NATIONAL OPEN UNIVERSITY OF NIGERIA

SCHOOL OF LAW

**COURSE CODE: LAW445**

**COURSE TITLE: Law of Evidence**

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|---|---|
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| **Course Title:** | Law of Evidence |
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**Course Guide**

**Law of Evidence**
**Table of Content**



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**Introduction**

Law of Evidence is a compulsory two-semester course of  credit Units.  is a first semester course and consists of 28 Units. It covers the general introduction to Law of Evidence and a conceptual clarification of the technical terms that are of common usage in the Law of Evidence. The material has been developed with local examples and case law with occasional references to very important foreign judicial decisions.

This Course Guide is intended to help you study evidence in the Nigerian Legal System. It informs you albeit in a nutshell, what the course is about, what materials you require, how to work your way through theCourse Material. It highlights important aspects of the Evidence while it provides a general guideline to help you in building up a workable time table for yourself, specifying the amount of time you may likely spend on each unit of the course. Within each unit, there are Self Assessment Exercises and Tutor-Marked Assignments, and other activities that may be required of you. It is advisable that you attend to them as they assigned to help to moniour understanding of the subject as well as your progress. The Tutorial Class, wherever it is available, is also to assist you in that direction. It is important that you participate in the discussions and do not hesitate to share your experiences, difficulties or challenges with tutors and other students of proven academic excellence.

The key to a successful study of the Law of Evidence is understanding it. You have to understand it, study it, manage your study time effectively and strengthen your command of English Language. The Law of Evidence you are about to study cannot be found in any one Book or one statute. It is contained in several statutory laws, various courts laws and codes of practice made under statutory powers and judicial precedents. Students are warned to avoid the decided cases and textbooks that aolete. A lawyer must be curre

**Course Aims**

This Course aims at giving you an overview of the Law of Evidence. Its goals are:

- Introduce you to the Law of Evidence
- Point to you, the direction where the Law of Evidence in the Nigerian Legal System comes from.
- Assist you to identify different types of Evidence
- Define and conceptualise important terms, principles and rules in the Law of Evidence, which may constitute pitfalls if you do not first understand them.
- Equip you to differentiate between principles, and rules of evidence, guidelines and judicial discretion.
- Empower you to understand how to prove your case in the court and which evidence may be admissible or inadmissible.
- Prepare you for further research.

**Learning Objectives**

Each of the Units in the Course Material is intended to isolate a particular item of the Law of Evidence and to achieve specific objectives. When you shall have studied the Course Material, you should be able to:

- Explain the basic concepts of the Law of Evidence
- Define, explain or describe certain important terms in the Law of Evidence such as: the Law of Evidence, Evidence, facts in issue, evidential material, court, etc.
- Explain, in a nutshell, legal rules and principles governing admissibility of Evidence.
- Differentiate between the classes of Law of Evidence, and Identify each class of evidence when you see one.
- Differentiate between facts in issue and relevant facts.
- Demonstrate an understanding of what similar facts and 'res gestae' mean
- Explain the extent to which the Law of Evidence is home-grown or foreign
- Discuss in and speak the language of Law of Evidence.

It is important that you read, first, the objectives of each unit before studying the unit itself.

**Working Through This Course**

In order to have a solid grip of the Law of Evidence, you must study the Course Material carefully. Students, who aspire towards distinctions, may require to readMaterials recommended for further reading.

In each unit, you will find Activities and Self Assessment exercises. At specific points during the course, you shall be required to attempt and to submit Tutor Marked Assignments for assessment purpose. You will be required to write an examination at the end of the course.

It is expected that an average student will complete this Course Material in 16 weeks. You are advised to allocate your time to each Unit and ensure you complete the course successfully and on time. The major components of the Course are listed below:

**Course Materials**

- The Study Units
- Textbooks
- Assignment File
- Presentation Schedule

The components of a study unit are:

- Quality
- Quantity
- .Test

**Study Modules and Unit**

The Course is arranged into modules and units. There are 3 modules and 12 Units and they are:

**MODULE I** Definition and Sources of Law of Evidence
UNIT 1 Introduction to Law of Evidence
2 Sources of Law of Evidence (I)
3 Sources of Law of Evidence (II)

**MODULE 2** Classification d Types of Evidence
UNIT 1 Classification
2 Direct Circumstantial Evidence
3 Primary and Secondary Evidence
4 Documentary Evidence

**MODULE 3**
UNIT 1 Relevant Facts (1)
2 Relevant Facts (2)
3 Similar Facts
4 Res Gestae
5 Complaints

The Units follow the same basic structure, namely:

- Title
- Content: The List of main section heading
- Introduction: telling you what the Unit deals with
- Objectives: the learning outcomes; that is to say, the things you should be able to do after completing the Unit successfully.
- Main Body: this is the main text sub-divided into sections, Conclusion .Summary References/Further Reading

There are Self Assessment Exercises, Activities and Tutor Marked Assignments.

**Units**

There are 12 Units in this course. Each Unit isolates a topic within the Law of Evidence with a specific objectives, indicates to you its most significant features as well as the directions of study, reading materials, self assessment exercises and in some cases Activities, and Tutor Marked Assignments. These exercises are designed to assist you in achieving the stated learning objectives of each of the units and of the Course as a whole.

**Textbooks**

Your main textbook *for* this course are indicated in your Course Material. Your starting point is thisCourse Guide. This is to establish the basic foundations, which are considered vitally necessary to understanding particular topics later in the Unit.

You may need to complement your reading with any of the textbooks indicated in the References at the end of each Unit.

**Statute**

The Law of Evidence comprises; principles, rules, guidelines and discretion. The Evidence Act is the primary statute book. You find this in the Appendix to your Course Material. Read up the statutory provision whenever there is any reference to them. Other rules can be found in the Rules and Practice of the different courts or other sources.

**Case Law**

Judicial precedent is a source of law of evidence and guidelines. It informs you about important judicial decisions and how judges exercise their discretion in relation to the admissibility of any item of evidence.

You should develop the habits of making references to the decided cases where they are cited. After you have studied a decided case, you are advised to make in your casebook, extracts from the reports; so that you do not go on repeatedly searching for a frequently cited case in the Library. You may find references to official reports e.g. Reports of the Law Reform Commission, or Legal Journals an added advantage.

Cases have been referred to without full citation. This is deliberate. It is a distinguishing mark of Lawyers that they know where to find cases and the law. Besides, it is not intended to impose any particular law report. It also assures that you will read the full text and have a better grip of the rules and principles enunciated in the particular cases.

**Assessment**

There are two aspects of the assessment of this work: the Tutor Marked Assignment (TMA) and the written examination.

**Tutor Marked Assignment**

There is a Tutor Marked Assignment at the end of each Unit, which you are required to attempt and submit with a Tutor Marked Assignment Form to your Tutorial Facilitator for formal assessment. Each assignment must be submitted within the period specified in the Presentation schedule and the Assignment file. It is your responsibility to ensure that your assignments get to the tutorial facilitator on time. If, for any reason, you are unable to do so, you must inform your Tutorial Facilitator before the assignment is due and discuss the possibility of an extension. You will be assessed on all of the Assignments; but only the best three performances

will be used for your continuous assessment. Each assignment carries 10.0 per cent and all three together will account for 30.0 per cent of your total course work.

**Final Examination and Grading**

The final examination for Law of Evidence will be of three hours. It carries 70.0 per-cent of the total course grade.

The examination will consists of the questions which reflect the kinds of Activities, Self Assessment Exercises (SAE) and the Tutor Marked problems, which you possibly have already encountered. All areas of the Course are expected to be covered. You may therefore find it useful to review your Self Assessment Exercises, Tutor Marked Assignments and Activities for your examination. You should meaningfully use the time between the time you finish the last unit and the date of examination to revise the entire Course.

**Course Marking Scheme**

The following table lays out how the actual course marking is broken down

| ***SIN*** | **Assessment** | **Marks** |
|---|---|---|
| 1. | Tutor Marked Assignments | Three best Assignments, each 10%, totaling 30.0% |
| 2. | Final Examination | 70% of out all course marks |
| 3. | Total | 100% of Course Marks |

**Course Overview**

| **Unit** | **Title of Work** | **Weeks Activity** | **Tutor Marked Assignment** |
|---|---|---|---|
| Module 1 | Definitions & Sources | 4 weeks | Assignment 1. |
| Module II | Classification & Types | 6 weeks | Assignment 2 |
| Module III | Facts Issues, Relevant fact etc. | 6 weeks | Assignment 3 – 4 |

**How to Get the Most from Course**

Studying the Law of Evidence is important for:

- Persons who may be concerned with criminal investigation
- Anyone, who may bear responsibility for conducting court trials in criminal or civil matters
- Persons interested in law generally and to distinguish between rules of Evidence applicable in Civil litigation from those applicable in a Criminal process.

The Law of Evidence is concerned principally with what and how facts or materials are admissible in order to prove something that is in dispute. For this purpose, your study is concentrated on what obtains in the Magistrates courts where 80.0 per cent of crimes are tried. In civil matters, several aspects of the Law of Evidence have been relaxed. Many restrictions on admissibility of evidence, which apply in Criminal proceedings have been removed in civil proceedings. As between Civil and Criminal proceedings, the rules of evidence are different to certain extent in practice. In Administrative Tribunals and Arbitration, the rules of evidence have little or no application at all.

In distance learning, study units play the role of the University Lecturer. You have the advantage of reading and working through the study materials at your pace, and at a time and place that suit you best. As you read the Course Material, perceive that a lecturer is talking to you and you are listening to him. Just as a lecturer might give you in'-class exercise, so your study units provide you exercises to do at appropriate times. In addition you have access to facilitation facilities.

You get the most from your study if you follow the following procedure:
First, read this Course Guide, then read the units one after another. Do not skip any.
Note the Content Outline.
Read the Introduction
Look at the objectives or learning outcomes; keep the list in mind as you proceed with the study.

Remind yourself of the learning outcomes from time to time. Read this Course Material carefully and in detail. Make Notes of anything you do not understand
Note the new words and phrases you have come across, add them to your vocabulary Notebook. Attempt the Assessment exercises and activities as you come across them. At the end of the Unit, ask yourself what you have read. Measure your understanding by reference to the learning outcomes or objectives.

Self Assessment Exercise are interpersed throughout the Units. Working through them will help you to achieve the objectives of the Unit and prepare you for assignments and the examination. You are advised to Work through them.

**Activities**
You may come across a number of Activities in the course. They are to help you to learn, think, devise a response and in the process help you to understand the matter in issue.

**Facilitators and Tutorials**

A total of 8 hours of tutorial is required to be provided in support of this course. Your Study Centre Director will notify you of the dates, time and location of these tutorials, together with the name and telephone numbers of your tutorial facilitators, as soon as you are allocated a tutorial group.

Your tutorial facilitator will mark and comment on your assignments, keep a close watch on your progress.He or she will solve any difficulties you might encounter as well as provide assistance to you during the course your tutor marked assignments. You are expected to submit your assignments to your tutorial facilitators before the due date. They will be marked by your tutors and returned to you as soon as possible.
Do not hesitate to contact your facilitator by telephone or e-mail should you need help. Contact him or her if :

- You do not understand any part of the study Unit or the assigned readings.
- You have difficulty with the Self Assessment Exercises or Activities
- You have a question or a problem with your facilitators comments on an assignment or with the grading of an assignment.

You should do your best to attend the tutorials. This is the only chance you have face to face contact with your facilitator and ask questions, which are answered instantly. You can raise any problemsencountered in the course of your study. To gain the maximum benefit from the course tutorials, you need to prepare a question list before attending any. You will gain a lot from participating actively.

Dr. Christopher Allen and Professor Stephen Guest have suggested Ten golden rules for studying the Law of Evidence. You may find the rules helpful. They are:

1. learn each topic as you study it and frequently revise
2. Read each unit in your course material at least twice.
3. Read as many of the important decided cases as you can
4. Read as much of the textbooks you find under "Reference" as you can
5 Take full notes of what is said in any tutorials that you attend
6 Read with a book of statutes at hand for reference (The Evidence Act is your major concern in this course and it is an appendix to your course material).

7. Condense your own fill notes into a skeleton set of notes.
8. Practice answering the Self Assessment Exercises, Activities and Tutor Marked Assessments.
9. Keep up to date
10. Try to see the law in action.

**Summary**

The Law of Evidence aims at equipping you with the knowledge and skills of the principles and rules of Evidence. Upon completing the course, you should be able to define, identify, explain, and then describe important term such as facts, relevant facts, evidential facts etc. The law of Evidence is interesting; topical, dynamic and challenging. It is relevant to all branches of law and in both Civil and Crimina1 processes.

You will write an Examination at the end of the Course. The Examination gives you opportunity to demonstrate to the examiner that you have an understanding of the law of Evidence to the required standard. If you work conscientiously through the Course Material and do not skip any Unit, you will experience no difficulty in passing your examination.

Best of luck.

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**UNIT 1: INTRODUCTION TO LAW OF EVIDENCE**

**CONTENTS**



## 1.0 INTRODUCTION

You may be familiar with the word "Evidence" in English language but remember you are not an English student, neither is the present Course "English". You are in the business of Law and the Law of Evidence in its technical meaning. In this unit, you shall examine what the Law of Evidence is and, the courts which apply it.

## 2.0 OBJECTIVES

When you have studied this unit, you should be able to:

1. Define or explain what Law of Evidence is about
2. Critique the legal definition of 'Evidence' , and the 'Law of Evidence'
3. Identify the courts which must apply the Law of Evidence

## 3.0 LAW OF EVIDENCE AND COURTS THAT APPLY IT

3.1 Definition of Law of evidence

The Law of Evidence relates to:

-proof of facts before the court

- who may prove

- how facts may be proved, and

-what facts may not be proved in a court of law.

Stephen says that the Law of Evidence is "that part of the Law of Procedure which, with a view to ascertain individual rights and liabilities in particular cases, decides.

(1) What facts may, and what may not be proved in such cases
(2) What sort of evidence must be given of a fact, which may be proved
(3) By whom and in what manner the evidence must be produced by which any fact is to be proved.

"That part of the Law of Procedure" can be found in judicial decisions, statute Law and Text-Books, among others.

