CHAPTER 1

General Provisions

**SECTION 19‑1‑10.** Rules of construction.

 The rule of common law, that statutes in derogation of that law are to be strictly construed, has no application to this Title.

HISTORY: 1962 Code Section 26‑1; 1952 Code Section 26‑1; 1942 Code Section 902; 1932 Code Section 902; Civ. P. ‘22 Section 850; Civ. P. ‘12 Section 487; Civ. P. ‘02 Section 448; 1870 (14) 470.

CROSS REFERENCES

Acts constituting prima facie evidence of practicing podiatry, see Section 40‑51‑200.

Admissibility of amount of compensation employee received under Workmen’s Compensation Law in suits against third parties, see Section 42‑1‑570.

Admissibility of articles of ship in prosecution of offenses relating to sailors and immigrants, see Section 54‑9‑40.

Admissibility of evidence in Family Court, see Section 63‑3‑600.

Admissibility of evidence of usage of trade in case concerning sale of goods, see Section 36‑1‑303.

Admissibility of evidence that a party to a negotiable instrument signed as accommodation party, see Section 36‑3‑419.

Admissibility of market quotations in case concerning sale of goods, see Section 36‑2‑724.

Admission or representation by partner as evidence, see Section 33‑41‑330.

Application of this Title to courts of magistrates, see Section 22‑3‑300.

Certificate showing that livestock brand has been registered as prima facie evidence of ownership of livestock, see Section 47‑9‑290.

Copying records of banks, see Section 34‑3‑540.

Evidence at hearing concerning judgment debtor’s property, see Section 15‑39‑330.

Evidence of a dueling offense, see Sections 16‑3‑440 to 16‑3‑460.

Evidence of abandonment of cemetery, see Section 27‑43‑40.

Evidence of dishonor of a negotiable instrument, see Section 36‑3‑505.

Evidence of establishment and authorization of city housing authority, see Section 31‑3‑330.

Evidence of establishment and authorization of regional housing authority, see Section 31‑3‑940.

Evidence of general reputation of the place in a nuisance action, see Section 15‑43‑40.

Evidence of publication of notice of application to form a drainage district, see Section 49‑19‑270.

Evidence of truth in prosecution for libel, see SC Const, Art I, Section 16.

Objections for want of evidence under South Carolina Rules of Civil Procedure, see Rules 41 and 50 SCRCP.

Offers of judgment, see SCRCP, Rule 68.

Order for payment of reparation issued by Public Service Commission as prima facie evidence in a suit on the reparation order against telephone company, see Section 58‑9‑750.

Parol evidence rule in regard to contract for sale of goods, see Section 36‑2‑202.

Part payment or written acknowledgment as evidence to prevent the bar of the statute of limitations, see Section 15‑3‑130.

Pleading and evidence in libel and slander actions, see SCRCP, Rule 9.

Polygraph examiners, see Section 40‑53‑10 et seq.

Possession of alcoholic mixture at or near an illicit alcohol manufacturing facility as prima facie evidence of nonpayment of State liquor tax, see Section 12‑33‑610.

Possession of cigarettes in place of business of by person required to stamp them as prima facie evidence that they are intended for resale, see Section 12‑21‑2980.

Preserving evidence of goods in dispute, see Section 36‑2‑515.

Prima facie evidence by third party documents, see Section 36‑1‑307.

Prima facie evidence of continuation of partnership beyond fixed term, see Section 33‑41‑560.

Prima facie evidence of discriminatory rates of railroads, see Section 58‑17‑1990.

Prima facie evidence of domicile under the Uniform Divorce Recognition Act, see Section 20‑3‑430.

Prima facie evidence of drawing and uttering fraudulent check, see Section 34‑11‑70.

Prima facie evidence of transmission of orders by National Guard, see Section 25‑1‑2120.

Prima facie evidence of violation of provisions concerning dentists, see Section 40‑15‑320.

Probative force of deeds executed and delivered under judicial sales in other civil actions, see Section 49‑19‑1880.

Proof of market price in case concerning sale of goods, see Section 36‑2‑723.

Return of court appointed surveyors as evidence in land disputes, see Section 27‑1‑30.

Rules of evidence applicable in probate proceedings, see Section 62‑1‑107.

Rules of evidence being inapplicable in bail proceedings, see Section 17‑15‑60.

Rules of evidence in cases under the General Railroad Law, see Section 58‑17‑120.

Rules of evidence in proceedings for admission to mental hospital under Chapter 17 of Title 44, see Section 44‑17‑570.

Rules of evidence to be followed in hearings under the South Carolina Consumer Protection Code, see Section 37‑6‑411.

Schedule of rates prescribed by Public Service Commission as evidence, see Sections 58‑17‑1850, 58‑17‑1890.

Testimony obtained by South Carolina Aeronautics Division during investigation not being used in certain suits, see Section 55‑5‑160.

Variances between pleading and proof, see SCRCP, Rule 15.

When provisions of the Workmen’s Compensation Law are not admissible in trial, see Section 42‑1‑630.

Library References

Statutes 1206(3).

Westlaw Topic No. 361.

RESEARCH REFERENCES

Forms

Am. Jur. Pl. & Pr. Forms Evidence Section 1 , Introductory Comments.

LAW REVIEW AND JOURNAL COMMENTARIES

Agnostics and Atheist May Not Be Competent Witnesses in South Carolina. 24 S.C. L. Rev. 564.

The Dead Man’s Statute. 25 S.C. L. Rev. 389.

Evidence: The Best Evidence Rule. 22 S.C. L. Rev. 554.

Evidence: Competency—The Dead Man’s Statute. 22 S.C. L. Rev. 558.

Expert Testimony. 25 S.C. L. Rev. 382.

Expert Testimony in Automobile Accident Cases. 20 S.C. L. Rev. 271.

“Handbook on South Carolina Evidence,” 9 SC LQ, Supp 2.

Hearsay. 25 S.C. L. Rev. 388.

Impeachment and Cross‑Examination. 22 S.C. L. Rev. 556.

Impeachment of One’s Own Witness in South Carolina. 8 SC LQ 217.

Judicial Notice. 25 S.C. L. Rev. 380.

Limitations on Cross‑Examination of a Witness Ruled Hostile on Direct. 25 S.C. L. Rev. 562.

The Need for an Evidentiary Privilege for the Use of Lie Detectors in Criminal Cases: Investigation as Risk. 31 S.C. L. Rev. 469.

The New Federal Rules of Evidence and South Carolina Evidentiary Law: A Comparison and Critical Analysis. 28 S.C. L. Rev. 481.

Presenting the Evidence. 8 SC LQ 194.

The Priest‑Penitent Privilege in South Carolina—Background and Development. 12 SC LQ 440.

Relevancy: Materiality But One Element of Relevancy. 24 S.C. L. Rev. 565.

The Role of the Polygraph in Our Judicial System. 20 S.C. L. Rev. 804.

Some Problems of Presumptions: South Carolina Treatment. 14 SC LQ 538.

Technicalities: Unintentional Waiver of Objection by Cross‑Examination. 25 S.C. L. Rev. 390.

Testimony of a Witness may not be Impeached by Contradicting Statements on Collateral Matters. 24 S.C. L. Rev. 563.

Unintentional Waiver of Objection by Cross‑Examination. 24 S.C. L. Rev. 559.

**SECTION 19‑1‑20.** “Clerk” defined.

 The word “clerk,” as used in this title, signifies unless the context otherwise indicates, the clerk of the court where the action is pending.

HISTORY: 1962 Code Section 26‑2; 1952 Code Section 26‑2; 1942 Code Section 900; 1932 Code Section 900; Civ. P. ‘22 Section 848; Civ. P. ‘12 Section 485; Civ. P. ‘02 Section 447; 1870 (14) 469.

Library References

Statutes 1122.

Westlaw Topic No. 361.

C.J.S. Statutes Sections 364, 372 to 374.

**SECTION 19‑1‑30.** Pleading shall not be evidence against accused.

 No pleading can be used in a criminal prosecution against the defendant as a proof of a fact admitted or alleged in such pleading.

HISTORY: 1962 Code Section 26‑3; 1952 Code Section 26‑3; 1942 Code Section 475; 1932 Code Section 475; Civ. P. ‘22 Section 418; Civ. P. ‘12 Section 207; Civ. P. ‘02 Section 178; 1870 (14) 180; 1929 (36) 102.

Library References

Criminal Law 385, 429(2).

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 915, 1024, 1391 to 1394.

NOTES OF DECISIONS

In general 1

1. In general

Applied in State v. Smith (S.C. 1951) 220 S.C. 224, 67 S.E.2d 82.

