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ملخص البحث

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Abstract

There are exclusionary rules whereby evidence which is otherwise admissible is nevertheless excluded on the ground of some overriding consideration which prevails over the rules of evidence. In which that evidence is admissible in excluding evidence under this rule the court must weight all relevant consideration before either entertaining the claim for privilege or rejecting the claim. This it will do by weighing the utilities involved and should not accept the claim except where there are clear grounds for the claim.

The first and more important example is public policy and the ground upon which public policy forbids evidence of certain matters is that disclosure of those matters would affect the security of the state or the good administration of public affairs or justice.

The second example of privilege is communications between client and a legal adviser, in that a client can not be compelled, and a legal adviser will not be allowed without the consent of his client to disclose communications or to produce documents passing between them in professional confidence. Also the privilege contains the communication between patient and physician and similar people could come under the term “ and the like “ used in S. 27 of the Evidence Act 1993.

Next privilege is the communication between spouses so husband and wife shall not be compellable in any proceedings to give evidence to prove that marital intercourse did or did not take place between them during any period.

Another privilege is that no witness is compellable to answer any question the tendency of which is to expose, to any criminal charge, penalty or forfeiture.

The last privilege is negotiation “ without prejudice” the ground of this privilege is to encourage a peaceful settlement of disputes.

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PHIPSON

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(1) Phipson On Evidence 12th Ed 1976 P.2 Sweet And Maxwell

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((what we apply in Sudan is not the English statutory provision it self but ,the general principles of justice which prompted the legislature in

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England to Cater for the situation . What the Sudan courts are prevented from doing the borrowings of a ratification's granted on a general principle by foreign statute.))

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WHEELER V. MARCHANT

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⁽³⁾ s.15 Civil Evidence Act 1968 :communication between patent agents and their clients are privileged from disclosure)

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D.v. National Society for the Prevention OF Cruelty Against Children (1978)
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⁽¹⁾1930 Ac H.1

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⁽³⁾ Phipson on evidence sweet and Maxwell p.245

⁽⁴⁾ AC 171 at 232, HL.

(Section 10 of the police and criminal act 1984)

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⁽¹⁾ Phipson on evidence tenth edition p.98

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(¹)Bulter V. Board Of Trade

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⁽¹⁾ (1970) ch b80 (1970) 3 W.L.R. 822 (1970) AUE. R 595

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(¹) (Hillir V. Marchant)

(¹) (Burnell v. British Transport Commission)

Cross Examination

(¹) Woolley v. mall London Railway

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⁽³⁾ (1956) 1.Q.B187 G.A

⁽⁴⁾ 1969) L.R.4C.P.602

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Fraud

(Prima Facie Case)

(¹) Greenough v. Gaskell

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(¹) R . v. COX And Rاپilton

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⁽²⁾ Mand K.98.115

⁽³⁾ (1884) 14 Q.B.D135

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⁽¹⁾ Phipson on evidence 12 edition p. 205

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⁽²⁾ The privilege may however be waived by client (though not by the solicitor) either expressly or impliedly. Where a client has power with the property to which the communication relates, his successor in title may waive the privilege. This has been held not to apply to a client's trustees in bankruptcy and upon his death the same right passed to his personal representative

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The police and Criminal Evidence Act 1984

⁽¹⁾ R.v. Peter borough justice (1971) ch . 680

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⁽²⁾ the law relating to witness p. C.D Field 2ed 1978 p.1137

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(no person who is or has been married shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married , nor shall he be permitted to disclose any such communication unless the person who made it , or his representative in interest consents, except in suits between married persons or proceedings in which one married person is prosecuted for any crime committed against the other)

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(4) a husband is a competent witness in criminal proceedings against his wife , in accordance with Indian Act

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(¹) Shenton v. Ayler

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⁽²⁾ 1939 ch .620

⁽³⁾ no privilege protected a widow from answering interrogatories as a secret trust alleged to have been created by her late husband , and that no privilege for communications between husband and wife had ever existed at common law .

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.Rumping v. director of public prosecutions

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: () (The Evidence Amendment Act Of 1853)

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The Criminal

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(Evidence Act Of 1898)

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(1) An introduction to evidence , fourth edition G. D Nokes p.201

(2) An introduction to evidence forth edition p. 202

(3) s.(3) No husband shall be compellable to disclose any communication made by his wife during the marriage and no wife shall be compellable to disclose any communication made to her husband during the marriage

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The Police And Criminal Evidence Act

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⁽¹⁾(Pitt)

⁽¹⁾ Criminal , Evidence Richard May -, sweet and Maxwell , London 1986 p.244
⁽²⁾(1983) QB 25 , 72 cr APP P. 254

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(Edmunds Davies) ⁽¹⁾
Hoskyn v. Metropolitan Police Commissioner