**What is Evidence**

Evidence is the foundation of proof. If the court believes and accepts the facts presented before it, it may result in proof. Otherwise it is not proven.

Evidence has been defined in different ways. Examples are;

(a) Taylor defines evidence as:
"All legal means, exclusive of mere argument, which tend to prove or disprove any matter of fact; the truth of which is submitted to judicial investigation"

(b) In his own definition of evidence, McKelvey States:
Evidence is any matter of fact from which an inference may be drawn as to another matter of fact; the former fact is called the evidential fact; the latter, the ultimate, main or principal.

(c ) Nokes' definition is that Evidence means

"Judicial evidence consisting of

1. Facts which are legally admissible, and
2. The legal means of attempting to prove such facts.

(d) Philpson states that evidence means the testimony, whether oral, documentary or real, which may be legally received in order to prove or disprove some facts is dispute.

(e) According to Cross, evidence is the testimony, hearsay, documents, things, and facts, which a court will accept as evidence of the facts in issue in a given case.

(f) To Best, evidence is "any matter of fact, the effect, tendency or design of which is , to produce in the mind, a persuasion, affirmative or disaffirmative, of the existence, of some other matter of facts"

Best distinguished Judicial evidence as "evidence received by courts of justice in proof or disproof of facts, the existence of which comes in question before them.

(g) Aguda adds that Evidence is the means by which facts are proved but excluding inferences and arguments.

**3.2 Critique of definitions of Evidence.**

There are other definitions: but what you have learned suffices to give you an insight into the different perspectives from which you may reflect on the definition, dimension and scope of Evidence and the Law of Evidence. The various definitions provide you with a broad range of definitions. Each of the definitions is open to one criticism or the other. None of them attains the status of universal acceptance. Let us look at a few of the definitions again.

1. Aguda States that Evidence does not include "inferences and arguments"
   But is this correct?
   Is "Confession" not Evidence?
   A "confession' suggests "an inference" that the accused has committed an offence. It is admissible evidence when it is voluntarily made.

2. Taylors' definition is incomplete. While his definition includes methods of proof, it excludes "actual facts proved". It is silent on the evidence, which is tendered but rejected which also is evidence. The definition emphasized some terms, which themselves required to be first defined e.g. "facts"

3. McKelvey'sdefinition is the reverse of Taylor's definition. McKelvey excludes methods of proof; He admits only the actual facts proved.

4. Look at Phipson's definition; and the use of the conjuction "and". The truth is that the court may be satisfied by oral **or** documentary **or** real evidence**or** by a combination of any of them **or** all of them together.
   Phipson's definition is restricted to oral, documentary and real evidence. What about "presumption". A "presumption" is a conclusion which may or must be drawn until the contrary is proved. Presumption is part of evidence in law and in fact as we shall see later.

The Law of Evidence is dynamic; its development has been casuistic, afflicted by a number of statutory rules and exceptions which do not seem to have any logical connection. This may tend to make the law of Evidence somewhat difficult.

For the moment, bear in mind that any discussion of Law of Evidence devolves on the following questions:

1. Is the fact or material relevant?
2. Is it admissible to prove something that is in controversy?
3. Has the correct method of proof been adopted?
4. Methods of proof includes:
    a. Exercise of judicial discretion in relation to admissibility of a fact or material in evidence
    b. How the judge directs himself in assessing the weight to attach to items of evidence.
    c. Oral, real and documentary

This leads us to the choice of Taylor's definition (subject to the inadequacy earlier pointed out). In Taylors definition, Evidence covers:

1. All the classes of evidence – oral, documentary or real evidence
2. Facts proved
3. Facts disproved.

His reference to "fact which are the subject matter of judicial investigations" answers the description of "relevancy"

As Professor Adesanya has explained, evidence is a means to an end, the end-product being "proof" or "disproof".

**Self Assessment Exercise**

Taylor defines Evidence Law as:_____

_____

_____

In your own view, evidence may mean: _____

_____

_____

The grounds upon which you base your definition are:

1. _____
   _____

2._____
_____

3._____
_____

In both civil and criminal trials in the Court, the Law of Evidence directs how this may be done and the issues usually involve:

- Calling witnesses
- Which witness or witnesses to call
- Which questions may be asked
- Which questions may not be asked and if asked may not be answered
- Statements of person who are not called, which may or may not be excluded
- Exhibits: documents or other tangible things, which may or may not be tendered
- Which fact or facts require proof by proving some other facts and how to prove it.
- Inference that may be legitimate from given fact(s) and situation(s).
- What facts may not be proved e.g. state secrets, accused's bad character, facts forbidden by exclusionary rules of evidence
- What evidence is relevant.

### 3.3 Judicial Evidence

Judicial evidence, according to Nokes, consists of:

1. Facts which are legally admissible, and
2. The legal means whereby such facts may be proved

**Facts that are legally Admissible**

Legally admissible facts include

- Facts in issue
- Hearsay, except where it is forbidden or excluded
- Opinion of experts
- Character, except where it is excluded or forbidden
- Privilege where it is applicable.

Legal Proof:

The Legal means of attempt to prove such facts include:

- Witness(es)
- Oaths or affirmation
- Documents
- Formal admissions or confession
- Corroboration

Special means of proving facts also exist. These are:

- Judicial Notice
- Presumption of facts

**Self Assessment Exercise.**

1. Five categories of facts, which are legally admissible in the law of evidence are:
   a. _____
   b._____
   c._____
   d. _____
   e._____

2. The Law of Evidence has laid down two special means of proving certain facts. The two ways are:

1. _____

2. _____

### 3.4 The Courts that apply the Law of Evidence

The main courts in Nigeria are:

**1. Superior Courts**

These are courts of record or courts of unlimited jurisdiction. Examples are:
The Supreme Court of Nigeria
The Court of Appeal
The High Court (Federal and States)
The Sharia Court of Appeal (Federal and States)
The Customary Court of Appeal (Federal and State)
Other Courts that may be so designated by the National or State Houses of Assembly

**2. Inferior Courts**

These are Courts other than Superior Courts. Examples are:
The Magistrates Courts
The Coroner's Courts
Juvenile Welfare Courts

**3. Special Courts**

These are specialist courts established for specific and specialised purpose with spelt - out jurisdiction. Examples are:
The Judicial Tribunals.
The Court Martial

The National Industrial Court.etc.

This list of courts is not exhaustive. The courts named are examples only.

One important question you need to answer at this juncture is whether the Evidence Act applies in all the courts? For example should the customary courts or the Area or native courts including District Courts be bound to comply with the Evidence Act in the proceedings before them? Similarly does the Evidence Act bind the Court Martial or the Police Orderly Room Proceedings?

**4. Meaning of Court:**

Section 1, Evidence Act states that the term"Court" includes all judges and magistrates and except arbitrators,and all persons legally authorised to take evidence. In Section 228 it states that the "court" means a High Court or a "Magistrate Court"

Sometimes, the Court, the Judge or the Magistrate are used interchangeably.

**Self Assessment Exercise**

Enumerate as many inferior Courts as you know there are in your State?

**Activity**

You may find it extremely rewarding to visit the Magistrate Court, the District court, the Area and Customary Courts, one after the other.

Observe the structure of the Court, judicial and non-judicial officers and their roles in the respective Courts.

Assess in each Court, the level of application of Law of Evidence.

Based on your assessment of the level of application of the principles and rules of evidence in each particular court, attempt to visualise what happens in the event of an appeal from the decisions of these courts to Superior Courts.

Share your experience with your study group and your Tutorial Facilitator.

**3.5 Application of Evidence Act:**

a. Court
   The Evidence Act applies to all judicial proceedings in or before any court established in the Federal Republic of Nigeria but it shall not apply to:-
- Proceedings before an arbitrator; or
- Field General Court Maritial.
- (Evidence Act, 2004, S. 1 (2))

b. Offences

A person charged under the Road Traffic Law of a state with driving at a speed greater than the allowed maximum shall not be convicted solely on the evidence of one witness that in his opinion he was driving at such speed. The Road Traffic Act thus provides for the application of Evidence Act as well as the sufficiency of such applicable evidence.

Similarly a person shall not be convicted upon the uncorroborated testimony of one witness for the following offences under the Criminal Code:

Uttering any seditions words section 51 (j) (b)

Defilement of girls under 13 (under 11 in the South Western and EasternStates).(Section 218)

Defilement of girls under 16 and above13 and of idiots (section 221).

Procuration (Section 223)

Procurement of defilement of women by threats, or fraud, or administering drugs.(Section 224)

For more details, read Evidence Act, Section 179

The foregoing analysis may be summarised as follows:

1) The Evidence Act applies to all Judicial proceedings in or before any court established by Constitution of the Federal Republic of Nigeria.
2) In every other case, judicial proceeding must be strictly guided in accordance with the Evidence Act or the statute or law establishing the Court and Procedural rules. For examples; Rules as to burden of proof and standard of proof are mandatory in all judicial proceedings, where the Evidence Act applies.

## 4.0 CONCLUSION

Evidence includes questions about what facts may or may not be proved, what sort of evidence must be given of a fact which may be proved, by whom, in what manner evidence must be produced by which any fact is to be proved. It is all about admissibility of evidence in courts.

## 5.0 SUMMARY

You have learned about the definitions of Evidence. A few of them were examined and criticised. You can carry out similar exercise with regard to the rest of the definitions. Taylor's definition is inadequate but it is preferred

## 6.0 TUTOR MARKED ASIGNMENT

1. There is no definition of Evidence of universal acceptance. Discuss

2. Evidence deals with facts and proof of facts. Enumerate and critique the legal means whereby such facts may be proved.

## 7.0 REFERENCES


1. Cross, R & Wilkins, N. 1971) An Outline of the Law of Evidence 7th 3rd Ed. Butterworth. London.

2. Nwadialo, F (1999) Modern Nigerian Law of Evidence. 2nd Ed.University of Lagos Press.

3. Cross, Rupert &Anor (1971)AnOutline of the Law of Evidence 3rd Ed. Butterworths, London

4. FGN: Evidence Act, CAP E14, LFN 2004. (Students should bear in mind that the Evidence Act is now before the National Assembly for amendment and/or repeal).


## UNIT 2: SOURCES OF LAW OF EVIDENCE I

**CONTENTS**

## 1.0 INTRODUCTION

Knowledge of the source or origin of the Law of Evidence impacts on its validity or legitimacy. Hence its importance. In this unit, you will learn where the Evidence Law started, assess where we are and be able to visualise possible challenges. Again what you require is to adopt a critical attitude towards the Study Material.

## 2.0 OBJECTIVES

When you have studied this unit, you should be able to:

- Outline the process of development of the modern Law of Evidence in Nigeria.
- Explain the main theories of and sources of Law of Evidence.
- Critique the theories of and sources of Evidence Law.

## 3.0 MAIN CONTENT:

### SOURCES OF LAW OF EVIDENCE

Legal writers have classified law into:

3.1 (a) Substantive and (b) Procedural law for the purpose of legal proceedings

**a. Substantive Law**

This is a generic term, which covers such areas of law as tort, contract; crime etc. It is the law that defines legal rights, duties and liabilities. Examples are :

The Criminal Code

The Penal code.

b. Procedural Law

Also called Adjectival Law; it is the law which prescribes the process by which substantive law is lifted from the statute book and applied in practice. It regulates the prosecution of offenders or civil litigation and how the facts upon which rights, duties, liabilities may be founded are established in the courts. Examples are:

Criminal Procedure Code

Criminal Procedure Act

Evidence Act

### 3.2 SOURCES OF LAW OF EVIDENCE

Law of Evidence is a type of the Public Law, like the Criminal Law, Constitutional Law, Administrative Law and Revenue Law. The Law of Evidence is unique in that it applies to all branches of law.

Generally, you can say that the Law of Evidence derives from the following:

a. Informal (Traditional) or non-formal source.
   The rules from this source may be legal but they are not authoritative. There are persuasive only.
b. Formal source of law.
   A formal source give validity to the law. It is also in the nature of the ill and common consciousness of the people of Nigeria; -

c. Material Source. This may be

   i. Historical :
   Writings of distinguished learned writers. They are of persuasive authority.

   ii. Legal;
   the laws which the law *per se*recognises. Examples are statutes,judicial precedents, etc
   d.Authoritative and binding sources.
   This refers to the origin of legal rules and principles, namely:

- The legislature, which through legislations, brings into existence, received and local statutes,
- The courts which through authoritative judicial decisions, create judicial precedents eg common law, doctrines of Equity and local precedents
- Customs, the origin of customary laws.

### 3.3 Historical development of Law of Evidence

It can be said that Law of Evidence in Nigeria originates as well as derivesits authority from the following:

local laws and custom

Received English Law, to wit;

a. the English Common Law

b. the doctrines of Equity

c. The statutes of general application in force in England as at January 1, 1900

d Local legislations and the judicial interpretation based on them

e. The Law Reports

f. Text Books and Monographs on Nigerian Law

g. Judicial Precedents.

**Activity**

Let's stop here for a moment. Reflect on the sources of law you have just learnt; and relate each one of them to the reality of the comtemporary Nigerian Society and attempt to proffer answers to the following issues:

Who makes laws as a matter of fact i.e. the *de facto* law makers

Who makes laws as a matter of law, i.e. the *de jure* law- makers

What is the relationship between *de-facto* and *de-jure* law makers

Is an enactment by one person or group the act or omission of the other or is it not?

In Customary Law, the ultimate question is; What does the "The Bible", "The Quaran" or "The Oracle" say, depending on whether you are a Christian, Muslim or traditionalist.

Most laws in modern Nigeria are contained in the statutes, made by the legislatures. Like any other citizen, you are deemed to know every statute, including the Evidence Act, because ignorance of law is no excuse.

In passing a statute into law, do the legislators carry you along, before, during and/or after the enactment?

- Assess the freedom of expression at the floor of the National Assembly when passing a Bill.
- How real or apparent is the idea that the wealthy and the elite dictate the laws.
- Compare law making and execution of the law vis-à-vis the role of the wealthy and powerful
- Whose interests does the law protect

- In trying to resolve these knotty issue, let us examine theories of sources of Law.