**SECTION 19‑1‑60.** Request for admission of authenticity of documents and other papers.

 Either party to a civil action may exhibit to the other or to his attorney at any time before the trial any paper material to the action and request an admission of its genuineness in writing. If the adverse party or his attorney fail to give the admission within four days after the request, and if the party exhibiting the paper be afterwards put to expense in order to prove its genuineness and the same be finally proved or admitted on the trial, such expense shall be paid by the party refusing the admission, unless it appear to the satisfaction of the court that there was good reason for the refusal.

HISTORY: 1962 Code Section 26‑6; 1952 Code Section 26‑6; 1942 Code Section 673; 1932 Code Section 673; Civ. P. ‘22 Section 689; Civ. P. ‘12 Section 427; Civ. P. ‘02 Section 389; 1870 (14) Section 405.

Library References

Pretrial Procedure 473, 485.

Westlaw Topic No. 307A.

C.J.S. Discovery Sections 166 to 167, 180.

**SECTION 19‑1‑70.** Proof of negligence by plaintiff in certain motor vehicle cases.

 The provisions of Chapter 5, Title 56 declaring prima facie speed limitations shall not be construed to relieve the plaintiff in any civil action from the burden of proving negligence on the part of the defendant as the proximate cause of the accident.

HISTORY: 1962 Code Section 26‑7; 1952 Code Section 26‑7; 1949 (46) 466.

CROSS REFERENCES

Admissibility in civil action of conviction under The Uniform Act Regulating Traffic on the Highways, see Section 56‑5‑6160.

Admissibility of prior similar acts in prosecution for crime relating to titles to motor vehicles, see Section 16‑21‑150.

Certified copies of records of Highway Department as evidence, see Section 56‑3‑2450.

Proof of existence of speed limit signs as evidence of maximum safe speed, see Section 56‑5‑1570.

Library References

Automobiles 242(4).

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 1204, 1209 to 1212, 1214.

LAW REVIEW AND JOURNAL COMMENTARIES

Expert Testimony in Automobile Accident Cases. 20 S.C. L. Rev. 271.

NOTES OF DECISIONS

In general 1

1. In general

It may not be inferred that the speed of an automobile was the proximate cause of an accident unless there is some factual basis to support the inference. Dean v. Cole (C.A.4 (S.C.) 1964) 326 F.2d 907, certiorari denied 84 S.Ct. 1168, 377 U.S. 909, 12 L.Ed.2d 178, rehearing denied 84 S.Ct. 1911, 377 U.S. 1010, 12 L.Ed.2d 1059.

Jury question existed as to whether man who had traveled road only once before was grossly unreasonable in doing more than following suggested speed limit, in light of fact that he was under no absolute duty to stop, look, and listen before crossing railroad track, and his ability to use his senses might have been prevented by railroad’s negligence. Wessinger v. Southern Ry. Co., Inc. (D.C.S.C. 1977) 438 F.Supp. 1256. Railroads 350(13)

It is impossible to determine whether driver of car was guilty of contributory negligence as matter of law entitling defendant railroad to summary judgment, where inadequate sight distance at crossing created reasonable inference that driver was placed in position of vulnerability to oncoming train before he could see the train or react. Wessinger v. Southern Ry. Co., Inc. (D.C.S.C. 1977) 438 F.Supp. 1256.

Cited in Greenwood v. Anderson Truck Lines, Inc., 1964, 235 F.Supp. 1010.

Evidence was sufficient to support finding, in negligence action brought by county bus passenger against county and county transit authority after passenger was hit by an automobile after getting off bus, that county and transit authority’s negligence was greater then passenger’s negligence; testimony of former director of transit authority was overwhelming that the county and transit authority violated its own safety policy by alighting passengers on the shoulder of the road instead of at “park and ride” area that was constructed to insure passenger safety. Hurd v. Williamsburg County (S.C.App. 2003) 353 S.C. 596, 579 S.E.2d 136, rehearing denied, certiorari granted, affirmed 363 S.C. 421, 611 S.E.2d 488. Carriers 318(8)

Exceeding the prima facie speed limit of fifty‑five miles per hour is not negligence per se. Beverly v. Sarvis (S.C. 1965) 246 S.C. 470, 144 S.E.2d 220.

Exceeding the prima facie speed limit of fifty‑five miles per hour is not negligence per se, and whether or not one is negligent in so doing depends upon all of the attendant circumstances. Hiott v. Bishop (S.C. 1964) 244 S.C. 524, 137 S.E.2d 780. Automobiles 168(1)

Stated in Saxon v. Saxon (S.C. 1957) 231 S.C. 378, 98 S.E.2d 803.

Quoted in Chapman v. Associated Transport (S.C. 1951) 218 S.C. 554, 63 S.E.2d 465.

**SECTION 19‑1‑80.** Conditions on examination of witness in criminal proceeding concerning written statement made to public employee.

 No witness in any preliminary hearing or in any criminal judicial proceeding of any kind or nature shall be examined or cross‑examined by any examiner, solicitor, lawyer or prosecuting officer concerning a written statement formerly made and given to any person employed by this State, or any county, city or municipality thereof, or any part of any such governing body, unless it first be shown that at the time of the making of the statement the witness was given an exact copy of the statement, and that before his examination or cross‑examination the witness was given a copy of the statement and allowed a reasonable time in which to read it.

HISTORY: 1962 Code Section 26‑7.1; 1952 (47) 1977.

CROSS REFERENCES

Public employee taking statement in investigation giving copy to person examined, see Section 8‑15‑50.

Library References

Witnesses 268(8), 387, 392(1).

Westlaw Topic No. 410.

C.J.S. Federal Civil Procedure Section 586.

C.J.S. Witnesses Sections 546, 793 to 795, 825 to 826.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Witnesses Section 61, Prior Inconsistent Statements.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: evidence: statutory limitation by failing to deliver written statement. 28 S.C. L. Rev. 338.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

Questions for jury 5

Witness 4

Written statement 3

1. In general

Cited in State v Anderson (1954) 224 SC 419, 79 SE2d 455. State v Britt (1959) 235 SC 395, 111 SE2d 669. State v Steadman (1972) 257 SC 528, 186 SE2d 712.

Applied in State v Trull (1958) 232 SC 250, 101 SE2d 648. State v Britt (1960) 237 SC 293, 117 SE2d 379, cert den 365 US 886, 6 L Ed 2d 197, 81 S Ct 1040. State v Outen (1961) 237 SC 514, 118 SE2d 175, cert den 366 US 977, 6 L Ed 2d 1266, 81 S Ct 1948. State v Gamble (1966) 247 SC 214, 146 SE2d 709, later app 249 SC 605, 155 SE2d 916, cert den 390 US 927, 19 L Ed 2d 988, 88 S Ct 862.

First degree burglary defendant was not prejudiced by state’s failure to give him copy of his statement until morning of trial, despite his claim that statement referred to his use of crack cocaine and contained the only evidence of aggravating circumstance that burglary occurred in nighttime; there was no evidence that defendant did not have adequate time to review statement in preparation for trial, other witnesses testified that it was nighttime when defendant broke into victims’ apartment, and reference to defendant’s crack cocaine use corroborated his defense that he broke into apartment not with intent to commit crime, but with intent to obtain return of money he paid for crack cocaine that he did not receive. Bannister v. State (S.C. 1998) 333 S.C. 298, 509 S.E.2d 807, rehearing denied. Criminal Law 627.8(2); Criminal Law 627.8(6)

Although the defendant had not been provided with copies of two confessions at the time he made them, which failure was due to a malfunction of the copy machine at the police station, the trial court did not err in admitting these statements into evidence where the defendant had been given a copy three weeks later, prior to the preliminary hearing and approximately four months before trial. State v. Butler (S.C. 1982) 277 S.C. 452, 290 S.E.2d 1, certiorari denied 103 S.Ct. 242, 459 U.S. 932, 74 L.Ed.2d 191, habeas corpus granted 302 S.C. 466, 397 S.E.2d 87, certiorari denied 111 S.Ct. 442, 498 U.S. 972, 112 L.Ed.2d 425. Criminal Law 413.22

Trial court committed no error in refusing to allow defense counsel to impeach witness in murder prosecution by reference to written statement witness had given police on ground that witness had not signed receipt acknowledging having received copy of such statement. State v. Bolton (S.C. 1976) 266 S.C. 444, 223 S.E.2d 863. Witnesses 387; Witnesses 392(1)

Where written statement was taken by an officer and a copy thereof was not given to the witness prior to testimony at trial, the statements would not be admitted in evidence or permitted in cross‑examination, due to code sections making it improper to admit into evidence, in any criminal proceeding, a written statement taken from a witness by a person employed by the state, unless an exact copy of the statement is given to the witness and a signed receipt taken therefor. State v. Motes (S.C. 1975) 264 S.C. 317, 215 S.E.2d 190.

One of the purposes of this section [Code 1962 Section 26‑7.1] is to permit a witness or a defendant to refresh his memory relative to statements made prior to the trial. State v. Mikell (S.C. 1971) 257 S.C. 315, 185 S.E.2d 814.

