it to be.



**s 54D – Best evidence rule**

(1) In any legal proceeding, where the best evidence rule is applicable in respect of electronic record, the rule is satisfied on proof of the integrity of the electronic records system in or by which the data was recorded or stored.

(2) In any legal proceeding, where an electronic record in the form of printout has been manifestly or consistently acted on, relied upon, or used as the record of the information recorded or stored on the printout, the printout is the record for the purposes of the best evidence rules

**s 54E – Presumption of integrity**

In the absence of evidence to the contrary, the integrity of the electronic records system in which an electronic record is recorded or stored is presumed in any legal proceeding —

- (a) where evidence is adduced that supports a finding that at all material times the computer system or other similar device was operating properly, or if not, that in any respect in which it was not operating properly or out of operation, the integrity of the record was not affected by such circumstances, and there are no other reasonable grounds to doubt the integrity of the record;
- (b) where it is established that the electronic record was recorded or stored by a party to the proceedings who is adverse in interest to the party seeking to introduce it; or
- (c) where it is established that the electronic record was recorded or stored in the usual and ordinary course of business by a person who is not a party to the proceedings and who did not record or store it under the control of the party seeking to introduce the record.

**s 54F – Standards**

For the purpose of determination under any rule or law whether an electronic record is admissible, evidence may be presented in respect of any standard, procedure, usage or practice on how electronic records are to be recorded or preserved, having regard to the type of business that used, recorded or preserved the electronic record and the nature and purpose of the electronic record.

## **Relevancy of Evidence**

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**s 14. Meaning of relevancy**

When either party proposes to give evidence of any fact the Court may ask the party proposing to give the evidence in what manner the alleged fact if proved would be relevant to the issues before the Court, and the Court shall admit the evidence if it thinks that the fact, if proved, would be relevant to the issue and not otherwise. Any fact of which evidence is admissible under the provisions of this Part of this Act shall be deemed to be relevant to the issues before the Court.