**3.4 Theories of Sources of Law**

The theories of Sources of Law range from the Consensus, to the Conflict and middle of the Road theories.

a. Consensus theory
   This theory argues that Laws are a product of unanimous agreement – *a consensus ad idem* – of the society. This idea functions as an integrated structure, which the members of the pertinent society mutually and voluntarily agree to and accept as their norms, rules, and values, which should be uniformly respected.
b. Conflict Theory
   The conflict theory is in dissonance with the Consensus theories. It denies that the society is ever consensual, but conflict and competitive. Accordingly, conflict theory argues that laws are a dictate of the wealthy and powerful elite, and they make laws only to perpetuate their positions and class interests.

C. Middle-of-the Road Course Theory

The proponents of the Middle Course theory argue that the laws are definitions by the privileged group, of the dominant values, notions and morals.

The better view is that the Laws are the handiwork of the legislators who are your elected representatives. Theyexercise the political and legal powers of the state but not necessarily to protect their positions, statues or class interests

None of the theories is completely valid or wholly invalid. Each has its merit and deficiencies. The same conclusion is true of any legal system in any part of the world.

## 3.5 Origin of the Law of Evidence

### 3.5.1. **Pre-Colonial Era.**

The pre-colonial rules of evidence, applied in pre-colonial settlements, Empires and Kingdoms which now constitute Nigeria they were:

1. The Moslem Law of the MalikiSchool.
   This law applied in Islamic areas and Courts in those areas. It is a written law.
2. The Customary Law.
   This applied in non-Islamic areas and courts. It is either wholly unwritten or part-written.

### 3.5.2 Colonial Law of Evidence

By Ordinance, No 3, of 1863, Her majesty, the Queen of England, introduced into the Colony of Lagos, the following Laws:

1. Common Law of England
2. Doctrines of Equity
3. Statutes of General Application
4. Laws specifically enacted for the Colony of Lagos.

The English –type courts, were set up to enforce and administer these laws. Example of such courts are:

The Consular Court and

The Equity Court.

The Supreme Court

The Supreme Court metamorphosed into the Court of Civil and Criminal Justice; it resurrected as the Supreme Court of Lagos colony. The Supreme Court Proclamation, 1900 also created a Supreme Court for the Protectorate of Northern Nigeria.

The Native Court Proclamation 1900-1901 established the statutory Native Courts.

Prior to 1900, the Received Law and native laws and customs co-existed, and were Sources of Nigerian law including the Law of Evidence. The ordinance 3, 1863 as modified by the Supreme Court Ordinance, No. 4, 1876, applied the Received Laws, the Statutes of General Application in force as at the 24 July, 1874 (later varied to 1st January 1900) subject to local circumstances. They permitted local laws and customs, which were not repugnant to natural justice, equity and good conscience norincompatible with local statutes. In the North, the Native Court Proclamation, 1900 similarly permitted customary laws that were not repugnant to natural justice and humanity.

After 1900 and more particularly after the amalgamation of the colony and Protectorate of Southern Nigeria and the Protectorate of the Northern Nigeria (1914), the local laws and ustoms declined and the eceived English law and the established English Courts prevailed. The Native courts Proclamation, 1900 as amended by the Native Courts Proclamation No. 12, 1901 established the statutory Native Courts with exclusive civil and riminal jurisdiction. The traditional authority of indigenous courts as well as the customary laws and customs of the Local communities disappeared, or were swept under ground.

The following Ordinance further entrenched the Common Law of England in the Nigerian legal system:

The Protectorate Courts ordinance, 1933.Section 12.
The Provincial Court Ordinance 1914 as amended, section 10.
The Magistrates Court Ordinance, 1943, Section 30.
The Native Courts Ordinance, 1933.
The West African Court of Appeal Ordinance 1933.
The Supreme Court Ordinance 1943, section 12.
Evidence Ordinance No. 27, 1943.

By Official Gazette No. 33 of 1945, Notice No. 618, the Evidence Ordinance, No. 27, 1943 became effective on 1st June, 1945.Thus the evidence law, which applied in Nigerian up to 1945, was the Received Law and more particularly, the Common Law.

### 3.5.3 Judicial Precedent

In the early law there was no organised system of Law reporting. Records of Courts proceedings were contained in Private Reports and the Year Book. They contained little about rules of evidence. The reason was that early Judges resented such rules. Even Lord Manslfield in *Lowe v. Jollifee* (1762) was heard to say:

> "We don't now sit here to take our rules of evidence from Siderfin and Keble"

At the close of the 18th Century, however, private reporting had grown enormously and there was a gradual decline in resenting "rules of evidence from Siderfin andKeble" (with apology to Lord Mansfield). Case Law and the rules of evidence began to acquire prominence.

Soon there was a conscious and deliberate effort to codify the common law rules of evidence in the form of a digest. An example is Sir James Fitzergerald Stephen's Digest of Law of Evidence. Sir Stephen's vision was to codify the common law for the use of English Courts, but the British Parliament rejected it and refused to adopt it. Rather the Parliament adopted and constituted the Digest into the Indian Law of Evidence, 1872 and subsequently adopted it as Law of Evidence for Pakistan, Sri- Lanka, Kenya, Tanzania and Uganda.

In 1943, the British Parliament passed into law, the Evidence Ordinance of Nigeria, introducing into Nigeria, a modification of Sir Stephen's Digest. The modification was to incorporate contemporary English decisions e.g. *Duncan v. Cammell Laird* (1942) and *Hollington v. Hewthorne& Co Ltd*. (1943).

In addition to the Evidence Act, there are a number of other statutes which contain specific aspects of Law of Evidence. Example are as follows:

1. The Road Traffic Act.
   This Act provides the rule of evidence that in a charge of exceeding speed limit, the opinion of a witness as to the speed of vehicle require corroboration.

2. Indian Hemp Act.
   The burden of proof shifted from the prosecution to the accused.
3. The Companies and Allied Matters Act
   The existence of a company became provable by the production of a certificate of incorporation
4. Marriage Act.
   Proof a marriage can now be established on presentation of a marriage certificate

5. Foreign Statute

English statute may be a source of the Law of Evidence – those in particular which are of general application as at 1 January, 1900.

6. The Evidence Act, 1938 (UK)

   The Act remains the source of the Rule of Evidence on "Admissibility of documentary Evidence as to the fact in issue", which is now part of the operative law of Evidence in force in Nigeria.

**3.6 Textbooks**

Text Books Writers, as Source of Law of Evidence

There are a number of legal literature on the Law of Evidence. Examples are:

Jeremy Bentham (1827) Rationale of Judicial Evidence

Taylor's Law of Evidence

Stephen's Digest (1876)

Phipson's Evidence (1891)

Aguda : The Law of Evidence

Nwadialo F. : Modern Nigerian Law of Evidence

Babalola, Afe: Law and Practice of Evidence in Nigeria

**Activity**

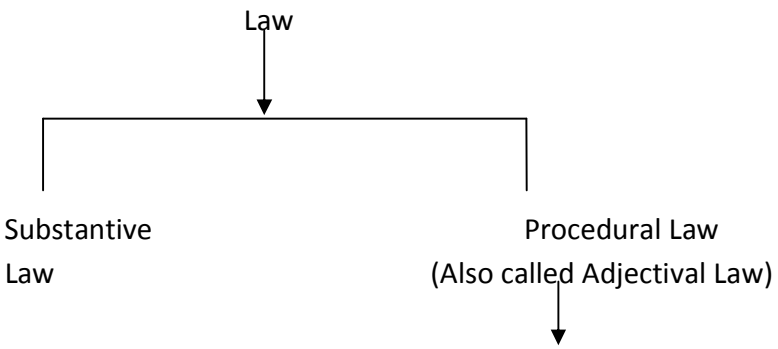
Other Sources of Law of Evidence

Summarise in one paragraph each, the gist of the following cases:

(1) Duncan v iCammell Laird (1942)
(2) Hollington v Hutton & Co. (1943)

## 4.0 CONCLUSION

This diagram will remind you of the location of Law of Evidence in the Nigerian Legal System



Procedural Law (properly so called)

Law of Evidence

Law of Evidence resides in Public Law but it applies to Private and Business Law as in deed all categories of Law. The Law of Evidence derive from the Common Law, Sir James Fitzgerald Stephen's Digest of law of Evidence, judicial precedents, statutes, and text book writers, among others. The principal source today is the Evidence Act as amended.

**5.0. SUMMARY**

In this unit, you have learned about the sources of the Law of Evidence in Nigeria. The Law of Evidence applicable in pre-colonial settlements, kingdoms and Empires (which became Nigeria in 1914) were customary law and the Moslem Law. By Ordinance No. 3 of 1863, No. 4 of 1876 and other ordinances, the Common Law of England was extended to Nigeria. The Evidence Ordinance which was enacted in 1943 and became effective on 1s January 1945 has substantially been re-enacted to form the present day Law of Evidence in force in Nigeria. In the next unit, you shall learn about the Constitution as a source of Evidence Law, the application of Common Law and what happens in the face of conflicts in matters that are not expressly dealt with in the Evidence Act.

**6.0. TUTOR MARKED ASSIGNMENT**

Describe the historical development of the Law of Evidence in Nigeria.

**7.0. REFERENCES**

Obilade A. (2007) The Nigerian Legal Systems Spectrum Law Societies, Abuja.

FGN 1960. The Independence Constitution

1963: The Republican Constitution

1979: The Constitution

1999: The Constitution

Babalola, A. (2001): Law& Practice of Evidence in Nigeria, Sibon Books Ltd, Ibadan

**Unit 3: Sources of Law of Evidence II**

**CONTENT**



## 1.0 INTRODUCTION

In this concluding unit on Sources of Law of Evidence, you shall learnt about the Constitution as a one of its Sources,you shall also look at the relationship between the Evidence Act and the Common Law in the Contemporary Nigeria Legal System.

## 2.0 OBJECTIVES

At the end of this Unit, you should be able to;

1. Discuss or explain the Nigeria Constitution as a Source of Law of Evidence
2. Indicate the extent to which the Law of Evidence is alien or home grown

3. Critique the Law of Evidence within the context of its source or historical evolution

## 3.0 MAIN CONTENT

3.1 Independence Constitution, 1960

The Nigerian (Constitution) Order-in-Council, 1960 provided as follows:

Section 3: Existing Laws

(1) Subject to the provision of this section, the existing laws shall have effect after the commencement of this order as if they has been made in pursuance of this order and shall be read and construed with such modification, adaptation, qualifications, and exceptions as may be necessary to bring them into conformity with this order.

Both the Exclusive ad Concurrent legislative lists were silent on the issues of Law of Evidence in 1960 except that:

Items 44, Exclusive legislative list gave the central government sole legislative authority on (a) any matter that is incidental or supplementary to any matter mentioned elsewhere in this list; or to the discharge by the Government of the Federation or any officer, court or authority of the Federation of any function conferred by this Constitution.

Item 28: the Concurrent Legislative List empowered both the Central and Regional (states) Governments to legislate on"any matter that is incidental or supplementary to any matter mentioned elsewhere in this list"

Section 64: Powers of Parliament to make Laws;

Subsection (4): If any law enacted by the legislature of a Region is inconsistent with any law validly made by Parliament, the law made by Parliament shall prevail and the Regional law shall, to the extent of the inconsistency, be void.

(5): Subject to the provision of subsection (4) of this section, nothing in this section shall preclude the legislature of a Region from making laws with respect ot any matter that is not included in the Exclusive Legislative List.

Section 77; Evidence Act

Parliament may make laws for Nigeria or any part thereof, with respect to evidence in regard to matters not included I the legislative lists.

Provided that an Act of Parliament enacted in pursuance of this section shall have effect in relation to any Region only to the extent that provision in that behalf is not made by the legislature of that Region.

3.2 The Republican Constitution, 1963.

The provisions in the 1960 Constitution was reproduced verbatim in the Constitution of the Federation 1963 but in different sections as follows:

| | **1960** | **1963** |
|---|---|---|
| Exclusive List | 44 | 45 |
| Concurrent List | 28 | 9 |
| Power of Parliament | 64 | 69 |
| Evidence | 77 | 83 |

Summary of the 1960 and 1963 Constitutions:

The implication of the Constitutional provision was the multiplicity of laws of Evidence. The Evidence Act applied throughout the Federation over federal matters. The Regions also had their respective laws of Evidence applicable within the Regional boundaries in matters within the competence of the Regional governments. However, the Law of Evidence of the Regions were mere replication of the Law of Evidence of the Federation in respect of matters outside the Exclusive Legislative List.

3.3 Military Dispensation

The Constitution in force during the Military Dispensation in 1966 – 1979 and 1983 – 1999 was a combination of the unsuspended part of the Republican Constitution and the rest of

the provisions as amended by Decrees. The Laws of Evidence remained as it was prior to 1966.

3.4 The 1979 and 199 Constitutions

3.4.1 The Constitutions of the Federal Republic of Nigeria 1979 – 1999.

Both Constitutions by Section 4: Legislative Powers, provides as follows:

(2) The National Assembly shall have power to make laws for the peace, order and good governance of the Federation or nay part thereof with respect to any matter included in the Exclusive Legislative List. (Also Section 4 (2) of the 1999 Constitution)

(3) The power of the National Assembly to make laws for the peace, order and good governance of the federation with respect to any matter included in the Exclusive Legislative List shall, save as otherwise provided in this Constitution, be as to the exclusion of the House of Assembly of States.

Also see: Section 4(3) of the 1999 Constitution, Second schedule: schedule: Legislative powers Part 1, Exclusive legislative Powers

Items 23: Evidence

(This is contained in both 1979 and 1999 Constitution)

Few states of the Federation re-enacted into law their Evidence Law, and they were a repetition of the Evidence Act passed by the National Assembly. The only difference was that the Evidence law of the state contained rules of Evidence on Residuary Matters.

3.4.2 The Constitution of the Federal Republic of Nigeria, 1999

For the purpose of law of Evidence, you need to refer to section 36 of the 1999 Constitution.

The 1999 Constitution, Section 36, Fair Haring States:

36:-(1) In the determination of his civil rights, obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair

hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure independence and impartiality.

(2.) Without prejudice to the foregoing provisions of section, a law shall not be invalidated by reason only that confers on any government or authority power to determined questions arising in the administration of a law that affects or affect her civil rights and obligations of any person if such law;

a) provides for an opportunity for the person whose rights and obligations may be affected to make representation the administering authority before that authority makes decision affecting that person; and

b) contains no provisions making the determination of administering authority final and conclusive.