Where tapes were played to and for the defendants prior to trial, the spirit and purpose of this section [Code 1962 Section 26‑7.1] had not been circumvented. State v. Mikell (S.C. 1971) 257 S.C. 315, 185 S.E.2d 814.

Requirement of this section [Code 1962 Section 26‑7.1] is satisfied if a copy of the statement be given within a reasonable time after its making, considering the surrounding circumstances, and at all events far enough in advance of the hearing or proceeding to permit the witness to read it before being examined or cross‑examined concerning it. State v. Jones (S.C. 1956) 228 S.C. 484, 91 S.E.2d 1.

Reasonably construed, the provision in this section [Code 1962 Section 26‑7.1] that the witness be given a copy of the written statement “at the time of the making of the statement” does not mean that such copy must be given eo instante. State v. Jones (S.C. 1956) 228 S.C. 484, 91 S.E.2d 1.

2. Constitutional issues

South Carolina Supreme Court interpretation of Code 1962 Sections 1‑65, 26‑7.1 and 26‑7.2 [Code 1976 Sections 8‑15‑50, 19‑1‑80, and 19‑1‑90] as permitting the prosecution to object to use of a statement, on the basis that the police did not comply with the requirement of delivering a copy thereof to the person making the statement and obtaining a signed receipt, to cross‑examine witnesses as to inconsistencies, is of doubtful constitutionality. Motes v. Leeke (D.C.S.C. 1976) 423 F.Supp. 919.

3. Written statement

An oral statement does not invoke the requirement of Sections 8‑15‑50, 19‑1‑80, and 19‑1‑90 that a copy be given to the witness. Moreover, a waiver of rights form is not a “written statement” under these statutes. Where one accused of murder signed a waiver of rights form and then gave an oral statement, the trial judge did not err in admitting into evidence the signed waiver of rights form merely because the defendant had not been given a copy. State v. Smith (S.C. 1985) 286 S.C. 406, 334 S.E.2d 277, certiorari denied 106 S.Ct. 1239, 475 U.S. 1031, 89 L.Ed.2d 347, rehearing denied 106 S.Ct. 1665, 475 U.S. 1132, 90 L.Ed.2d 207, denial of habeas corpus affirmed 137 F.3d 808.

Officer’s written recollection of content of defendant’s purported oral confession was not written statement contemplated by provisions of Section 19‑1‑80; thus its use by solicitor in cross‑examination was not precluded by that section, where defendant heard alleged statement at suppression hearing and statement was made available to defense before trial. State v. Scott (S.C. 1977) 269 S.C. 438, 237 S.E.2d 886.

The legislature has not made this section [Code 1962 Section 26‑7.1] applicable to tape recordings. State v. Mikell (S.C. 1971) 257 S.C. 315, 185 S.E.2d 814.

4. Witness

The word “witness” as used in this section [Code 1962 Section 26‑7.1] obviously refers to the person who made the “written statement,” and not to any other witness who may be examined concerning the same. State v. Jones (S.C. 1956) 228 S.C. 484, 91 S.E.2d 1.

5. Questions for jury

Where testimony was in conflict as to compliance with this section [Code 1962 Section 26‑7.1], an issue of fact was presented and was for the jury to decide. State v. Bullock (S.C. 1959) 235 S.C. 356, 111 S.E.2d 657, certiorari granted 80 S.Ct. 959, 362 U.S. 968, 4 L.Ed.2d 900, certiorari dismissed 81 S.Ct. 686, 365 U.S. 292, 5 L.Ed.2d 570.

**SECTION 19‑1‑90.** Admissibility in criminal proceeding of written statement made to public employee.

 Unless the provisions of Sections 8‑15‑50 and 19‑1‑80 have been complied with, no statement such as is referred to in those sections shall be admissible in evidence in any case, nor shall any reference be made to it in the trial of any case.

HISTORY: 1962 Code Section 26‑7.2; 1952 (47) 1977.

CROSS REFERENCES

Public employee taking statement in investigation giving copy to person examined, see Section 8‑15‑50.

Library References

Criminal Law 405.15.

Westlaw Topic No. 110.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Witnesses Section 61, Prior Inconsistent Statements.

Forms

Am. Jur. Pl. & Pr. Forms Evidence Section 15 , Introductory Comments.

LAW REVIEW AND JOURNAL COMMENTARIES

“The Admissibility of Confessions in Evidence in Criminal Courts,” 5 SC LQ 268 (1952).

NOTES OF DECISIONS

In general 1

Constitutional issues 2

1. In general

First degree burglary defendant was not prejudiced by state’s failure to give him copy of his statement until morning of trial, despite his claim that statement referred to his use of crack cocaine and contained the only evidence of aggravating circumstance that burglary occurred in nighttime; there was no evidence that defendant did not have adequate time to review statement in preparation for trial, other witnesses testified that it was nighttime when defendant broke into victims’ apartment, and reference to defendant’s crack cocaine use corroborated his defense that he broke into apartment not with intent to commit crime, but with intent to obtain return of money he paid for crack cocaine that he did not receive. Bannister v. State (S.C. 1998) 333 S.C. 298, 509 S.E.2d 807, rehearing denied. Criminal Law 627.8(2); Criminal Law 627.8(6)

An oral statement does not invoke the requirement of Sections 8‑15‑50, 19‑1‑80, and 19‑1‑90 that a copy be given to the witness. Moreover, a waiver of rights form is not a “written statement” under these statutes. Where one accused of murder signed a waiver of rights form and then gave an oral statement, the trial judge did not err in admitting into evidence the signed waiver of rights form merely because the defendant had not been given a copy. State v. Smith (S.C. 1985) 286 S.C. 406, 334 S.E.2d 277, certiorari denied 106 S.Ct. 1239, 475 U.S. 1031, 89 L.Ed.2d 347, rehearing denied 106 S.Ct. 1665, 475 U.S. 1132, 90 L.Ed.2d 207, denial of habeas corpus affirmed 137 F.3d 808.

Although defendant was not provided with copy of two written confessions when made because of malfunction of copy machine at police station, he was given copy 3 weeks later, prior to preliminary hearing and approximately 4 months before trial, therefore, defendant had ample time to prepare case. State v. Butler (S.C. 1982) 277 S.C. 452, 290 S.E.2d 1, certiorari denied 103 S.Ct. 242, 459 U.S. 932, 74 L.Ed.2d 191, habeas corpus granted 302 S.C. 466, 397 S.E.2d 87, certiorari denied 111 S.Ct. 442, 498 U.S. 972, 112 L.Ed.2d 425. Criminal Law 413.22

Trial court committed no error in refusing to allow defense counsel to impeach witness in murder prosecution by reference to written statement witness had given police on ground that witness had not signed receipt acknowledging having received copy of such statement. State v. Bolton (S.C. 1976) 266 S.C. 444, 223 S.E.2d 863. Witnesses 387; Witnesses 392(1)

Where written statement was taken by an officer and a copy thereof was not given to the witness prior to testimony at trial, the statements would not be admitted in evidence or permitted in cross‑examination, due to code sections making it improper to admit into evidence, in any criminal proceeding, a written statement taken from a witness by a person employed by the state, unless an exact copy of the statement is given to the witness and signed receipt taken therefor. State v. Motes (S.C. 1975) 264 S.C. 317, 215 S.E.2d 190.

Cited in State v. Steadman (S.C. 1972) 257 S.C. 528, 186 S.E.2d 712.

Applied in State v. Gamble (S.C. 1966) 247 S.C. 214, 146 S.E.2d 709.

This section [Code 1962 Section 26‑7.2] adds nothing to the duties imposed on investigating officers by Code 1962 Section 1‑65. It simply declares that the result or noncompliance with its terms shall be the exclusion of such statement from evidence. The applicability of the rule of exclusion laid down by this section [Code 1962 Section 26‑7.2] is limited to a statement to which the requirements of Code 1962 Section 1‑65 apply, for it is only as to such a statement that noncompliance is possible. State v. Anderson (S.C. 1954) 224 S.C. 419, 79 S.E.2d 455.

When the State offered in evidence appellant’s written statement, which he had signed for police officers, his counsel objected to its admission upon the ground that the provisions of Code 1962 Section 1‑65 had not been complied with, in that the officers who took the statement did not give a copy thereof to appellant or obtain his receipt therefor. This objection was properly overruled upon the ground that these requirements did not apply to the statement, which was signed some five months before this section [Code 1962 Section 26‑7.2] and Code 1962 Section 1‑65 became law. State v. Anderson (S.C. 1954) 224 S.C. 419, 79 S.E.2d 455.