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⁽¹⁾ (1979) A.C 474, 67 CR App 88

(Richard May)

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(1) Criminal , Evidence Richard May -, sweet and Maxwell , London 1986 p.244

(2) the reason that the wife is compellable for the co-accused only in this cases is that since the prosecution can not compel the wife to give evidence , it would be wrong to allow a co- defendant to compel her to give evidence and there by give the prosecution the opportunity to incriminate her husband by cross – examining her)

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(DUCHESS OF KINGSTON)

garner v. garner ()

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secondary evidence

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crown privilege

(¹) Duncan v . Gammell laird

) VISCOUNT SIMON

⁽¹⁾ Phipons Manual Of The law of evidence p.90

⁽²⁾ (1942) A.C P. 624

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(¹)MERRICKS V .NOTTBOWER

DUNACAN

REGROSVENOR HOTEL LONDON

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Duncan

(¹) Glasgow corporation v.gentral land board

⁽¹⁾ (1965) I. Q B 75 , A

⁽²⁾ There was a residual power to over ride the ministers objection when privilege was claimed () , and the court had a right to inspect the documents , for which privilege was claimed thought these power should exercised sparingly .

⁽³⁾ (1956) S.C (H.L).

⁽¹⁾Robinson v. State of south Australia (no . 2)

DUNCAN

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(ESTABLISHMENT MATTERS)

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⁽¹⁾ (1931) A.C 704.

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BURHAMAN OIL CO.LTD V. THE BANK OF

(¹)ENGLAND

. Conway v. rammer

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(2) s. 123of the Indian Evidence Act :-

No one shall be permitted to give any evidence derived from unpublished records relating to any affairs of state , except with permission of the officer at the hand of the department concerned , who shall give and withhold such permission as he thinks fit .

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Marks

()v.Beyfus

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⁽²⁾ An introduction to evidence , G.D. Nokes fourth ed. (1967) Sweet and Maxwell P. 190

⁽³⁾ (1890) 25 Q.B. P.99 .AC

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personal prosecution

Public prosecution

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⁽²⁾ In public prosecution and in civil proceedings arising there from , witness will not be allowed to disclose the channels through which came the information which led to the prosecution , unless the judge considers that such disclosure is necessary to show the innocence of the prisoners .

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⁽²⁾ Creed c.j stated the following principles while delivering the judgment of the Court of Appeal (What is said or written by a party in the course of negotiations before or during an action in an attempt to settle a dispute , where such negotiations are entered into expressly or impliedly without prejudice , can not be given in evidence against that party without his consenty .

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D.v. National society for the prevention of cruelty to children (1978) A.C 117 at 232,

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(2) Redaintrey (1893) 2 q.P. 116

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⁽¹⁾ Re Dialtrey (1893) 2 . Q b . 116

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Privilege Against Self Incriminations

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⁽²⁾ The court shall disallow any question which to be irrelevant , oppressive or vexatious ()⁽³⁾

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(Court Of Common Law)

(Ecclesiastical Courts)

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⁽¹⁾(witnesses act 1806)

⁽¹⁾ An introduction to evidence G.D Nokes fourth Edition 1967 Sweet and Maxwell P.206

⁽²⁾ Answer tending merely to establish a debt or to subject to civil liability short of penalty or for feature or co-defendants, are those which expose the witness to public contumely or contempt although the court will usually protect witnesses from unnecessary questions of this sort .

R. v Boyes ()

(Act Of Settlement)

(cockburn)

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⁽²⁾ (1861) 1 B and s.311

⁽³⁾ Phipson's manual of the law of evidence tenth edition D. W Elliot . Sweet and Maxwell p.99

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Bankruptcy Act 1919 S. ()

bigamy

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Ecclesiastical Censure

Theft Act 1968

(Criminal Damage Act 1971)

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() Williams v. Summerfield

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⁽¹⁾ phipson on evidence , 12 edition ,sweet and Maxwell p.22

⁽²⁾ Criminal Evidence Act 1898 s(1) (e) a person charged and being a witness in pursuance of this act may be asked any question in cross. Examination not with standing that it would tend to criminate him as to the offence charged .

⁽³⁾ (1972-2 Q 513 (DC)

Foreign Jurisdiction

(¹) Trplex safety Glass co Lancegaye safety glass (1934).

⁽¹⁾ (1939)2 K.B 395 at 403-404

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⁽¹⁾ An introduction to evidence G.D Nokes Fourth Edition 1967 Sweet and Maxwell P.209

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- (41) Phipson on Evidence 12th Edition Sweet and Maxwell.
- (42) Phipson on Evidence 10th Edition Sweet and Maxwell.
- (43) Ratanal Indian Law of Evidence.
- (44) The Law Relating to witness C.D Field 2 Edition 1978.