(3.) The proceedings of a court or the proceedings of any tribunal relating to the matters mentioned in subsection (1) of this section (including the announcement of the decisions of the court or tribunal) shall be held in public.

(4.) Whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal:

Provided that:

a) A court or such a tribunal may exclude from its proceedings, persons other than the parties thereto or their legal practitioners in the interest of defence, public safety, public order, public morality, the welfare of persons who have not attained the age of eighteen years, the protection of the private lives of the parties or to such extent ad it may consider necessary by reason of special circumstances in which publicity would be contrary to the interests of justice.

b) If in any proceedings before a court or such a tribunal, a Minister of the Government of the Federation or a Commissioner of the Government of a State satisfies the court or tribunal that it would not be in the public interest for any matter to be publicly disclosed, the court or tribunal shall make arrangements for evidence relating to that

matter to be heard in private and shall take such other action as may b e necessary or expedient to prevent the disclosure of the matter.

(5.) Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty.

Provided that nothing in this section shall invalidate any by reason only that, the law imposes upon any such person the burden of providing particular facts.

(6.) Every person who is charged with a criminal offence will be entitled to:-

a) Be informed promptly in the language that understands and in detail of the nature of the offence:

b) Be given adequate time and facilities for the preparation of his defence;

c) Defend himself in person or by legal practitioners of own choice;

d) Examine, in person or by his legal practitioners, witnesses called by the prosecution before any court tribunal and obtain the attendance and carry out examination of witnesses to testify on his behalf before court or tribunal on the same conditions as those apply to the witnesses called by the prosecution; and

e) Have, without payment, the assistance of an interprete if he cannot understand the language used at the trial of offence.

(7.) When any person is tried for any criminal offence, court or tribunal shall keep a record of the proceedings and accused person or any person authorized by him in that behalf be entitled to obtain copies of the judgment in the case with seven days of the conclusion of the cases.

(8.) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the it took place, constitute such an offence, and no penalty shall imposed for any criminal offence heavier than the penalty in full at the time the offence was committed.

(9.) No person who shows that he has been tried by court ofcompetent jurisdiction and either convicted or acquitted shall again be tried for offence or for a criminal offence having the same ingredient as that offence save upon the order of a superior court.

(10.) No person who shows that the has been pardoned as a criminal offence shall again be said for that offence

(11.) No person who is tried for a criminal offence shall be compelled to give evidence at the trial

(12.) Subject as otherwise provided by this Constitution, a person shall not be convicted on a criminal offence unless that offence is defined and the penalty therefore is prescribed in written law; and in this subsection, a written law refers to an Act, the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provisions of a law.

You need to note however that all the Constitutions of Nigeria, 1990 – 1999 recognized the competency of the National Assembly alone to legislate on matters of Evidence. Matters of Evidence are now listed in the Exclusive Legislative List.

You should remember that the Constitution is supreme law and has a binding force on all authorities. Any law that is inconsistent with the provisions of the Constitution is void to the extent of the inconsistency. It provides various categories of rights, duties rules and imposes obligations and liabilities. See especially chapters II and IV of the 1999 Constitution.

**Activity**

What is the gist of the following cases

a) Duncan v Cammell Laird (1942)

b) Hollington v Hewthorne& Co Ltd. (1943)

1.7 Autochthony of Evidence of Law

1.7.1 How autochthous is the Law of Evidence

**3.5. Is the Law of Evidence Home-grown or Common Law**

It is an exciting area of controversy whether or not common law of England is still operative as the source of the Nigerian Law of Evidence.

To what extent is the Law of Evidence home-grown or foreign?

- Autochthony or autochthonism refers to the nativity or foreigness of the Law of Evidence.
- An Act is autochthorious if it does not trace its validity to a foreign legislature, or if it is homegrown and rooted in its domicile.
- Autochthony therefore implies;

  -a kind of Africanism

  - a kind of rebirth or a break in legal continuity

  - an enactment by virtue of an authority that is native to it.

  **Activity**

  With the mindset, consider:

  1. Origin of the Law
  2. Where the court derives its authority
  3. Contents of the legislation in issues

Autochthony has two parts

1. Formal autochthony – the origin of source
2. Substantive (formal autochthony – content of Legislations).

### 3.7.2 Further Exposition

Read Section 5 of the Evidence Act especially 5 (a)

Attempt to summarise what this section says in your own words and language

Can you visualize the scope and extent of the provision?

This provision permits the reception of evidence

- Which is admissible under any other statutory enactment in force in Nigeria.
- Which would have even admissible, had the Evidence Act not being passed.

In essence, the Act allows the admission of evidence, which would be admissible under pre-existing rules as if the Evidence Act has not been passed

The question arises whether pre-existing law refers to the immediate past Evidence Act, or to Common Law or any other claim of evidence for the matter; since no evidence can now be excluded at common law.

One school of thought is that the pre-existing law referred to the rules which existed on June 1, 1945.

Another School of thought is that the pre-existing law is the common law.

What happens if the statutes are silent and do not cover the issue at hand? The general opinion is that the Common Law applies. Most of the High Court Rules expressly provide for the application of the common law to fill the gap.

Look at the following cases;

*R v Itule* (1961)

Held: the matter was not dealt with expressly and therefore common law applied.

*JimohAmoo v R* (1959)

Held: where an English judicial precedent conflicts with the provision of the Act, the Courts must follow the Act.

*R v Agwuna*

Held: that there is no provision in the Act which allows evidence to be rejected save as provided in the Act, itself.

You should not forget that the Common Law rules of Evidence applied in Nigeria before 1st June, 1945 when it was supplanted by the Evidence Ordinance (Now Evidence Act)

The Evidence Ordinance (Now Evidence Act) was based largely on Sir James Stephens Digest of Laws of Evidence (12th Edition), and this Digest itself was a deliberate effort to codify the Common Law Rules of Evidence in form of digest.

Stephens Digest ultimately became the Indian Evidence Act, 1872 which itself inspired the Laws of Evidence operating in Sri Lanka, Kenya, Tanzania, Uganda, and Nigeria. One thing distinguishes Nigeria's edition from Sir James Stephens Digest. Nigeria's Evidence Act incorporated contemporary judicial decisions. Examples of such English decision engrafted into the Evidence Act are:

- *Duncan v* CammellLaird (1942). *See also Conway v Rimmer (1968) which subse overruled Duncan v Cammell Laird. It is hoped that when the Evidence Act is amended, this position in the UK will be reflected, that is, amending section 220 of the Evidence Act in line with the mndecision in Conway v Rimmer.*

  This is reflected on Evidence Act, Section 220

- *Hollington v Hewthorne& Co Ltd*. (1943)

  The ratio decidendi in this case is reflected in section 51 of the Evidence Act

Apart from the Case Law: some provisions of English Evidence Acts 1895 – 1938 were incorporated into Nigerian Evidence Act. Examples are:

Section 90: Admissibility of documents Evidence as fact in issue

Section 159: Competency of person charged to give evidence

## 4.0. CONCLUSION

The Constitution of Nigeria, 1960 and 1963 were silent on law of Evidence. The result was a multiplicity of Law of Evidence – regional and federal. Since 1979, it has become an item under the Exclusive Legislative List.

## 5.0. SUMMARY

Law of Evidence was not in the Exclusive or Concurrent Legislative List in both the Independence and Republican Constitutions (1960-1963). The Regions and the Central Governments legislated on "any matters; that is incidental or supplementary matters". The Regions also Legislated on "any matter that is not included in the Exclusive legislature List e.g. Law of Evidence. In both 1979 and 1999 Constitution, "Evidence" became item 23 in the Exclusive Legislative List. The provisions of the Evidence Act (particularly Section 5), and of the various state High Court Rules permit the application of Common Law rules of Evidence where there is a lacuna.

## 6.0. TUTOR MARKED ASSIGNMENT

1. Account for the historical development of Law of Evidence in Nigeria

2. The Law of Evidence in Nigeria is home grown, comprehensive and conclusive. Discuss exhaustively.

## 7.0. REFERENCES/FURTHER READINGS

FGN: Constitution, 1960

Constitution, 1963

Constitution, 1979

Constitution, 1999

# MODULE 2: CLASSIFICATION AND TYPES OF EVIDENCE

**UNIT 1: CLASSIFICATION OF LAW OF EVIDENCE**

**CONTENT**

**5.0 SUMMARY**

**6.0 TUTOR MARKED ASSIGNMENT**

**7.0 REFERENCES/FURTHER READINGS**

## 1.0 INTRODUCTION

There is no one way of classifying evidence. It may be classified into various types on different bases. In this unit you shall learn some of the more important classifications and types.

## 2.0 OBJECTIVES

When you have studied this unit, you should be able to:

1. Enumerate the more important classification of Law of Evidence
2. Explain and illustrate with examples, the different classes or types of Evidence.
3. Critique the types of Evidence learned.

## 3.0 MAIN CONTENT

### 3.1 CLASSIFICATION OF EVIDENCE

Different writers have classified Evidence in different ways. Let us look at some of them.

a. Gross and Williams

These authors classified Evidence into:

- Direct and circumstantial
- Primary and Secondary
- Insufficient, Prima Facie and Conclusive

b. Nwadialo's classification of Evidence is into:

- Direct and Circumstantial Evidence

- Direct and hearsay Evidence
- Oral and Documentary
- Real Evidence
- Primary and Secondary Evidence

Other classifications are into:

- Direct and Circumstantial
- Direct and hearsay or Original and Hearsay
- Oral and Documentary
- Primary and Secondary
- Prima facie and Conclusive
- Personal and Real
- Pre-appointed and Casual
- Best Evidence

Evidence may also be classified into:-

Direct and Indirect Evidence

Direct and Hearsay Evidence

Oral and Documentary Evidence

Primary and Secondary Evidence

Personnal and Real Evidence

Per-appointed (or Pre-Constituted)

Best Evidence.

No one classification is better than the other. In a conflict situation, it is incumbent that you must, (whether consciously or not,) determine the nature of evidence, whether or not the piece of evidence before you belongs to any of the categories classified. From there, you proceed further to determine rules of law you should apply to the case. The important thing therefore is that you are able to identify each type of evidence and understand which rule to apply to the particular case.

Types of Evidence

From the various classifications mentioned above, you are able to enumerate the following "types" of evidence: that some what common;

From Con and Wilikins

1. Direct
2. Circumstantial
3. Primary
4. Secondary
5. Insufficient
6. Prima facie
7. Conclusive
8. Hearsay
9. Oral
10. Documentary
11. Real

12. Original

13. Indirect

14. Personal

15. Pre-appointed

16. Causal

17. Best Evidence

But it may not be correct to assert that there are 18,19,or 20 types of evidence. It is a problem of nature of an evidence being called different names. For example: Best Evidence may be primary, direct, oral, pre-constituted, Perusal etc.

You may want to learn in nutshell how to define or describe these evidence types. Some of them will be discussed in depth later.

1. Direct Evidence

Your evidence is direct if it is based on your personal knowledge or observation and if true to believed, proves a fact out of inference or presumptions. It a testimony of

What you hear with your ears

What you see with your eyes

What you smell with your nose

What you touch with your hand or body

What you taste with your mouth or tongue

The term 'direct' relates to the source of your knowledge, being deposed to. It is also called "positive evidence".

2. Circumstantial Evidence

Also called indirect evidence or oblique evidence because it is based on inference rather than personal knowledge or observation. It is evidence of some collateral fact from which the existence or non-existence of some fact in question may be inferred as a probable consequence.

3. Primary Evidence (section 94 EA)

The best evidence, original evidence, that particular means of proof, which under any probable circumstances affords the greatest certainty of the fact in issue – specific and definite and carrying on its surface no indication that a better evidence lurks behind.

4. Secondary Evidence (section 95 EA)

Evidence of hearsay; Testimony of Contents of a lost document; mediate evidence, substitutionary evidence.

5. Insufficient Evidence

Evidence that is inadequate to prove something such that no presumption can safely be raised.

6. Prima Facie Evidence

Evidence that, on the surface, is significant to prove something, establish a fact or sustain a judgment unless the opponent produces contrary evidence. It is the minimum evidence which the law requires in any given case – just the evidence that is sufficient to establish a fact in the absence of evidence to the contrary.

7. Conclusive Evidence

Also called irrebuttable presumption of law, when the law forbids evidence to be contrary. Conclusive evidence or conclusive proof is that evidence, though not irrebuttable, is so strong as to oblige the court to come to a certain conclusion or to overbear any other evidence to the contrary, even though it is not irrebuttable, like prima facie evidence, a conclusive evidence is the sum total of the evidence adduced by a party indicating that, that party has met the requirements of the law and the burden of proof as required of him or her.

8. Hearsay Evidence

Hearsay is statement other than one made by the declarant, offered in evidence to prove the truth of the matter asserted. Double hearsay is that statement which contains further hearsay statements within it.

9. Oral Evidence

Also called "panel evidence", means evidence given orally – a verbal testimony of a witness

10. Documentary Evidence

A documentary evidence is that evidence which is supplied by a writing or other document. It is a requirement before the court can admit it in evidence.

11. Real Evidence

This is the physical evidence that plays a direct part in the incident in question.

Salmon describes it as "anything which is believed for any other reason than that someone have said so, is believed on real evidence". Real evidence consists of production of any object used in committing a crime, e.g. gun, knife, pen.

12. Original Evidence

This is a direct or best evidence. It is a witness's statement that he or she perceived a fact in issue by hearing, seeing, smelling, touching or tasting or that the witness was in a particular physical or mental state.

13. Personal Evidence

This is the evidence which a competent witness under oath or affirmation gives a trial or in an affidavit or deposition

14. Pre-appointed Evidence

A pre-appointed evidence is pre-constitutional evidence, prescribed or procured advance for the proof of certain facts. Example is the testimony of a witness who had hidden in cupboard to hear the conversation of other. By operation of the law, there must be two witnesses to the execution of a will. Evidence that is not pre-appointed or pre-constituted is causal evidence.