2. Constitutional issues

South Carolina Supreme Court interpretation of Code 1962 Sections 1‑65, 26‑7.1 and 26‑7.2 [Code 1976 Sections 8‑15‑50, 19‑1‑80, and 19‑1‑90] as permitting the prosecution to object to use of a statement, on the basis that the police did not comply with the requirement of delivering a copy thereof to the person making the statement and obtaining a signed receipt, to cross‑examine witnesses as to inconsistencies, is of doubtful constitutionality. Motes v. Leeke (D.C.S.C. 1976) 423 F.Supp. 919.

**SECTION 19‑1‑100.** No statement shall be used for impeachment in civil proceeding unless copy furnished when signed.

 No statement taken from and signed by a witness or litigant after July 1, 1966 shall be used in any civil judicial proceeding for the purpose of contradicting, impeaching or attacking the credibility of such a witness or litigant, unless such party shall have been furnished a copy of said statement at the time of its signing.

HISTORY: 1962 Code Section 26‑7.3; 1966 (54) 2621.

Library References

Witnesses 387, 392(1).

Westlaw Topic No. 410.

C.J.S. Witnesses Sections 793 to 795, 825 to 826.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Witnesses Section 61, Prior Inconsistent Statements.

S.C. Jur. Witnesses Section 62, Prior Inconsistent Statements‑Written Statements.

NOTES OF DECISIONS

In general 1

1. In general

Physician’s written stipulation to Board of Medical Examiners, that he had overprescribed controlled substances and failed to monitor decedent’s drug‑abuse problem, was admissible as prior inconsistent statement to impeach physician’s testimony in wrongful death action that he was not negligent in his prescribing practices. Weaver v. Lentz (S.C.App. 2002) 348 S.C. 672, 561 S.E.2d 360. Witnesses 379(4.1)

A written proof of loss statement, detailing plaintiff insured’s account of an automobile fire, signed by the insured, was a “statement” within the purview of Section 19‑1‑100, and, where the insured had not been furnished with a copy, the defendant insurer was properly precluded from admitting the proof of loss statement into evidence to impeach insured as a witness. Varnadore v. Nationwide Mut. Ins. Co. (S.C. 1986) 289 S.C. 155, 345 S.E.2d 711.

Where witness admits making inconsistent statement he thereby impeaches himself and renders further evidence thereof unnecessary and inadmissible. Muhleck v. Tamanini (S.C. 1978) 271 S.C. 57, 244 S.E.2d 535.

**SECTION 19‑1‑110.** Introduction of certain instruments or copies issued by common carriers.

 It shall be competent (a) to introduce in evidence as prima facie evidence that the same is genuine any instrument purporting to be the original of any waybill, receipt, bill of lading or similar instrument issued by any common carrier or (b) to introduce in evidence a copy of any such instrument as prima facie evidence that the same is a true and correct copy if the adverse party shall fail, upon due notice given, to produce the original instrument.

HISTORY: 1962 Code Section 26‑8; 1952 Code Section 26‑8; 1942 Code Section 736; 1932 Code Section 736; Civ. P. ‘22 Section 752; Civ. C. ‘12 Section 4015; 1910 (26) 695.

Library References

Carriers 133.

Evidence 178(11), 186(6), 354(2).

Westlaw Topic Nos. 70, 157.

C.J.S. Carriers Sections 429, 432.

C.J.S. Evidence Sections 1307 to 1308, 1318, 1356 to 1357, 1363 to 1371, 1374 to 1375, 1377 to 1378, 1385.

NOTES OF DECISIONS

In general 1

1. In general

Judge erred in directing verdict in favor of railroad on basis that late receipts for soybean shipment issued by railroad at inception of shipping were insufficient proof of weight to base suit for loss of weight during shipping, since receipts were sufficient to present jury question on issue. Tallon v. Seaboard Coast Line R. Co. (S.C. 1978) 270 S.C. 362, 242 S.E.2d 418.

**SECTION 19‑1‑120.** Proving signature of absent witness to bond or note; effect of sworn denial of signature.

 The absence of a witness to any bond or note shall not be deemed a good cause by any court of justice for postponing a trial respecting the same, but the signature to such bond or note may be proved by other testimony, unless the defendant in his answer shall swear or affirm, according to the form of his religious profession, that the signature to the bond or note in suit is not his, or in case the defendant or defendants should be executors or administrators unless one of them shall swear or affirm, as aforesaid, in his answer that he has cause to believe the signature to such bond or note is not the testator’s or intestate’s, as the case may be.

HISTORY: 1962 Code Section 26‑9; 1952 Code Section 26‑9; 1942 Code Sections 709, 710; 1932 Code Sections 709, 710; Civ. P. ‘22 Sections 725, 726; Civ. C. ‘12 Sections 3988, 3989; Civ. C. ‘02 Sections 2884, 2885; G. S. 2213, 2214; R. S. 2348, 2349; 1802 (5) 485.

Library References

Evidence 374(6).

Executors and Administrators 450.

Westlaw Topic Nos. 157, 162.

C.J.S. Evidence Sections 1086, 1095.

NOTES OF DECISIONS

In general 1

Sufficiency of proof 2

1. In general

This section applies only to bonds and notes. Townsend v Covington (1825) 14 SCL 219. Harper v Solomon (1793) 3 SCL 3.

It is not necessary that the delegation of power to seize chattels under a mortgage should be in writing, under seal or otherwise, and although such power may be in writing, and attested, it is not necessary to prove its execution by the subscribing witnesses unless the same is denied under oath, as provided for by this section [Code 1962 Section 26‑9]. McGowan v. Reid (S.C. 1887) 27 S.C. 262, 3 S.E. 337. Principal And Agent 117(1)

The object of this section [Code 1962 Section 26‑9] was to dispense with the strict common‑law mode of proof and to substitute a greater facility in its place. Edgar ads. Brown (S.C. 1827).

This section [Code 1962 Section 26‑9] is in derogation of the common‑law rule, and therefore must be confined to the particular causes herein enumerated. Townsend v. Covington (S.C. 1825).

2. Sufficiency of proof

When the maker of a note signs his name with his mark, and the subscribing witness is not produced to prove the making of such note, it is sufficient to prove by any witness the defendant’s signature under the authority of this section [Code 1962 Section 26‑9]. Gervais v Baird (1806) 4 SCL 37. Bussey v Whittaker (1820) 11 SCL 374.

If the subscribing witness to a bond is dead or out of the State, the next best evidence to prove the execution of the bond is proof of the handwriting of the obligor, with the additional evidence of the handwriting of such subscribing witness. Plunket v Bowman (1822) 13 SCL 138. Myers v Taylor (1803) 3 SCL 245.

Where the law requires more than one attesting witness to make the paper valid, and there is a real contest over the proper execution, all should be produced, if alive and within the reach of the court; but if any be dead, or absent, proof of handwriting will be sufficient. McGowan v. Reid (S.C. 1887) 27 S.C. 262, 3 S.E. 337.

Proof of handwriting of subscribing witnesses is not necessary on proof of execution of bond. Edgar ads. Brown (S.C. 1827).

This section [Code 1962 Section 26‑9] permits any competent witness, who can, to prove the handwriting of the obligor in the place of the subscribing witness on a plea of non est factum, unless such plea of the defendant be verified. Deas ads, Marigault (S.C. 1821). Evidence 374(6)

An endorsement on a promissory note may be proved by evidence of handwriting of the endorser although it appears that there was a witness to it who had not been subpoenaed. Madden v. Burris (S.C. 1804).

It was said in the case of Myers v Taylor (1803) 3 SCL 245, that where the subscribing witnesses do not attend, their handwriting must be proved as well as the signature of the obligor, the court basing such conclusion on the fact that this section [Code 1962 Section 26‑9] does not dispense with the rule that the next best evidence must be produced. Myers v. Taylor (S.C. 1803).

This section does not dispense with the rule that the next best evidence must be produced. Myers v. Taylor (S.C. 1803).

**SECTION 19‑1‑130.** Situations in which notary’s protest is sufficient evidence.

 Whenever a notary public who may have made protest for nonpayment of any inland bill or promissory note shall be dead or shall reside out of the county in which the bill or note is sued his protest of such bill or note shall be received as sufficient evidence of notice in any action by any person whatsoever against any of the parties to such bill or note.

HISTORY: 1962 Code Section 26‑10; 1952 Code Section 26‑10; 1942 Code Section 711; 1932 Code Section 711; Civ. P. ‘22 Section 727; Civ. C. ‘12 Section 3990; Civ. C. ‘02 Section 2886; G. S. 2215; R. S. 2350; 1802 (5) 485.

Library References

Bills and Notes 408.

Notaries 9.

Westlaw Topic Nos. 56, 276.

C.J.S. Bills and Notes; Letters of Credit Section 249.

C.J.S. Notaries Sections 10 to 11, 15.

NOTES OF DECISIONS

In general 1

1. In general

And the protest should state both the demand and notice of payment and is evidence of both. Dobson v Laval (1826) 15 SCL 57, cited with approval in Bank of State v Green (1831) 18 SCL 230.