15. Best Evidence Rule

In best evidence rule is that which the nature of the thing will afford. It is evidence which is more specific and definite as opposed to that, which is merely general and indefinite or descriptive. The best evidence is that kind of proof, which under any possible circumstances affords the greatest certainity of the facts in question or evidence which comes on its surface, no suggestion of better evidence behind . Thus a direct evidence is superior to a circumstantial evidence. Evidence of consent or hand-writing is best given by the person consenting or the writer respectively.

Although these were the types of evidence indicated in your discourse of classification of evidence, there are a lot more types of evidence. Examples are admissible and non admissible evidence, expert evidence.

Dubious classes of Evidence

The classes of evidence you have learned are not exhaustive. There are some types of evidence that are incapable of classification. Examples are:

a nod

a sigh

sky writing

you may note the following:

silence: This may amount to admission

Visit to Locus in quo

the class of evidence to which it belongs is not certain. But see *Guold v Evans and Co.* (1957) where Lord Denning expressed the view that a visit to locus in quo should be regarded as real evidence, character evidence, rebuttable and irrebutable evidence, evidence in chief, etc. Indeed classes or types of evidence cannot be exhausted. They include all the means by which any alleged matter of fact, the truth of which is submitted to investigation, is established or disproved – all species of proof legally presented at trial.

## 4.0. CONCLUSION

You have learned about the classification of evidence. These are no one way of classification. It is important you are able to identify any specie of evidence whenever you come across it. Without such knowledge, you may not known what rule to apply.

## 5.0. SUMMARY

Evidence may be classified in various ways. You learned how cross and Wilkins, Nwadialo and other legal writers have attempted to do so. Attempts have been made to define briefly a number of types of Evidence as were classified by the writers. In the next Unit you will learn in greater detail, some of the important types of Evidence which you will commonly come across.

Activity

Reading over the definition of the Evidence types you have learned. Attempt to compare and contrast one with another.

## 6.0. TUTOR MARKED ASSIGNMENT

1. What do you understand by “best evidence rule”
2. Explain the term “double hearsay” and “secondary evidence”

## 7.0 REFERENCES/FURTHER READINGS

Nwadialo, F. (1999). Modern Nigerian Law of Evidence (2 ed.) University of Lagos Press.

Cross , R &Anor (1971) (This must be an old edition) An outline of the Law of Evidence (3rd Ed.), Butterworth, London.

Babalola, A. (2001) Law & Practice of Evidence in Nigeria, Sibon Books Ltd., Ibadan.

# UNIT 2: DIRECT AND CIRCUMSTANCES EVIDENCE

**CONTENT**

**1.0 INTRODUCTION**

**2.0 OBJECTIVES**

## 1.0 INTRODUCTION

In the last Unit, you learned about different types of evidence, and defined a number of them. In this unit, you will learn in greater depth, two of the important classes of evidence – direct evidence and circumstantial evidence'.

## 2.0 OBJECTIVES

When you have studied this unit, you should be able to:

1. Attempt to explain the term "direct" in relation to Evidence
2. Identify a direct evidence as it occurs
3. Differentiate between direct evidence and other types of evidence
4. Demonstrate an understanding of the rules of evidence as they relate to 'direct evidence'

## 3.0 MAIN CONTENT

3.1 Direct Evidence and Circumstantial Evidence

Thayer says that evidence is any matter of fact which is furnished in a legal tribunal, otherwise than by reasoning or a reference to what is noticed without proof, as the basis of inference in ascertaining some other matter of fact. Two of the ways of presenting that testimony, documents, or tangible objects that tend to prove or dispose the existence of an alleged fact or by direct evidence and circumstantial evidence.

As John Wigmore as said, there is no disputed case that will ordinarily be proved solely by circumstantial or solely by direct evidence. Ordinarily, there is evidence of both kinds.

3.2 Direct Evidence

A direct evidence is a statement of personal knowledge or observations, which tend to prove a fact without inference or presumption. The word "direct" relates to the source of knowledge being disposed to. A direct evidence is the testimony of a witness who perceived the fact in dispute with one of his/her own senses, or the production of the document which constitutes the fact.

Your evidence is 'direct' if it is a testimony of a fact which you perceive with one of your senses – hearing, sight, smell, touch or taste. That is to say it is the testimony as to the perception of a fact in issue.

SeeEvidence Act section 77 and summarise it in 2 or three sentences ones.

Examples of Direct Evidence:

. production in cost of the material thing eg weapon of offence, article

. inspection of the Locus in quo – the place where subject matter is located

.evidence of the fact in issue itself e.g. the evidence of an eye-witness.

. evidence of a witness speaking for his/her personal knowledge of a fact, the existence by which is required to be proved.

Illustration

A,B, and C went to the Public House, and while they drank, a violent quarrel broke out among them. A and C challenge each other; they both angrily rush out. T followed trying to stop them. Soon after leaving the hall, C suddenly drew out a knife, stabbed A twice. A slumped and died.

Police has arrested C for suspected murder of A; and obtained statements form C, B, and T among other.

'T' in his statement wrote:

"I was in the Public house, I got on a table next to where A, B, and C sat. At a point, A, B, and C had bitter alteration with one another. They spoke in high tones; A said to the other, let's go down if you'll live to tell your story tomorrow". Both rushed down. I rushed down with them to try and stop them, but it was no use C pulled out a dagger, stabbed A two times and A fell down. He bled profusely and efforts to revive him failed".

C has been charged with the murder of 'A' and the Police seeks to tender T's statement.

In this case, the fact in issue is:

Whether it was C who killed A.

T witnessed C perpetuating the act of killing A. T's testimony of what she heard with her ears, and saw with her eyes is a direct evidence of it – evidence of the fact in issue T's testimony relates directly on the very issue before the court.

The problem with direct evidence is that it is seldom available and there may be no witness(es) in most cases when crime is committed. Where direct testimony of eye witnesses is not available, the court is permitted to infer from the facts proved, the existence of other facts that may be logically inferred (*I'udo-debia& others v The State* (1976)). Where it is available, direct evidence is the best evidence.

### 3.3 Circumstantial Evidence

Circumstantial evidence is an indirect evidence – evidence other than a direct evidence. when the evidence available does not consist of the fact in issue but of evidential facts, such evidence is circumstantial. It is neither evidence of the fact in issue nor a detailed account of what

happened. It is evidence facts. It is also – evidence of a number of items pointing to the same direction

-evidence of other facts from which the fact in dispute can be inferred, either directly or indirectly with more or less certainty.

-also described as presumptive or indirect evidence.

Examples of Circumstantial Evidence

. finger-prints at the scene of crime leading to the presumption that the person who made the prints was there

. possession of a murder weapons or of stolen, goods

Illustration

It is arraigned before the court for the murder of Z.

There was no direct evidence as to who killed Z. But there are before the court:#

Fact W which may prove fact X

Fact X which may prove fact Y

Fact Y which may prove fact Z

Fact W is a direct evidence of fact X but a circumstantial evidence of fact Z.

Illustration 2:

AB is being tried for the murder of XY before a court. The prosecutor's evidence is as follows:

Busola: My name is Busola. XY was my husband. AB said I have jilted and married AB and he is aggrieved. He vowed to take my life. I know AB for over 5 years, he owns the gun and cartridges. Keys are in the house of Haruna, his friends for safe keeping.

On Friday October 15, my husband XY left the house at 12.00 noon for a party. I did not see him again until the next day when the Public showed the dead body .

2.Haruna said: I am Haruna Allan, am a friend to AB and XY and Busola. In 2009, AB bought a double barrel gun; and cartridges; and kept them in my house or safe keeping. On Thursday 14 October, AB met me. He said he needed to service and clean up the gun and he withdrew the gun and cartridges.

3. The police investigating officer's testimony before the court: I am detective constable John. In the course of investigation the allegation of murder levied against AB; I conducted a search in his person and home; I found a gun in his house. It was concealed in the chimney. I also got some cartridges. They are the type commonly fired from the type of gun.

I searched the body of the deceased. I found injuries and pellets in the body of the deceased. The pellets corresponded with the cartridges. The injuries were fresh. I inspected the place where the body of the deceased was found. There were foot prints. The foot prints corresponded with the impressions made at the accussed house.

There were flakes of paints in the clothing found with the accused. The flakes of paints corresponds with the paints at the scene of murder.

AB also made sentences saying:

I am not guilty of murder. I did not kill Deji. He was my friend. I bought a double barrel for hunting, not to kill any person. I am being framed up by the Police. I am innocent of the charge.

The Pathologist wrote:

I performed autopsy on the deceased. I found bullet injuries on the chest which caused excessive bleeding from which Deji died. Deji died of gun shoot. I extracted pullets from the body deposited by the gun sht the deceased received. Received some shooting with blood stains. Here are they. I examined the blood. It is of the same blood group AA with that of the deceased.

The Ballistic Expert says:

The investigatory office sent me some pellets and a double barrel guns. These are the pellets and the gun. I examined them scientifically. The pellets corresponded with the bullets/cartridges commonly fired from the type of the double barrel. Both are lethal.

Remember that the subject of inquiry is Murder.

The fact in issue is whether it was AB who killed XY

There is no direct evidence of any person to the effect he saw, Chukwu when he killed XY, if at all.

What you have are different items of evidence of Busola, Haruna, Constable John, Pathologist and Ballistocian. The testimonies of each of these witnesses are indirect, presumptive or circumstantial evidence.

How do you describe this type of evidence. Can it be liken to a chain?

"It has been said', say Pellock that circumstantial evidence is to be considered as a chain and each pieces of evidence as a link in the chain, but that is not so, for then, if any one link breaks, the chin would fall.

It is more like the case of rope comprises of several cords. On strand of the cord might be insignificant to sustain the weight but three stranded together may be quite of sufficient strength.

Thus it may be in circumstantial evidence, there may be a combination of circumstances, no one of which would raise a reasonable conviction or more than a mere suspicion, but there (no more) taken largely may create a conclusion of guilt with as much certainty as human appears can require or admit of".

Nwadialo has explained that in order to support or sustain a conviction, circumstantial evidence must:

. be cogent and compelling

. point irresistibly to the accused and to no other else as one culprit

. be incompatible with the innocence of the accused

. be incapable of explanation on the basis of other reasonable hypothesis than one of guilt

Take illustrations from a civil cause.

W alleged that H has committed adultery. Direct evidence in this type of case is hardly obtainable. Circumstantial evidence may be evidence of

. familiarity

. Opportunity

. Birth Registration of a child of a woman other than that of the woman's husband

. Birth of a child after a long absence of the woman's husband

. visit to brothel

. Veneral disease

. Blood test

Circumstantial evidence is subject to some infirmities:

1. There is a possibility that the witness may be telling a lie
2. The witness may be mistaking
3. The inference may be erroneous in the particular case.

## 4.0 CONCLUSION

Direct evidence consists of testimony of empirical observer – what he or she presumed with his or her own senses. Conversely, a circumstantial evidence is evidence of an inference form which that fact in issue may be drawn.

## 5.0 SUMMARY

Direct evidence is evidence of the fact in issue itself. E.g. evidence of an eye witness. Evidence is an indirect evidence. It is presumptive. Circumstantial evidence may be a chain. Thus, fact Z

prove fact Y which may prove Fact X which may prove fact A. in this example, Z is a direct evidence of Y; but a circumstantial evidence A.

The oral testimony of a witness to murder is direct. The evidence that broken glass from the headlamp of a defendants' car was found on the wrong side of the road is circumstantial evidence from which a disputed fact can be inferred.

**6.0 TUTOR MARKED ASSIGNMENT**

Distinguished Direct Evidence and Circumstantial Evidence.

**7.0 REFERENCES/FURTHER READING**

Aguda, Law of Evidence

Nwadialo, F. Modern Nigeria Law of Evidence (2nd Ed.)University of Lagos Press Akoka.

**UNIT 3: PRIMARY AND SECONDARY EVIDENCE**

**CONTENT**

**6.0 TUTOR MARKED ASSIGNMENT**

**7.0 REFERENCES/FURTHER READINGS**

## 1.0 INTRODUCTION

In the last Unit, you learned some types of evidence, particularly direct and circumstantial evidence, and their infirmities. In this /Unit, you shall learn more classes, namely; primary and secondary evidence. It is important that you are able to identify each class when you find it. Therefore you need to develop as usual a critical attitude towards each class you learn, understand it and practice the application of its rules.

## 2.0 OBJECTIVES

When you have read this unit, you should be able to:

1. Identify the following classes of Evidence
    a. Primary Evidence
    b. Secondary Evidence
2. Explains the rules of Secondary Evidence
3. Critique each class of evidence

## 3.0 MAIN CONTENT

3.1 Primary Evidence (section 94 EA)

The word 'primary' derives from the latin word "Primo" meaning 'first' – original.

Primary evidence means the productions in court of the original document itself that contains the facts to be proved or for inspection of the court.

Thus an original document or thing for instance, is the primary evidence itself.

Primary Evidence includes:

- Production of original document or thing as evidence of itself or its contents. The real document itself produced for inspection is a primary evidence. This includes a duplicate original document when it seeks to acquaint the court with the contents.

  A number of documents made by a single act by use of carbon papers, for this purpose, is original. Consequently, documents forming part of a number made by one uniform process, for example by photography, lithography or printing, not being mere common copies of the original are original and primary. So also each part of a document executed in several parts or the counterpart of a document

- Evidence, which does not by its nature suggest the existence of a better evidence. This is evidence of highest quality available, as measured by the nature of the case rather than the thing being offered as evidence. Be that as it may, the court, today accepts any relevant evidence whether or not there is a better evidence available.

Activity

Read Evidence Act, Section 94.

Best Evidence Rule.

Primary evidence is also termed 'Best Evidence' which requires the production in court of the best evidence of which the nature of the case would permit. The best evidence rule excludes:

- Testimony concerning the condition of a thing unless the ting itself can be produced
- Circumstantial evidence if a direct evidence is available.

3.2 Best Evidence Rule

The Best Evidence Rule presupposes that no better evidence could have existed than what is adduced.

Illustrations:

. Dike swears as to what he saw. That is original, direct; Better than indirect or circumstantial, like Fatima; narration of what Dike told her that she (Dike) saw.

Production of original document e.g. The Will is primary, Better than oral testimony of its contents or secondary evidence of Dambaba who had seen and read it.

Conversely, proof of admission of the contents of a document of the party against whom it is sought to be tendered is a primary evidence.