In a case where, after suit was brought on a note, the protest of the notary, altered by him after commencement of the suit so as to correct a mistake in stating that he presented the note “at the said bank” where the note was discounted instead of “at said office,” meaning the place where the note was payable, is not admissible in evidence to prove a demand of, and notice of, nonpayment. Aiken v. Cathcart (S.C. 1844). Bills And Notes 410

This section [Code 1962 Section 26‑10] is intended to make the protest evidence of what is stated therein. Dobson v. Laval (S.C. 1826).

It is clear that this section [Code 1962 Section 26‑10] did not intend to dispense with the necessity of a demand on the drawer, and if the protest does not state that such demand has been made, of course it cannot be evidence of that fact. Dobson v. Laval (S.C. 1826).

Such a paper, to be evidence per se, must carry with it all the usual evidence of genuineness. If it be altered after made, such alteration destroys its character of authenticity and would go far to exclude it altogether from being offered as evidence. Aiken v. Cathcart (S.C. 1844).

The mere correction by the notary of his protest is no more than his declaration that it was wrong, and such is clearly inadmissible in evidence. Aiken v. Cathcart (S.C. 1844).

This section [Code 1962 Section 26‑10] places the protest of an inland bill or promissory note, in the case of the death of the notary, or his residence being out of the district where the case was tried, upon the same footing as a protest of a foreign bill made abroad. Aiken v. Cathcart (S.C. 1844). Bills And Notes 409

**SECTION 19‑1‑140.** Use of testimony in subsequent trials when witness is in armed forces.

 In all civil causes pending in the courts of this State when a witness has testified and has been cross‑examined or the right given the opposing side to cross‑examine him his testimony so given may be read in all subsequent trials or hearings concerning the same cause when such witness is in the armed forces of our country.

HISTORY: 1962 Code Section 26‑11; 1952 Code Section 26‑11; 1943 (43) 278.

Library References

Evidence 577.

Westlaw Topic No. 157.

C.J.S. Evidence Sections 645 to 647, 650.

**SECTION 19‑1‑150.** Life expectancy tables.

 When necessary, in a civil action or other litigation, to establish the life expectancy of a person from any period in his life, whether he is living at the time or not, the table below must be received in all courts and by all persons having power to determine litigation as evidence, along with other evidence as to his health, constitution, and habits, of the life expectancy of the person. In determining the age of a person as of any particular time, periods of six months or more beyond the last full year must be treated as one year in using the table below.

|  |  |  |
| --- | --- | --- |
|  |  |  |
| Age | Male | Female |
| 0 | 76.62 | 80.84 |
| 1 | 75.69 | 79.88 |
| 2 | 74.74 | 78.91 |
| 3 | 73.76 | 77.93 |
| 4 | 72.78 | 76.95 |
| 5 | 71.80 | 75.96 |
| 6 | 70.81 | 74.97 |
| 7 | 69.83 | 73.99 |
| 8 | 68.84 | 73.00 |
| 9 | 67.86 | 72.02 |
| 10 | 66.88 | 71.03 |
| 11 | 65.89 | 70.05 |
| 12 | 64.91 | 69.07 |
| 13 | 63.93 | 68.08 |
| 14 | 62.95 | 67.10 |
| 15 | 61.98 | 66.13 |
| 16 | 61.02 | 65.15 |
| 17 | 60.07 | 64.17 |
| 18 | 59.12 | 63.20 |
| 19 | 58.17 | 62.23 |
| 20 | 57.23 | 61.26 |
| 21 | 56.29 | 60.28 |
| 22 | 55.34 | 59.31 |
| 23 | 54.40 | 58.34 |
| 24 | 53.45 | 57.37 |
| 25 | 52.51 | 56.40 |
| 26 | 51.57 | 55.43 |
| 27 | 50.62 | 54.46 |
| 28 | 49.68 | 53.49 |
| 29 | 48.74 | 52.53 |
| 30 | 47.79 | 51.56 |
| 31 | 46.85 | 50.60 |
| 32 | 45.90 | 49.63 |
| 33 | 44.95 | 48.67 |
| 34 | 44.00 | 47.71 |
| 35 | 43.05 | 46.75 |
| 36 | 42.11 | 45.80 |
| 37 | 41.16 | 44.84 |
| 38 | 40.21 | 43.89 |
| 39 | 39.27 | 42.94 |
| 40 | 38.33 | 42.00 |
| 41 | 37.39 | 41.05 |
| 42 | 36.46 | 40.11 |
| 43 | 35.53 | 39.17 |
| 44 | 34.61 | 38.23 |
| 45 | 33.69 | 37.29 |
| 46 | 32.78 | 36.36 |
| 47 | 31.87 | 35.43 |
| 48 | 30.97 | 34.51 |
| 49 | 30.07 | 33.60 |
| 50 | 29.18 | 32.69 |
| 51 | 28.28 | 31.79 |
| 52 | 27.40 | 30.90 |
| 53 | 26.52 | 30.01 |
| 54 | 25.65 | 29.14 |
| 55 | 24.79 | 28.27 |
| 56 | 23.94 | 27.41 |
| 57 | 23.10 | 26.57 |
| 58 | 22.27 | 25.73 |
| 59 | 21.45 | 24.90 |
| 60 | 20.64 | 24.08 |
| 61 | 19.85 | 23.27 |
| 62 | 19.06 | 22.47 |
| 63 | 18.29 | 21.68 |
| 64 | 17.54 | 20.90 |
| 65 | 16.80 | 20.12 |
| 66 | 16.08 | 19.36 |
| 67 | 15.37 | 18.60 |
| 68 | 14.68 | 17.86 |
| 69 | 13.99 | 17.12 |
| 70 | 13.32 | 16.40 |
| 71 | 12.66 | 15.69 |
| 72 | 12.01 | 14.99 |
| 73 | 11.39 | 14.31 |
| 74 | 10.78 | 13.64 |
| 75 | 10.18 | 12.98 |
| 76 | 9.61 | 12.34 |
| 77 | 9.05 | 11.71 |
| 78 | 8.50 | 11.10 |
| 79 | 7.98 | 10.50 |
| 80 | 7.49 | 9.92 |
| 81 | 7.01 | 9.35 |
| 82 | 6.57 | 8.81 |
| 83 | 6.14 | 8.29 |
| 84 | 5.74 | 7.79 |
| 85 | 5.36 | 7.32 |
| 86 | 5.00 | 6.87 |
| 87 | 4.66 | 6.43 |
| 88 | 4.35 | 6.02 |
| 89 | 4.07 | 5.64 |
| 90 | 3.81 | 5.29 |
| 91 | 3.57 | 4.96 |
| 92 | 3.35 | 4.61 |
| 93 | 3.15 | 4.26 |
| 94 | 2.96 | 3.93 |
| 95 | 2.78 | 3.63 |
| 96 | 2.62 | 3.38 |
| 97 | 2.47 | 3.18 |
| 98 | 2.32 | 3.02 |
| 99 | 2.19 | 2.82 |
| 100 | 2.07 | 2.61 |
| 101 | 1.96 | 2.42 |
| 102 | 1.86 | 2.23 |
| 103 | 1.76 | 2.06 |
| 104 | 1.66 | 1.89 |
| 105 | 1.57 | 1.74 |
| 106 | 1.48 | 1.60 |
| 107 | 1.39 | 1.47 |
| 108 | 1.30 | 1.36 |
| 109 | 1.22 | 1.25 |
| 110 | 1.14 | 1.16 |
| 111 | 1.07 | 1.08 |
| 112 | 0.99 | 1.00 |
| 113 | 0.92 | 0.93 |
| 114 | 0.85 | 0.86 |
| 115 | 0.79 | 0.79 |
| 116 | 0.72 | 0.73 |
| 117 | 0.66 | 0.67 |
| 118 | 0.61 | 0.61 |
| 119 | 0.55 | 0.56 |
| 120 | 0.50 | 0.50 |

HISTORY: 1962 Code Section 26‑12; 1952 Code Section 26‑12; 1942 Code Section 735; 1932 Code Section 735; Civ. P. ‘22 Section 751; Civ. C. ‘12 Section 4014; 1903 (24) 92; 1951 (47) 234; 1963 (53) 93. 1981 Act No. 37; 2004 Act No. 209, Section 1, eff April 26, 2004.

Editor’s Note

2004 Act No. 209, Section 2, provides as follows:

“The life expectancy table contained in this section is based on the 2001 Commissioners Standard Ordinary Mortality Table developed by the National Association of Insurance Commissioners.”

Library References

Evidence 14, 328, 364.

Westlaw Topic No. 157.

C.J.S. Evidence Sections 150 to 152, 155 to 156, 169, 171, 182, 1117, 1260 to 1261, 1264, 1266.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Annuities Section 13, The Cost of an Annuity as an Element of Damages.

S.C. Jur. Damages Section 6, Past and Future Damages.

S.C. Jur. Damages Section 19, Lost Time, Lost Wages, and Impaired Earnings.

Attorney General’s Opinions

The documentary tax on a deed granting and conveying title to realty that expresses the consideration as being in the form of payments to the grantees for a stipulated sum annually until the death of the grantors is to be calculated by the use of a mortuary table as provided in this section [Code 1962 Section 26‑12] and multiplying the remaining life expectancy of the grantors by the amounts to be paid annually. 1968‑69 Op Atty Gen, No 2778, p. 268 (December 04, 1968) 1968 WL 9002.

NOTES OF DECISIONS

In general 1

Instructions 2

1. In general

Applied in Greene v Miller (1953, DC SC) 114 F Supp 150. Simmons v Fenters (1964, DC SC) 233 F Supp 550. Humphries v United States (1964, DC SC) 234 F Supp 560. Thinna v United States (1964, DC SC) 234 F Supp 588. Long v United States (1965, DC SC) 241 F Supp 286. Davenport v United States (1965, DC SC) 241 F Supp 320. Davenport v United States (1965, DC SC) 241 F Supp 792. Sodergren v Goodman (1965, DC SC) 242 F Supp 44. Smory v Piedmont Chemical Co. (1965, DC SC) 242 F Supp 344. Murphy v Smith (1965, DC SC) 243 F Supp 1006. Downing v Ulmer (1966, DC SC) 253 F Supp 694. Wright v Charles Pfizer & Co. (1966, DC SC) 253 F Supp 811. Kapushinsky v United States (1966, DC SC) 259 F Supp 1. Andrews v Central Surety Ins. Co. (1967, DC SC) 271 F Supp 814, affd (CA4 SC) 391 F2d 935. Rose v Atlantic C. L. R. Co. (1967, DC SC) 277 F Supp 913, affd (CA4 SC) 403 F2d 204. Steeves v United States (1968, DC SC) 294 F Supp 446. Adams v Hunter (1972, DC SC) 343 F Supp 1284, affd without op (CA4 SC) 471 F2d 648.

Cited in Hyland v Southern Bell Tel. & Tel. Co. (1904) 70 SC 315, 49 SE 879. Davis v Davis (1928) 144 SC 205, 142 SE 496. Whetsell v Sovereign Camp, W. O. W. (1938) 188 SC 106, 198 SE 153. Jackson v Solomon (1955) 228 SC 225, 89 SE2d 436. Beasley v United States (1948, DC SC) 81 F Supp 518. Seitz v Hammond (1967, DC SC) 265 F Supp 162. Jones v Hamm (1967, DC SC) 283 F Supp 199. Lester v McFaddon (1968, DC SC) 288 F Supp 735, affd (CA4 SC) 415 F2d 1101, 13 FR Serv 2d 292.

The mortuary table is admissible in evidence in a personal injury action in spite of uncontradicted testimony regarding plaintiff’s health. Griggs v Driggers (1956) 230 SC 97, 94 SE2d 225. Belieu v Murray (1964, DC SC) 231 F Supp 579.

The legislature did not, does not, intend that either social security benefit ages, retirement ages, or other collateral assumptions or calculations should be written into the formula used. Ray v. U. S. (D.C.S.C. 1968) 277 F.Supp. 952. Damages 100

Quoted in U. S. v. 15,883.55 Acres of Land, Situate in Spartanburg County, S.C., 1942, 45 F.Supp. 783.

Workers’ Compensation Commission had authority to prorate a lump sum award for permanent disability over claimant’s life expectancy using life expectancy table provided by state law, even without the consent of employer and carrier, in case in which claimant sought to minimize the offset of her Social Security benefits; nothing in Workers’ Compensation Act prohibited, either expressly or impliedly, the proration language at issue, proration did not affect amount of workers’ compensation award, and proration was purely an accounting mechanism specifically approved of by the Social Security Administration in determining the amount of a Social Security offset. James v. Anne’s Inc. (S.C. 2010) 390 S.C. 188, 701 S.E.2d 730, rehearing denied. Workers’ Compensation 1005

Finding that exceptional circumstances warranted creation of alimony trust to secure wife’s alimony after husband’s death was supported by 12‑year age difference between husband and wife, wife’s longer life expectancy, and wife’s history of emotional problems, which resulted in significant medical expenses and her inability to maintain gainful employment. Gilfillin v. Gilfillin (S.C.App. 1999) 334 S.C. 213, 512 S.E.2d 534, reversed 344 S.C. 407, 544 S.E.2d 829. Divorce 615

Mortality tables provide an adequate basis upon which to determine the present day value of lifetime workers’ compensation benefits. Glover by Cauthen v. Suitt Const. Co. (S.C. 1995) 318 S.C. 465, 458 S.E.2d 535, rehearing denied. Workers’ Compensation 839.1

In a wrongful death action it is not necessary that beneficiaries be able to prove pecuniary loss before they may introduce the mortuary table; if they are entitled to recover any damages on account of loss of companionship and society, it is proper to show the probable life expectancy of the deceased. Nelson v. Charleston & W. C. Ry. Co. (S.C. 1957) 231 S.C. 351, 98 S.E.2d 798.

The value of this table to a jury is that, in ascertaining damages, one may find what a person is capable of earning in a year and then take his or her expectancy and find what their earning capacity would be for a lifetime. Clifford v. Southern Ry. Co. (S.C. 1910) 87 S.C. 324, 69 S.E. 513.

2. Instructions

In an action for wrongful death the court may charge the jury as to the deceased’s expectancy of life as shown by the mortuary table provided for by this section [Code 1962 Section 26‑12]. Hambright v Atlanta & C. A. L. R. Co. (1915) 102 SC 166, 86 SE 375, citing Clifford v Southern R. Co. (1910) 87 SC 324, 69 SE 513.

Instructing jury regarding use of mortality tables was proper, in wrongful death and survival actions brought by personal representative of estate of patient who died from breast cancer against physician, where there was evidence as to patient’s chances of survival if cancer had been treated at time physician should have discovered it based on mammogram, and court instructed jury that it was not bound by mortality tables. Haselden v. Davis (S.C.App. 2000) 341 S.C. 486, 534 S.E.2d 295, rehearing denied, certiorari granted, affirmed 353 S.C. 481, 579 S.E.2d 293. Death 104(3)

The trial court in an action for personal injuries properly charged the South Carolina Life Expectancy Tables, Section 19‑1‑150, where the plaintiff testified his right knee had “never gotten right,” and that “nothing can be done” about it, and thus there was evidence of permanent injury. Johnston v. Aiken Auto Parts (S.C.App. 1993) 311 S.C. 285, 428 S.E.2d 737, rehearing denied, certiorari denied.

The trial court erred in failing to charge the jury in a negligence case with the life expectancy tables where a pedestrian, who injured her foot in an automobile accident, testified that she was still having pain in her foot 2 1/2 years after the accident, and her doctor testified that she had a “permanent injury,” but could not say either that she would or would not have a complete recovery. Gethers v. Bailey (S.C.App. 1991) 306 S.C. 179, 410 S.E.2d 586.

In a libel action it is not error to charge the jury on the mortality tables to assist them in determining damages, but the jury should be instructed to consider the mortality tables only if they find permanent injury. Abofreka v. Alston Tobacco Co. (S.C. 1986) 288 S.C. 122, 341 S.E.2d 622.

The mortuary table is not properly charged to the jury in a personal injury action if there is no evidence of permanent injury, but it is proper to charge the table if there is evidence which would make the issue of permanent injury a jury question. Fishburne v. Short (S.C. 1977) 268 S.C. 546, 235 S.E.2d 118.

Where defendant was given the opportunity to request amplification of the trial judge’s charge on the mortuary statute, but did not do so, he cannot complain that the judge failed to charge fully with regard to the provisions as to decedent’s health, constitution and habits. Johnson v. Charleston & W. C. Ry. Co. (S.C. 1959) 234 S.C. 448, 108 S.E.2d 777.

**SECTION 19‑1‑160.** Nonsealed instruments may be considered as sealed.

 Whenever it shall appear from the attestation clause or from any other part of any instrument in writing that it was the intention of the party or parties thereto that such instrument should be a sealed instrument then such instrument shall be construed to be, and shall have the effect of, a sealed instrument although no seal be actually attached thereto.

HISTORY: 1962 Code Section 11‑1; 1952 Code Section 11‑1; 1942 Code Section 6751; 1932 Code Section 6751; Civ. C. ‘22 Section 3651; Civ. C. ‘12 Section 2535; Civ. C. ‘02 Section 1677; 1899 (23) 48.

CROSS REFERENCES

Effect of corporate seal on document, see Section 33‑1‑200.

Omission of seal from conveyance, see Section 27‑7‑30.