If there be two or more ways of proving a fact, the method most cogent, tha others is to be adopted. Lord Hardwiche confirmed that the judges and usages of the Law have laid it down that there is but one general rule of evidence: the best that the nature of the case will allow. *Omichund v Baker, 1744.*

However, good this best evidence rule may have been it has ceased to be a fixed rule of law it is no more than a mere counsel of prudence to adduce the best evidence available rather than a rule of law excluding inferior evidence merely because a superior evidence is available.

Thus where the handwriting of document is disputed, the Best evidence rule excludes every other evidence except the production of its writer. Now, however, that seeking to tender the document may elect to prove his or her case by evidence of handwriting through testimony of a witness who knows it or saw him/her write it.

If two methods are available to prove a matter, the party whom the burden of proof lies, may select the less cogent method. It is no more than a matter for comment that the more cogent method was not adopted.

The case of *Garton v Hunter* (1994) illustrates the modern attitude to the Best Evidence Rule. In that case, the Lands Tribunal, in assessing rates, excluded the calculations proffered by expert based on profits and on a contractor's basis, quoting well known dicta that where a particular hereditament was let at a rock-rent, than "that evidence is the best evidence and for that reason alone is admissible."

The Court of Appeal held that the Tribunal had erred in law; the evidence on the profits or contractor's basis should have been admitted, and the tribunal had rejected relevant and admissible evidence on a dictum no longer applicable.

Sir Lord Denning:

"The Best Evidence Rule has gone by the board long ago. We admit all relevant evidence. The goodness or badness of it goes to weight and not to admissibility.

*Also R v Stevenson* (1971)

Nonetheless, it can be said that the Best Evidence Rule still subsists and evidence can still be excluded altogether on the ground that it is not the best evidence available.

Take a transaction by a written document, e.g. a lease, or Mortgage Deed. Although sensual methods of proof are available, the court would demand that if you have the original document, you must produce it, unless non-production is excused.

However, such instances are not to be misconstrued as anything in the nature of the Bet Evidence Rule as a fixed rule of Law. Rather, they are suggestive only that the secondary evidence or other evidence adduced is so unreliable that is would be unsafe to admit it.

Self Assessment Exercise

How valid is the statement that the Best Evidence Rule is certainly not applicable in Nigeria where the exclusion of evidence is governed entirely by the Evidence Act.

3.3 Secondary Evidence (section 95 EA)

Secondary evidence is evidence other than a primary evidence. It consists of the repetition or reproduction in court of oral or written statements previously made out of court. It is inferior previously made out of court. It is inferior to the primary evidence and it becomes, subject to certain conditions, admissible when the primary evidence is lost or inaccessible.

Examples of Secondary evidence are:

. a copy of original documents, produced by a different mechanical process than the original

. a copy of the document

. a verbal narration of the content of an original documents by a person who has seen it

. a copy of a document made by a different process than the original

. a certified copy of the original documents

From these examples, you can see that a secondary evidence may be oral or in writing. Perhaps for this reason, legal writers have described a secondary evidence as a residue rather than as a class of evidence.

Furthermore, a secondary evidence does suggest the existence of a primary evidence or at least a better evidence – the existence of the original document which the archaic best evidence rule demands should be produced as evidence of its contents.

Generally however, the court will be inclined to exclude a secondary evidence if the purpose of rendering it is to prove the truth of the statements. However, it would admit it to prove not the truthfulness or falsity of the statements but the fact of such statements having been made, regardless of the truth or falsity.

## 4.0. CONCLUSION

Primary Evidence includes:

. the original document or thing

. the counterpart of a document which was executed together with it

. the printed, lithographic, Photostat or photographic copy of document produced in one uniform process

Secondary evidence may be:

A copy of the document

Oral testimony of the contents of a document

Secondary Evidence is more of unclassified residue.

## 5.0 SUMMARY

Primary evidence means – 'first' or 'original' evidence – Production in court of original document itself as evidence is itself or its contents. The best evidence rule presupposes that there is no better evidence that could have been adduced but this rule is said to have "gone by he board long ago". Secondary Evidence is evidence other than primary evidence – the residue

of evidence beyond primary evidence. It is excluded from evidence if its object is to prove the truthfulness of what it states .it is admissible evidence that it was made, regardless of its truth or falsity.

**6.0 TUTOR MARKED ASSIGNMENT**

Distinguish Primary and Secondary Evidence

**7.0. REFERENCES/FURTHER READINGS**

Nwadialo, F. (1999). Modern Nigerian Law of Evidence (2 ed.) University of Lagos Press.

Cross , R &Anor (1971) (old edition Indeed the current edition is 7th, published in 1997 by Oxford University Press) An outline of the Law of Evidence (3rd Ed.), Butterworth, London.

Babalola, A. (2001) Law & Practice of Evidence in Nigeria, Sibon Books Ltd., Ibadan.

Cross & Wilkins (1997) Supra.

**Unit 4: DOCUMENTARY EVIDENCE**

**CONTENT**

## 1.0 INTRODUCTION

Documentary evidence is one of the important ways of proving the facts of a case in the court. It is evidence by way of a document and its arises where a party informs himself by reading some permanent visible document as when you write a Law Report like All Nigeria Law Report, All England Report etc.

In this Unit, you shall learn about the provisions which the Evidence Act has made regarding it.

## 2.0 OBJECTIVE

When you have studied this unit, you should be able to:

1. Understand the concept of documentary evidence
2. Define the term document and describe its different types
3. Understand the modes of proof.

## 3.0 MIAN CONTENTS

### 3.1 Meaning of document

The New English dictionary (2000) defines 'document' as a paper, containing performance or proof of anything.

Documentary evidence then, is providing or proving with documents.

The Black's Law Dictionary describes document as something tangible on which words, symbols, or marks are recorded. Examples are the deeds, agreements, title papers, letters, receipts and other written instruments used to prove a fact.

Technical Meaning

Technically, the term 'document' includes carvings on words stones, or other materials, and tombstones, plagues, engravings, road signs or posters and every permanent forms of communicating visual messages from some human being to another. A Will or testament is a document.

In essence a document is everything that contains the written or pictorial proof of something (*Seccombe v Attorney General* (1919)).

Evidence Act

Under this Act, document includes books, maps, plans, drawings, photographs and also includes any mater expressed or described upon any substance by means of letters, figures, or marks or by more than one of these means, intended to be used or which may be used for the purpose of recording that matter. (Section 2(1)). It probably also would include Wills (or testament), contacts, letters pictures, accounting records, births or deaths certificates, a device which stores and records the evidence. You would observe that the term "document" is much wider in the law of evidence. Even the Evidence Act definition is not exhaustive: For instance a computer printout a document; it is the printout that is a document or the apparatus that produces the printout?

3.2 Types of Documents

Documents are of two types, namely;

Public documents

Private documents Public Document.

This refers to a document of public interest issued or published by a public body or otherwise connected with public business. It is a record that a government unit is required by law to keep. Public document is generally open to view by the public.

Examples of Public Documents are:

a. Documents forming the acts or records of the acts of:

   i. The Sovereign Authority

   ii. Official bodies and tribunals, and

   iii. Public officers, legislative, judicial and executive whether of Nigeria or elsewhere

b. Public records kept in Nigeria of private documents

   See Evidence Act S. 109.

Examples of Public Documents

a. Statute:

   The Courts in Nigeria take judicial notice of statutes of the federation and the Laws of the States. See section 74 EA). It is proven also by production of a copy printed the Federal Government Printing Press. A By-Law is proven by a copy of the by-law made by the Local Government and duly certified.

b. Public Registers.

   Entries in Public Registers may be proved by the production of the relevant certificate. E.g. Births Certificates, Death Certificates, Marriages Certificates e.t.c.

c. Certificate of Incorporation

   Official Maps, Histories, Surveys and Records Proof of these types of public document is by the production of official copies issued by the official surveyor.

d. Judgments

Judgments of courts are public records. They may be proved by the production of an official copy or a certified copy

A document of a foreign court is a public record and may be proven by examined copy or by a copy bearing foreign courts seal.

These are illustration only and do not exhaust the list of public documents.

Prerequisites of a Public Document

To qualify as a public document, certain conditions must be fulfilled. These are:

1. The document must have been drawn-up by a public official in the course of his or her official duty.
2. There must have been a public inquiry
3. The document must be the purpose of public use or intended for public use
4. The document must be accessible as of right to the public.

3.3 Proof of Contents of Documents

The contents of documents may be proved either by: Primary evidence or by Secondary Evidence (section 93 EA)

Primary Evidence (section 94 EA)

The primary evidence means the document itself produced for the inspection of the court. – the original and physical embodiment of information or ideas such as a letter, contract, receipt, account book, blue-print, X-ray plate etc.

Where a document has been executed in several parts, each part is a primary evidence of the document.

Where a document has been executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is a primary evidence as against the parties executing it.

Where a number of documents have all been made by one uniform process, as in the case of printing, lithography or photography, each shall be primary evidence of the contents of the rest; but where they are all copies by a common original, they are not primary evidence of the contents of the original.

For purpose of clarity, a secondary evidence includes:

a. Certified copies given under the provision of the Evidence Act

b. Copies made from the original by mechanical processes, which in themselves ensure the accuracy of the copy and copies compared with such copies.

c. Copies made from or compared with the original

d. Counterparts of documents as against the parties who did not execute them

e. Oral accounts of the contents of a document given by some person who has himself seen it.

Secondary Evidence (section 95 EA)

Generally, documents must be proved by the primary evidence (section 96) . However, secondary evidence may be permitted in the following circumstances (section 97):

(a). When the original is tiem possession of the adverse party or other:

When the original is shown to or appears to be in the possession or power

i). of the person against whom the document is sought to be proved

ii). of any person legally bound to produce it, and when, after the notice to produce it, such person does not produce it.

In such a case, the court may receive a secondary evidence of the content of the document.

The notice to produce the original document may be served on the party in whose possession or power the document is. You may also give it to a legal practitioner employed by such party.

The notice must be such as is prescribed by law or such notice as the court considers reasonable in the circumstance of the case.

You need to note that there are cases when the court may dispense with notice (section 98). On the other words, a secondary evidence may be given in certain case without the requirement of notice. The Court, without notice to the adverse person or person in possession of an original document permit a secondary evidence in the following cases:

a. When the document to be proved is itself a notice

b. When from the nature of the case the adverse party must know that he will be required to produce it

c. When it appears or is proved that the adverse party has obtained possession of the original by fraud or force

d. When the adverse party or his agent has the original in court

e. When the adverse or his agent has admitted the loss of the document

The Court may also dispense with the notice in any other case in which it thinks fit to do so.

Other circumstances, in which the court would admit secondary evidence include

(b). When the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest (Here, the written admission is admissible).

(c ). When the original has been destroyed or lost and in the latter case all possible search has been made for it. (where this is the case, you are permitted to give a secondary evidence of the contents of the document)

(d). When the original is of such a nature as not to be easily movable.

(e). When the original is a public document within the meaning of section 108 of the Evidence Act. Here also, any secondary evidence of the contents of the document is admissible.

(f). when the original is a document of which a certified copy is permitted by the Evidence Act or by any other law in force in Nigeria to be given. (Here, the court may admit a certified copy of the documents, it may require any other kind of secondary evidence)

(g). When the original consist of numerous accounts or other documents which cannot conveniently be examined in court, and the fact to be proved is the general result of the whole collections.

In these circumstances, also a certified copy of the document, but no other kind of secondary evidence is admissible. Evidence may also be given as to the general result of the documents by any person, who has examined them, and who is skilled in the examination of such documents.

(h). When the document is an entry in a banker's book.

In all other cases, documents must be proved by primary evidence – that is to say, by producing the original document. If a document is in the possession of the prosecution or plaintiff (Complainant) who wishes to prove ithe or she must make the document available in the court and accessible to the other party. On the other hand if the document is in the hand of the opposite party;

The document must be disclosed to the other party

If it has not been so discovered, the party wishing to prove it shall give the adversary party notice to produce it is provided by law as the court may consider reasonable.

Proof of Document (Proof of Execution of Documents – ss 100-108)

Contents by a document may be proved by any of the following:

. the maker or author of the document

. the executor of or signatory to the document

. the person who signed the document as a witness

. a person who can identify the signature on the document or attesting witness

. the person who has lawful custody or content of the document

. the person who procures the certified time copy of a public document.

A little more evidence is required where the document is private. In such a case it requires also to be proved:

. that the person who claims to be the maker or author is in fact the maker or author

. that the signature or handwriting on the document belongs to the person claiming it.

The Evidence Act lays down how to prove the identify of a person or an handwriting as you shall see later. But note that any statement made by a *person interested* at a time when *a proceeding is pending or anticipated* involving a dispute or any fact which the statement may tend to establish is not admissible as evidence.

Private document (section 110)

All documents other than public documents are private documents. They include:

. documents emanating from private persons

. documents emanating from a public official in his private capacity

The letters you write are private documents, not public

Documentary and Real evidence compared.

You will recall that real evidence derives from "res" meaning "a thing". A document is of course a 'a thing'. Both are physical objects, but they serve different purposes.

A physical objects, is a real evidence if it is brought before the court for purpose of viewing it.

X is charged for wounding Y with a sharp knife. Having laid the necessary foundation, the Police tenders a knife purporting that it is the instrument by which the wound was inflicted on Y.

The purpose of showing the knife in court is for the court to view it for itself. It is a primary evidence and its admissibility in evidence depends on relevancy.

H and W are disputing the ownership of a parcel of land. W brings before the court a certificate of occupancy for the court to see. The certificate of occupancy speaks of itself and evidence of its validity but not of its contents.

If a divorce suit, W seeks to tender in evidence a letter which H had one time written to her; the letter is document it tells of itself that H is the writer, but it is still necessary for W to prove that the contents are done.

Sometimes it is different to distinguish whether an object as a real evidence or a documentary evidence. It may turn out to e both depending on the purpose it is intended to serve.

HK forges the signature of a customer of the Fortune Bank on one leaf for N1 million and the prosecutor seeks to tender the forged cheque in evidence. If the cheque leaf is being tendered as an instrument of fraud, it is a real evidence. If the purpose is to dispose to the fact that it tells a lie of itself eg that it was the customer who signed it, it is documentary evidence.