Library References

Bills and Notes 43.

Limitation of Actions 22(2).

Seals 5.

Westlaw Topic Nos. 56, 241, 347.

C.J.S. Bills and Notes; Letters of Credit Section 16.

C.J.S. Limitations of Actions Section 99.

C.J.S. Seals Section 6.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Limitation of Actions Section 21, Actions on Bonds, Realty Secured Contracts and Sealed Instruments.

Treatises and Practice Aids

Restatement (2d) of Contracts 4 3 ST NT, Stat. Note (1981).

Restatement (2d) of Contracts 4, 3 ST NT, Statutory Note.

NOTES OF DECISIONS

In general 1

1. In general

Statute providing that when it appears from attestation clause or other part of instrument that intention of parties was that instrument should be sealed, instrument will be given that effect, creates statutory rule of evidence and is applicable to all cases tried since its passage. Treadaway v. Smith (S.C.App. 1996) 325 S.C. 367, 479 S.E.2d 849, rehearing denied, certiorari denied. Seals 6

Separation agreement which was incorporated into 1974 Haitian divorce and which stated that parties have set their respective hands and seals in quadruplicate was sealed instrument, and thus, action by wife to enforce provision of agreement in which husband agreed to pay college expenses of children was governed by 20‑year statute of limitations. Treadaway v. Smith (S.C.App. 1996) 325 S.C. 367, 479 S.E.2d 849, rehearing denied, certiorari denied. Limitation Of Actions 22(2)

And is applied to scroll or word “seal” written in place of notarial seal. Wallingford v. Western Union Tel. Co. (S.C. 1901) 60 S.C. 201, 38 S.E. 443, rehearing denied 60 S.C. 201, 38 S.E. 629.

Depositions were not objectionable as lacking notarial seals where the word “seal” was attached to every jurat and the attestation clauses read, “Witness my hand and official seal.” Wallingford v. Western Union Tel. Co. (S.C. 1901) 60 S.C. 201, 38 S.E. 443, rehearing denied 60 S.C. 201, 38 S.E. 629.

This section [Code 1962 Section 11‑1] creates a statutory rule of evidence and is applicable to all cases tried since its passage. Cook v. Cooper (S.C. 1901) 59 S.C. 560, 38 S.E. 218.

**SECTION 19‑1‑180.** Out‑of‑court statements by certain children.

 (A) An out‑of‑court statement made by a child who is under twelve years of age or who functions cognitively, adaptively, or developmentally under the age of twelve at the time of a family court proceeding brought pursuant to Title 63 concerning an act of alleged abuse or neglect as defined by Section 63‑7‑20 is admissible in the family court proceeding if the requirements of this section are met regardless of whether the statement would be otherwise inadmissible.

 (B) An out‑of‑court statement may be admitted as provided in subsection (A) if:

 (1) the child testifies at the proceeding or testifies by means of videotaped deposition or closed‑circuit television, and at the time of the testimony the child is subject to cross‑examination about the statement; or

 (2)(a) the child is found by the court to be unavailable to testify on any of these grounds:

 (i) the child’s death;

 (ii) the child’s physical or mental disability;

 (iii) the existence of a privilege involving the child;

 (iv) the child’s incompetency, including the child’s inability to communicate about the offense because of fear;

 (v) substantial likelihood that the child would suffer severe emotional trauma from testifying at the proceeding or by means of videotaped deposition or closed‑circuit television; and

 (b) the child’s out‑of‑court statement is shown to possess particularized guarantees of trustworthiness.

 (C) The proponent of the statement shall inform the adverse party of the proponent’s intention to offer the statement and the content of the statement sufficiently in advance of the proceeding to provide the defendant with a fair opportunity to prepare a response to the statement before the proceeding at which it is offered. If the child is twelve years of age or older, the adverse party may challenge the professional decision that the child functions cognitively, adaptively, or developmentally under the age of twelve.

 (D) In determining whether a statement possesses particularized guarantees of trustworthiness under subsection (B)(2)(b), the court may consider, but is not limited to, the following factors:

 (1) the child’s personal knowledge of the event;

 (2) the age and maturity of the child;

 (3) certainty that the statement was made, including the credibility of the person testifying about the statement;

 (4) any apparent motive the child may have to falsify or distort the event, including bias, corruption, or coercion;

 (5) whether more than one person heard the statement;

 (6) whether the child was suffering pain or distress when making the statement;

 (7) the nature and duration of any alleged abuse;

 (8) whether the child’s young age makes it unlikely that the child fabricated a statement that represents a graphic, detailed account beyond the child’s knowledge and experience;

 (9) whether the statement has a ring of verity, has internal consistency or coherence, and uses terminology appropriate to the child’s age;

 (10) whether extrinsic evidence exists to show the defendant’s opportunity to commit the act complained of in the child’s statement.

 (E) The court shall support with findings on the record any rulings pertaining to the child’s unavailability and the trustworthiness of the out‑of‑court statement.

 (F) Any hearsay testimony admissible under this section shall not be admissible in any other proceeding.

 (G) If the parents of the child are separated or divorced, the hearsay statement shall be inadmissible if (1) one of the parents is the alleged perpetrator of the alleged abuse or neglect and (2) the allegation was made after the parties separated or divorced. Notwithstanding this subsection, a statement alleging abuse or neglect made by a child to a law enforcement official, an officer of the court, a licensed family counselor or therapist, a physician or other health care provider, a teacher, a school counselor, a Department of Social Services staff member, or to a child care worker in a regulated child care facility is admissible under this section.

HISTORY: 1988 Act No. 649, Section 1, eff June 3, 1988; 1992 Act No. 481, Section 1, eff June 23, 1992; 1999 Act No. 104, Section 4, eff June 30, 1999.

CROSS REFERENCES

General fair hearing procedures, Department of Social Services, see S.C. Code of Regulations R. 114‑130.

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Infants 2146(3).

Westlaw Topic No. 211.

C.J.S. Infants Section 55.

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S.C. Jur. Children and Families Section 41, Reasonable Cause and Review Hearings.

S.C. Jur. Children and Families Section 49.5, Testimony by Children.

S.C. Jur. Criminal Sexual Conduct Section 52, Statutory Family Court Hearsay Exception.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual survey of South Carolina law, evidence. 40 S.C. L. Rev. 141 (Autumn 1988).

Note: “Lights, camera, action”: videotaping and closed‑circuit television procedures coyly confront the Sixth Amendment. 40 S.C. L. Rev. 693 (Spring 1989).

NOTES OF DECISIONS

In general 1

Constitutional issues 2

1. In general

Videotape of forensic interviews with father’s two daughters was not admissible during child abuse hearing; statute, which created a narrow exception to the hearsay rule in family court proceedings, would have allowed the admission of the videotape if the statements were made to a “a law enforcement official, an officer of the court, a licensed family counselor or therapist, a physician or other health care provider, a teacher, a school counselor, a Department of Social Services staff member, or to a child care worker in a regulated child care facility,” and it was conceded that child forensic interviewer was not licensed by the state in any field, nor was she one of the individuals listed by the statute. South Carolina Dept. of Social Services v. Pringle (S.C. 2013) 405 S.C. 608, 749 S.E.2d 301, rehearing denied. Infants 2146(7)

Testimony from psychologist concerning hearsay statements made by child was inadmissible during intervention proceeding, even though child testified at hearing and was subject to cross‑examination; psychologist was not licensed in state at the time she interviewed child, and statute provided that only hearsay statements “made by a child to a licensed family counselor or therapist” were admissible. South Carolina Dept. of Social Services v. Lisa C. (S.C.App. 2008) 380 S.C. 406, 669 S.E.2d 647. Infants 2146(8)

Trial court erred when it allowed mother to testify regarding child’s accusations of sexual abuse against father, in intervention proceeding; allowing mother to testify after she had separated from father regarding accusations child allegedly made before the separation undermined statute, which sought to protect a parent from potentially false accusations instigated by the other parent. South Carolina Dept. of Social Services v. Lisa C. (S.C.App. 2008) 380 S.C. 406, 669 S.E.2d 647. Infants 2146(8)

Testimony from police detective regarding child’s hearsay statements was admissible, in intervention proceeding; child testified at hearing and was available for cross‑examination. South Carolina Dept. of Social Services v. Lisa C. (S.C.App. 2008) 380 S.C. 406, 669 S.E.2d 647. Infants 2146(7)

Statute on evidence, allowing admission of a child witness’ hearsay statements, does not authorize the exclusion of the parent/defendant, in a proceeding for intervention for and protection of an abused or neglected child, from the child’s video deposition or closed circuit television taping, or from the hearing at which the child testifies. South Carolina Dept. of Social Services v. Wilson (S.C. 2002) 352 S.C. 445, 574 S.E.2d 730. Infants 2086; Infants 2105; Witnesses 228

Evidence supported family court’s finding that child’s hearsay statements to psychologist about sexual abuse were sufficiently trustworthy and credible to be admissible in proceedings to terminate mother’s parental rights for abuse and neglect; family court found that psychologist was credible witness, that statements attributable to child were not coached, that child’s description of sexual abuse represented graphic, detailed account beyond a child of his age, knowledge and experience, and that description demonstrated personal knowledge of abuse. Richland County Dept. of Social Services v. Earles (S.C. 1998) 330 S.C. 24, 496 S.E.2d 864. Infants 2146(8)

Determination that children are unavailable to testify about neglect or abuse in proceeding to terminate parental rights because of likelihood children would suffer severe emotional trauma, as basis for admitting hearsay statements, requires finding that children would suffer severe trauma by testifying in person, by videotape, or by closed‑circuit television. Richland County Dept. of Social Services v. Earles (S.C. 1998) 330 S.C. 24, 496 S.E.2d 864. Infants 2146(6); Infants 2146(7)

Evidence supported finding that child would suffer severe trauma if forced to testify in person, by videotape, or by closed‑circuit television in proceedings to terminate mother’s parental rights and, thus, child was unavailable to testify and his hearsay statements to psychologist about alleged sexual abuse were admissible; although one psychologist who testified that child would suffer severe trauma by testifying under any method had not seen child in a year, doctor who was treating child at time of hearing also testified that child would be severely traumatized and that child’s reaction had been extremely severe the last time the topic of his mother was discussed. Richland County Dept. of Social Services v. Earles (S.C. 1998) 330 S.C. 24, 496 S.E.2d 864. Infants 2146(6); Infants 2146(7)

Trial court erred when it treated the “particularized guarantee of trustworthiness” of child’s out‑of‑court statement as a separate basis for admitting the statement in abuse case; statute required the court to make initial determination of whether child was unavailable and then, and only then, reach the “particularized guarantee of trustworthiness” issue. South Carolina Department of Social Services v. Wheaton (S.C. App. 1996) 323 S.C. 299, 474 S.E.2d 156. Infants 2146(6); Infants 2146(8)

Pursuant to statute, child’s out‑of‑court statement is admissible in abuse case only if one of two things occur, child testifies and therefore submits to cross‑examination or judge finds the child unavailable for one of five statutory reasons and finds the out‑of‑court statement possesses particularized guarantees of trustworthiness; unless judge makes the initial determination that child is unavailable, judge does not reach the “particularized guarantee of trustworthiness” issue. South Carolina Department of Social Services v. Wheaton (S.C. App. 1996) 323 S.C. 299, 474 S.E.2d 156. Infants 2146(6); Infants 2146(8)

2. Constitutional issues

The parent/defendant’s due process right to be present when a child testifies in a proceeding for the Department of Social Services’ (DSS) intervention for and protection of an abused or neglected child does not interfere with the application of the family court rule providing the family court judge with discretion to speak with the child in private conference. South Carolina Dept. of Social Services v. Wilson (S.C. 2002) 352 S.C. 445, 574 S.E.2d 730. Constitutional Law 4401; Infants 2096; Infants 2104

**SECTION 19‑1‑190.** South Carolina Unanticipated Medical Outcome Reconciliation Act; legislative purpose; definitions; inadmissibility of certain statements; waiver of inadmissibility; impact of South Carolina Rules of Evidence.

 (A) This section may be cited as the “South Carolina Unanticipated Medical Outcome Reconciliation Act”.

 (B) The General Assembly finds that conduct, statements, or activity constituting voluntary offers of assistance or expressions of benevolence, regret, mistake, error, sympathy, or apology between or among parties or potential parties to a civil action should be encouraged and should not be considered an admission of liability. The General Assembly further finds that such conduct, statements, or activity should be particularly encouraged between health care providers, health care institutions, and patients experiencing an unanticipated outcome resulting from their medical care. Regulatory and accreditation agencies are in some instances requiring health care providers and health care institutions to discuss the outcomes of their medical care and treatment with their patients, including unanticipated outcomes, and studies have shown such discussions foster improved communications and respect between provider and patient, promote quicker recovery by the patient, and reduce the incidence of claims and lawsuits arising out of such unanticipated outcomes. The General Assembly, therefore, concludes certain steps should be taken to promote such conduct, statements, or activity by limiting their admissibility in civil actions.

 (C) As used in this section, the term:

 (1) “Ambulatory surgical facility” means a licensed, distinct, freestanding, self‑contained entity that is organized, administered, equipped, and operated exclusively for the purpose of performing surgical procedures or related care, treatment, procedures, and/or services, by licensed health care providers or health care institutions, for which patients are scheduled to arrive, receive surgery or related care, treatment, procedures, and/or services, and be discharged on the same day. This term does not include abortion clinics.

 (2) “Designated meeting” means any meeting scheduled by the health care provider, representative or agent of a health care provider, or representative or agent of a health care institution:

 (a) to discuss the outcome including any unanticipated outcome of the provider or institution’s medical care and treatment with the patient, patient’s relative or representative; or

 (b) to offer an expression of benevolence, regret, mistake, error, sympathy, or apology between or among parties or potential parties to a civil action.

 (3) “Health care institution” means an ambulatory surgical facility, a hospital, an institutional general infirmary, a nursing home, or a renal dialysis facility.

 (4) “Health care provider” means a physician, surgeon, osteopath, nurse, oral surgeon, dentist, pharmacist, chiropractor, optometrist, podiatrist, or similar category of licensed health care provider, including a health care practice, association, partnership, or other legal entity.

 (5) “Hospital” means a licensed facility with an organized medical staff to maintain and operate organized facilities and services to accommodate two or more nonrelated persons for the diagnosis, treatment, and care of such persons over a period exceeding twenty‑four hours and provides medical and surgical care of acute illness, injury, or infirmity and may provide obstetrical care, and in which all diagnoses, treatment, or care are administered by or performed under the direction of persons currently licensed to practice medicine and surgery in the State of South Carolina. This term includes a hospital that provides specialized service for one type of care, such as tuberculosis, maternity, or orthopedics.

 (6) “Institutional general infirmary” means a licensed facility which is established within the jurisdiction of a larger nonmedical institution and which maintains and operates organized facilities and services to accommodate two or more nonrelated students, residents, or inmates with illness, injury, or infirmity for a period exceeding twenty‑four hours for the diagnosis, treatment, and care of such persons and which provides medical, surgical, and professional nursing care, and in which all diagnoses, treatment, or care are administered by or performed under the direction of persons currently licensed to practice medicine and surgery in the State of South Carolina.

 (7) “Nursing home” means a licensed facility with an organized nursing staff to maintain and operate organized facilities and services to accommodate two or more unrelated persons over a period exceeding twenty‑four hours which is operated either in connection with a hospital or as a freestanding facility for the express or implied purpose of providing skilled nursing services for persons who are not in need of hospital care. This term does not include assisted living, independent living, or community residential care facilities that do not provide skilled nursing services.

 (8) “Renal dialysis facility” means an outpatient facility which offers staff assisted dialysis or training and supported services for self‑dialysis to end‑stage renal disease patients.

 (9) “Skilled nursing services” means services that:

 (a) are ordered by a physician;

 (b) require the skills of technical or professional personnel such as registered nurses, licensed practical (vocational) nurses, physical therapists, occupational therapists, and speech pathologists or audiologists; and

 (c) are furnished directly by or under the supervision of such personnel.

 (10) “Unanticipated outcome” means the outcome of a medical treatment or procedure, whether or not resulting from an intentional act, that differs from an expected or intended result of such medical treatment or procedure.

 (D) In any claim or civil action brought by or on behalf of a patient allegedly experiencing an unanticipated outcome of medical care, any and all statements, affirmations, gestures, activities, or conduct expressing benevolence, regret, apology, sympathy, commiseration, condolence, compassion, mistake, error, or a general sense of benevolence which are made by a health care provider, an employee or agent of a health care provider, or by a health care institution to the patient, a relative of the patient, or a representative of the patient and which are made during a designated meeting to discuss the unanticipated outcome shall be inadmissible as evidence and shall not constitute an admission of liability or an admission against interest.

 (E) The defendant in a medical malpractice action may waive the inadmissibility of the statements defined in subsection (D) of this section.

 (F) Nothing in this section affects the South Carolina Rules of Evidence.

HISTORY: 2006 Act No. 373, Section 1, eff June 9, 2006.

Library References

Evidence 202, 243(4).

Health 820.

Westlaw Topic Nos. 157, 198H.

C.J.S. Drugs and Narcotics Sections 151 to 153.

C.J.S. Evidence Sections 556, 558, 580 to 581, 584, 586.

C.J.S. Hospitals Section 48.

C.J.S. Physicians, Surgeons, and Other Health‑Care Providers Sections 152 to 153.