Presumption (sections 4, 114-131 EA)

An ancient document is said to prove its own validity. It is presumed to be what it purports to be

An ancient document is a document that is produced from the proper custody and proved or purported to be at least 20 years old.

Such documents do not require proof of validity. But note the following important factors

1. Despite the age of the document and presumption as to validity, proof of the truthfulness of the contents of the document is still desirable.

2. The ancient document which attracts the presumption of validity must be produced from 'proper custody'. The test of "proper custody is:

   Whether it is reasonable and natural under the circumstance of the particular case to expect that they should have been in the place where they were actually found.

**4.0 CONCLUSION**

The word "document" has a wider connotation in law than in normal every day speech. In law, carvings on wood, stones or other materials like tom stones are documents.

**5.0 SUMMARY**

In this unit, you learned what document manes in law. It includes engravings and road signs. Documents may be public or private; and may be proved by primary, secondary evidence and presumptions.

**6.0. TUTOR MARKED ASSIGNMENT**

Distinguished between Private and Public documents

**7.0. REFERENCES/FURTHER READINGS**

Evidence Act Supra

**MODULE 3: RELEVANT FACTS (1)**

**Unit 1: Facts, and Fact in Issue**

**CONTENT**

**1.0 INTRODUCTION**

**2.0 OBJECTIVES**

**3.0 MAIN CONTENTS**

## 1.0 INTRODUCTION

In this unit, you shall learn about 'facts', 'fact in issue' and 'facts relevant to facts in issue' when irrelevant fact becomes relevant and irrelevant facts. Each class has its rule and method of proof or disproof. Hence it is important that you are able to distinguish one from the other.

## 2.0 OBJECTIVES

When you have studied this unit, you should be able to:

1. Explain the terms:

   Fact

   Fact in issue

   Fact relevant to fact in issue

   Fact relevant to fact relevant to fact in issue

2. Distinguish one from the other

3. Explain Relevant facts and classes or types

4. Illustrates irrelevant fact

## 3.0 MAIN CONTENTS

3.1 Fact

A fact includes:

a. Anything, state of things, or relations of things, capable of being perceived by the senses

b. Any mental condition of which any person is conscious

Section 2, Evidence Act

A fact is:

. something that actually exists, an aspect of reality

. an actual or alleged event or circumstance, as distinguished from its legal effect, consequence or interpretation Black Law Dictionary

. any act or condition or thing, assumed (for the moment) as happening or existing –(Wigmore)

A fact may be:

. be the result of one or more fact

. consist of a series of facts in which case,

Fact may:

Either be a part of the transaction (Constituent fact) or

Accompany and explain it (Accompany fact)

Neither definition helps you to identify or distinguish fact(s). suffice to say a fact is a thing known to a piece of verifiable information. It may be an event (Actual or alleged), an occurrence or circumstances as distinguished from its legal effect, consequences or interpretation.

"All men and Women are mortal" is a fact

### 3.2 Fact in Issue (section 2(1) EA)

This is the fact that the plaintiff, (or claimant) or prosecutor alleges which the defendant or accused person controverts. In other words 'fact in issue' are those facts which the party on whom lies the burden of proof must prove to establish his or her claim or facts which the other party must prove to establish his or her defence BUT which are not admitted by the other party.

The Evidence Act states that fact in issue include any fact, which either by itself or in connection with other facts the existence, non-existence nature or extent of any right, liability asserted or denied in any suit or proceedings necessarily follows.

#### 3.2.1 How do you identify 'Facts in Issue'

Facts in Issue are determined by;

1. Substantive Law
2. The Pleadings.
    a. Substantive Law

        Criminal cases:

        In Criminal Cases, facts in issue may be determined by reference to the definition of crime charged and the defence.

        Judas is charged with Murder (or culpable homicide punishable with death).

        Applying the definition, the facts in Issue is the killing by Judas of the deceased with the requisite intention, to which charge Judas has pleased not guilty.

        When in the course of trial, the accused gives evidence suggestive of defences of say: self defence, provocation, intoxication insanity or insane delusion, which the prosecution does not accept, additional facts in Issue arise.

b. Pleading

Facts in Issue arise from pleadings in civil causes; but the definition of Tort or other wrong on which the claim is based is a matter of substantive law.

Sophia claims from damages for personal injuries she received when Daramola negligently drove a motor car across her near Eagle Square, Abuja.

The facts in Issue going by the definition of the law of Tort and which Daramola denies are:

Negligence

Duty of care

Amount of damage

Whether Daramola inflicted the injury as the pleadings may or may not raise further facts in issue, depending on the nature of defence.

Consider an action for slander.

The fact in issue would be whether or not the defendant spoke the words complained of.

Consider the tort of Negligence.

The fact in issue is whether the Defendant was negligent.

You can see that the fact in issue is that fact which the respective parties must prove in order to establish their claims or defences as the case may be.

3.3 Facts Relevant to the Fact in Issue

In some cases the fact in issue may be proved by direct evidence. In a majority of cases, it is matter of inferences to be drawn by the judges or Magistrates either as a matter of law or as a matter of fact. In that case, witness tend to refer to other incidents or facts or claims of facts as evidence amounting to the main fact. All these other facts, which are "in the eyes of the facts in issue that they render the latter probable or improbable"

are referred to as facts relevant to the fact in issue. A fact relevant to the fact in issue is that fact (other than the fact in issue), showing the probability of the fact in issue.

It is crucially important that you understand the term "relevance", "relevancy". You need to understand that:

- All relevant evidence is prima facie, admissible unless excluded by law
- No irrelevant evidence is ever admissible except only in exceptional
- Evidence which tends to exonerate an accused may always be given and admissible

Relevancy:

Sir James Fitziames Stephens said that the word "relevant" means:

> that any two facts to which it is applied are so related to each other that according to the common cause of events, one either taken by itself or in connection with other facts proved or renders probable, the past, present, or future existence or non-existence of the other.

Lord Simon has explained further that:

> Evidence is relevant if ti is logically probative or disprobative of some matter, which requires proof (*DPP v Kelborne*(1973))

Allen and Guest have added that

> Evidence is probative of a proposition of a proposition if it tends to show that proposition to be true, evidence is disprobative if it tends to show that proposition to be false.

In essence, relevant evidence must be:

- A fact tending to prove or disprove a matter in issue
- Probative

- Material
- Admissible, unless excluded by a specific statute or rule.

A fact is relevant if:-

1.

- It applies to the matter in hand or pertinent to a pint
- It is logically connected and tending to prove or disprove a matter in issue, or having appreciable probative value.
- It tends rationally to persuade you some alleged fact (See 7).

2, Facts which are occasion, cause, effect all under section 8, Evidence Act, a fact is relevant if it performs any of the following functions in relation to the fact in issue, or relevant fact.

- If it shows or tends to show the occasion
- If it shows or tends to show the cause
- If it shows or tends to show the effect.
- If it shows or tens to show opportunity
- If it shows or tends to show the fact in issue, relevant fact or transaction

Circumstances under which the fact in issue occurred.

In this section, there the evidence might to be adduced and the fact in issue or relevant fact need not be contemporaneous.

Illustration

Ishyiaku is charged with culpable homicide punishable with death for allegedly killing Baku by shooting.

The prosecution may lead evidence to show:

(a). That shooting took place on 1st October in Garki during Bankole birthday party.

This evidence tends to show the occasion; it is relevant, and admissible

(b). That Ishyiaku knew that Ramatu was found of parties and in all probability would be present. This would be evidence of opportunity.

That Ishyiaku shot Bako after Bako had teased him; and

Marks on the ground showing struggle at the locus in quo are relevant, showing the circumstances

That immediately after the shooting Bako bled profusely and collapsed

When there is an occurrence, the first natural step is to consider whether there ae facts on hand calculated of producing, causing, effecting, affording the various items of evidence considered relevant and may on grounds of expediency be admissible.

Activity

Adebayo brings an action for compensation against Dan Fulani on the death of his son Tunde. Tunde was found dead with a halter in his hand and under a cow, property of Dan Fulani. Dan Fulani seek to lead evidence that Tunde is fond of teasing cows and had previously teased the offending cow with a halter; and Tunde's death is self-induced.

Would you say Dan Fulani is competent to testify

- That Tunde is fond of teasing cows
- That Tunde has previously liased the offending cow
- That Tunde's death is self-induced

When you shall have completed that exercise, read the case of *Joy v Phillips and Mills & Co. Ltd*. (1916) for the answers.

3.4 Motive and Preparation (section 9 EA)

An evidence is relevant which shows or constitutes motive or preparation for any fact in issue or relevant fact. Similarly the evidence is relevant which tends to show the conduct of any party or of any agent to any party to any proceeding in reference to such suit or proceeding or

in reference to any fact in issue therein or relevant thereto and the conduct of any person, an offence against whom is the subject of any proceeding, if the conduct influences or is influenced by the fact in issue or relevant facts. It is not material whether the conduct is pronoun or subsequent.

Note the meaning of the word “conduct” in this context.

The word conduct does not include any statement simpliciter unless the statement accompanies and explains acts other than statements. When the conduct of any person is relevant, any statement made to him or in his presence and hearings which affects such conduct is also relevant.

Activity

Uchena is charged with the murder of Sophia by poisoning.

Consider the relevancy and admissibility of the following items of evidence, with reasons:

1. The fact that Sophia knew that Uchena has earlier committed a crime Sophia has threatened to reveal it.
2. The fact that two days before the killing, Uchena had bought some quantity of arsenic, similar to that which was administered to Sophia
3. The fact that Uchena has had two previous police records for violence
4. The fact that Uchena absconded after Sophia’s death
5. That Uchena attempted to bribe the Police detective who carried out initial investigation
6. That ten minutes after taking some brandy in Uchena’s house, Sophia complained bitterly of stomach upset, was rolling on the ground and shouting that she was in serious pain.

## 4.0 **CONCLUSION**

A fact is a thing known to have happened. The fact in issue refers to the truth of the matter, the *mensrea* and the overt act constituting the crime or claim, it is ascertained by reference to substantive law and pleadings. It is the central crux of the whole proceedings - that thing which you must prove for you to succeed in the mater. Fact relevant to the fact in issue is that fact which is in extricable connected to the fact in issue. Evidence which shows or constitutes a motive or preparation for a fact in issue or relevant fact is also relevant.

## 5.0 CONCLUSION

You have learned to define fact, fact in issue, relevancy, and relevant fact and you can differentiate one form the other. You also learned about relevant facts especially those which show the occasion, case, opportunity, circumstances, motive, preparation, introductory explanation etc. Attention was drawn to the circumstances where facts, otherwise irrelevant become relevant e.g. fact relating to amount of damage, particular circumstance, state of mind or body etc. This Unit, dealt with part II of the Evidence Act.

## 6.0 TUTOR MARKED ASSIGNMENT

Differentiate with illustration between facts and facts in issue.

## 7.0 REFERENCES

Evidence Act, Supra.

## Unit 2: RELEVANT FACTS (2)

**CONTENT**

1. **INTRODUCTION**
2. **OBJECTIVES**
3. **MAIN CONTENTS**

**INTRODUCTION**

In the last Unit, you learnt about relevant facts particularly a fact, a fact in issue, a fact relevant to the fact in issue or relevant fact. In this unit, you shall learn more of relevant facts. They are important in the Law of Evidence because the man or woman's mind is very complex and eye witness to crimes or wrongful acts are rare to come by. At times when accused persons plead not guilty, the Court may yet be inclined to enter a plea of Not guilty and require the persecution to prove his/her case and the defence to rebut or discredit the evidence adduced by relevant facts and law.

**Objectives**

At the end of this Unit, you should be able to:

1. Determine its given situation, facts that are necessary to explain or introduce relevant facts
2. Explain the admissibility or inadmissibility of things said, done or written by accomplices
3. Explain circumstances when an irrelevant fact becomes relevant
4. Classify facts relevant to facts in issue.

**MAIN CONTENT**

4. Facts necessary to explain or introduce relevant facts (Sec. 10)

   Section 10 , the Evidence Acts permits the reception of the following facts a

- Facts that are introductory
- Fact that establish identity of a party or person whose identity is necessary
- Fact that support an inference
- Facts in rebuttal of an inference

Illustration

Agu is charged with culpable homicide punishable with death for alleged killing of Winifred

Dr Chime testifies as to the cause of death.

The following items of evidence may be admissible:

- Questions as to Dr. Chime's qualifications and experience
- To introduce the fact that Dr. Chime is an expert

- The fact that Agu left Koko Town few minutes after shooting
- To support an inference that Agu might have been implicated in the crime
- Unrefuted evidence of Agu that he left Koko unexpectedly because his mother was at point of death and he had to be at her side is admissible to rebut the inference that he absconded after killing Winifred
- To rebut the inference he absconded after killing Winifred.
- Evidence that Agu were the same dress, carried the same gun as that of the alleged esculent – to show identity.
- The fact fixing the time and place at which the relevant fact occur.

Consider this case.

There is a contract between Jegede and Faruk. Jegede has sued Dangana for inciting

Faruk to breach his contract. At the time of departure from the service of Jegede, Faruk was heard to say:

> "I am leaving your services because Dangana has offered me a better job"

Question: Is this statement relevant; Can the Court receive it?

Read Section 10, Evidence Act.

At Common Law, a statement is irrelevant and inadmissible against a party if such statements is made behind his back.

Read Section 10 again. There is no limitation. In other words such a statement as one made by Faruk is admissible and it is immaterial that it was made in the presence or absence of the accused.

Sec. 10 is innovative and its aim is to let an introductory or explanatory note to corroborate a relevant fact. It is not to prove any fact in issue. But in practice, however, it may weigh just as heavily as facts designed to prove the fact in issue or relevant fact.

3. A fact is relevant, if it fixes the time or place at which the fact in issue or relevant fact happened or shows the relation of parties by whom such fact was transacted.

4. Things said, done, or written by a conspirator (Sec. 11) where there is a reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written y any on3e of such persons in execution or furtherance of their common intention after the time when such intention was first entertained by anyone of them is a relevant fact as against each of them believed to be so conspiring as will for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

But statement made by individual conspirators as to measures taken in the execution or furtherance of any such common intention are not deemed to be relevant as such as against any conspirators except those by whom or in whose presence such statements are made.

In this context, evidence of acts or statements deemed to be relevant may only be received after the court is satisfied, prima facie, that evidence of conspiracy already exists.

Look at the case of *Police v Balogun* (1953), A, B and C were charged with conspiracy to steal some bags of cement. B and C made statements to the Police implicating A and in A's absence. There was other evidence that A was a party to the conspiracy.

Held: (1) The statements made by B and C in A's absence was not admissible against A but against B and C.

(2) The other acts or things done by B and C are admissible against all three if they were done in furtherance of their common intention.

This is a confirmation that a fact is relevant if it is a thing said or done or written by way f the conspirators' execution or furtherance of a common intention.

3.2 A fact, which is not otherwise relevant may be relevant.

Facts, not otherwise relevant are relevant if:

(a) It is inconsistent with any fact in issue or relevant fact

(b) It is by itself or in connection with others facts, it makes the existence or non-existence of any fact in issue or relevant fact probable or improbable (section 12 EA).

Illustration

Giwa is charged with murder of Bolarinwa at Ibadan on July 12, between 9a.m. and 12 noon. The following items of evidence may be relevant.

- The fact that Giwa was at Ibadan on the relevant day. To show opportunity.
- The fact that although Giwa was in deed at Ibadan on the relevant day, he did not arrive there until 5 p.m. : To show improbability that Giwa murdered Bolarinwa that day between 9 a.m. and 12 noon.

5. Other circumstances when a fact, not otherwise relevant becomes relevant( section 13 EA).

   (a) Where the fact will enable the court to determine the amount of damages, which it ought to award in a proceeding in which damages are claimed.

   (b) Where the fact tends t show how in particular instances, a matter alleged to be a custom in understood and acted upon by persons interested.

6. Fact showing existence of state of mind (section 16 EA) .

   Evidence showing the existence of a states of mind or of the body or bodily feelings is relevant. Examples are facts tending to show an intention, knowledge, good faith (or bad fault), negligence, rashness, ill-will or good will towards any particular person.

   To be relevant, the existence of any such states, mind, body, or bodily feeling must either be in issue or relevant

   Furthermore, the fact must show that the state of mind exists not generally but in reference to the particular matter in question.

   Quare, what is “state of mind”

State of mind probably refers to ones mental process and this can be of various shapes depicting: intention, knowledge, good faith, bad faith, ill-will, good will, rashness or negligence.

Illustration

Boniface attempts to break into a house; sees policemen on patrol; he withdraw. A week later, he returns breaks in, arrested and charged.

Question, can the persecution adduce evidence of the first attempt and the trial of his subsequent crime.

Yes, he can.

Illustration II

Abu is charged with killing Dick, by shooting, Abu's defence was accident. Parties may proceed to call in evidence,

- The fact that Abu had earlier attempted to kill Dick: To show intention to kill, - To prove knowledge that the shooting would lead to death, or to show evidence of ill-will towards Dick

The Fact that an Accounts Clerk knowingly utters a forged cheque is evidence form which an intention to defraud may be inferred just as complaints of pains evidences bodily feeling.

What about the fact that Moyo could not gave any answer to a simple question? What does that show or tend to show?

Illustration of Facts relevant to the Issue.

The court may admit the following evidence of facts relevant to the issue.

Evidence of:

Pharmacist: Evidence that Judas, bought poison from him,

Witness: Production in court of Receipt issued by Kato (deceased) acknowledge the receipt of a fee for instructing Judas on use of Poison (exception to Hearsay).

Dogo's letter, showing motive.

Police evidence that Poison was found on him

Attempt to explain

(1) The type of evidence in each case

(2) Jurisdiction for reception of the evidence

3.3 Classes of facts relevant to facts in issue.

The following are examples of facts relevant to prove circumstantially another fact:-

1. Previous and Subsequent existence of fact

   Existence of a fact in issue may be shown by proving its previous existence at a reasonable proximate date, there being a probability that certain conditions and relations continue.

   This is a presumption of fact (praesumptioneshominis) – provisional presumptions – which guides the court in deciding whether or not it should infer the fact in issue from it section 149 EA).

   Examples.

   Presumption of continuance; That things, circumstances or position, once proved to have existed at a certain date, continues to exist in such a state on condition for a reasonable time e.g. human life, sanity, insanity, marriage, partnership.

   Presumption of continuance may operate retroactively. For example, the fact that a ship is lost within a short time of sailing may lead to the influence that the ship was at initio unseaworthy

   Res ipsa loquitur (the things speaks for itself). The fact that D had control of the thing being caused the accident may lead to an influence of negligence.

   Evidence of Scienter.

A person found in possession of recently stolen goods may either be the thief or the receiver.

2. Other classes of relevant facts includes

- Course of Business
- Habits
- Standard of Comparison
- Acting in a capacity
- Title
- State of mind

    Knowledge

    Intention

    Bona fide; Mala fide

- Complaint
- Conduct and statement of third persons

You should consult any standard text book for illustration of each of the above.

Activity

Look at this ease:

In September, Judas went to a pharmacy and bought some poison. In December, Judas took lessons of instruction on a flee from Kato on how to use different kinds of poison. Kato issued a receipt and has since died. Harrison, who is Judas uncle has just written his Will bequeathing part of his vast property to Judas. Dogo got a wind of it and wrote to Judas what he stands to

gain on Harrison's death. Few days later, Harrison died of poison and Judas is arrested and when searched, poison was found in him. Judas charged with murder of Harrison, by poisoning.

Dick out (1) Judas denies the charge in its entirety. Facts in issue (2) Facts relevant to issue.

Fact in issue

- Whether Judas killed Harrison by poisoning
- Whether Judas had requisite interest at the material time.
- Other facts arising from the nature of defence, if any

3.4 Irrelevant Evidence

Generally Irrelevant evidence are inadmissible. Examples are:

- Statement made out of court and in the absence of a party
- Things done behind a party
- the character of the parties (sections 68-69 EA)
- Opinion evidence (section 66 EA)
- A party's conduct in other transaction or on other occasion.

In exceptional cases, however, such irrelevant evidence may be admitted. The reason why irrelevant evidence are excluded are:

- To discourse protracted litigation
- Public Policy

## 4.0 CONCLUSION

A fact is a thing known to have happened. The fact in issue refer to the truth of the matter, the *mensrea* and the overt act constituting the crime or claim, it is ascertained by reference to

substantial land and pleadings. It is the central crux of the whole proceedings - that thing which you must prove for you to succeed in the mater. Fact relevant to the fact in issue is that fact which is in extricable connected to the fact in issue. It is that from which the inference of fact in issue can be drawn. Evidence that parties stayed in an hotel as man and wife and had exclusive possession of a room undisturbed may give rise to an inference of adultery. Notice a of fact – fact relevant to a fact which is relevant to the fact in issue and fact, through and forth categories through not in issue, and are of relevant to the act in issue may become relevant. Example is the fact which do affect the weight of legal reception, the qualification of expert witness, duress in relation to the of statement. Irrelevant fact is itself a fact. It does not assist the court to assess the weight, validity or admissibility of other items evidence. Statutory definitions of 'fact' or fact in issue, appear vague and may not intelligently assist you to differentiate one form another. The illustrations and case law have been provided to help you overcome the problem.

## 5.0 SUMMARY

You have learnt about relevant facts especially those which show the occasion, case, opportunity, circumstances, motive, preparation, introductory explanation etc. Attention was drawn to the circumstances where facts, otherwise irrelevant become relevant e.g. fact relating to amount of damage, particular circumstance, state of mind or body etc. More about this Unit can be found in part II of the Evidence Act.

## 6.0 TUTOR MARKED ASSIGNMENT

In what circumstances will facts not relevant to the fact in issue be admissible in evidence.

## 7.0 REFERENCES

Evidence Act

**UNIT 3: SIMILAR FACTS EVIDENCE**

**CONTENTS**

## 1.0 INTRODUCTION

Evidence of general resemblance or general similar facts are inadmissible. They are admissible if they show not only a general resemblance but also such a particular resemblance as to fix the accursed as the actor on the particular case. Prior to the 19th Century, similar fact evidence was excluded unless it had a particular function. In the 19th Century, the reverse situation prevailed and similar fact evidence because, prim facie, admissible unless it showed only propensity. In 1894, exclusionary rule was restored and fact was confirmed by the Privy council in the case *of Markin v Attorney General of New South Wales.* In 1946, the Criminal Court of Appeal reverted to the rule of general admission *(R. v Sims)*. Three years later, 1949, reinterated the general rule of exclusion in NOOr*Mohammed V R*. The House of Lords confirmed this in *Harris V DPP*. However, the rules of exclusion of similar evidence is well established and enacted into law in section 7 of the Evidence Act, but the rule is subject of a number of exceptions.

## 2.0 OBJECTIVES

When you have studied this important unit, you should be able to:

1. Demonstrate an understanding of the similar facts Evidence Rule

2. Enumerate the reasons for exclusion
3. Indicate the exceptions to the rule
4. Enumerate the functions of similar facts Evidence
5. Critique the similar facts Evidence Rule.

## 3.0 MAIN CONTENTS

3.1 The Exclusionary Aspect of Similar Facts

See the following provisions:-

Section 6: Evidence may be given of facts in issue and relevant facts

Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as declared to be relevant and of no others.

Provided that

a) The court may exclude evidence of facts which through relevant or deemed to be relevant to the issue, appears to it to be too remote to be maternal in all the circumstances of the case: and

b) This section shall non enable any person to give evidence of a facts, which he is disentitled to prove by the provision of the law for the time being in force.

Section 68: Evidence of character of the accused in criminal proceedings

1.) Except as provided in this section, the fact that an accused person is of bad character is irrelevant in criminal proceedings

2.) The fact that an accused person is of bad character is relevant:-

a.) When the bad character of the accused person is a fact in issue.

b.) When the accused person has given evidence of his good character

3.) An accused person may be asked questions to show that he is of bad character in the circumstances mentioned in section 159 (d)

4.) Whenever evidence of bad character is relevant evidence of a previous conviction is also relevant.

Section 159: Competency of Accursed person to give evidence

Every person charged with a defence shall be a competent witness for the defence at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person.

(a) A person charged and called as a witness shall not be asked, and if asked, shall not be required to answer, any question tending to show that he has committed or been convicted of or been charged with any offence other than that wherewith he is then charged or is of bad character unless.

1) The proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged; or

2) He has personally or by his legal practitioner asked questions of the witnesses for the prosecution with a view to establish his own good character or has given evidence of his good character, it the nature or conduct of the defence in such as to involve imputation on the character o the prosecutor or the witnesses for the prosecution or

3) He has given evidence against any other person charged with the same offered

Section 17: Facts bearing on questions whether act was accidental or intentional.

When there is a question whether an act was accidental or done with a particular knowledge or intention, the fact that such act formed part of a series of similar occurrences in each of which the person doing he act was concerned is relevant.

Section 471: Evidence of Scienter

Whenever any person is being proceeded against for receiving any property, knowing I to have been stolen or for having in his possession stolen property for the purpose of proving guilty knowledge there may be given in evidence at any stage of the proceedings:

a). The fact that other property stolen within the period of twelve months proceedings the date of the offence charged was found or had been in his possession.

b). the fact that within the five years proceeding the date of the offence charged, he was convicted of any offence involving fraud or dishonesty

The last mentioned fact may not be roved unless:-

i). seven days' notice in writing has been given to the offenders that proof of such previous conviction is intended to be given, and

ii) evidence has been given that the property in respect of which the offends is being tried was found or had been in his possession.

Activity

Read the passages above again.

Attempt to say in your own words what the passages talk about.

Note the following: (i) Section 6 represents the general rule

(i) Section 17 is one of the most important exceptions to the general rule

(ii) Section 46 is material only for the purpose of proving guilty knowledge and for the fact of receiving the goods to which the charge relates must be proved.

3.2 The General Rule

The general rule specifies the facts of which evidence may be given.

The Evidence Act stipulates that evidence may be given facts in issue and relevant facts and " of no others".

The court, in exercise of its discretionary proved exclude an otherwise relevant fact, if it considers

(i) That the prejudicial tendency outweighs its probative value

(ii) Evidence is obtained illegally or by some tricks

(iii) Strict rules of admissibility would opsate unfairly against an accused

General evidence of similar facts is NOT admissible to prove the facts in issue. Koyo, a brewer supplies beer. He supplied beer to Haruna. No complaint. It was good beer. He supplied beer to Dogo who complained that the beer which Kodgo supplied was bad. Kodjo denies and seek to put in evidence that the beer he supplied are good beer and had supplied good beer to Haruna.

Ado obtained N50,000.00 by false pretence (4-1-9-) from Folashade in 2009. Ado also obtained N20,000.00 by false pretence from Chukwu in 2010. Again in has been arrested for obtaining N150,000.00 from Fatima by false pretence. He is charged to court. Ado denies the charge. The prosecution seeks to calFolashade and Chukwu to testify to previous fraud or to tender evidence of previous conviction for obtaining by false pretence.

What the brewer and Ado seek to do is to give evidence of facts similar to a fact in issue.

Lord Herschell stated the general rule when he said:

> "it is undoubtedly not competent for the prosecution to adduce evidence tending to show that the accused had been guilty of criminal acts other than those covered by the indictment; for the purpose of leading to the conclusion that the accused is a person likely form his criminal conduct or character to have committed the offence for which he is being tried."

See *Mekan v AG* (NSW) 1894

Lord Goddard held a contrary view, arguing

> "if one starts with the assumption that all evidence tending to show a disposition towards a particular issue must be excluded unless justified, then the justification of evidence of this kind is that it tends to rebut a defence otherwise open to the adduced; but if one starts with the general proposition that all evidence that is logically probative is admissible unless excluded, when evidence of this kind does not have to seek a justification but is admissible irrespective of the issues raised by the defence and this we think is the correct view".

The Privy Council overruled Lord Goddeard and confirmed the exclusionary rule. In *NOOR Mohammed v R*, appellants wife was alleged to have died from cyanide poison. Mohammed was charged with the murder. There was evidence that his paramour also died of cyanide poisoning. Held, on appeal, that such evidence was improperly admitted since the possession of cyanide was consistent with Mohammed trade of Goldsmitting.

In *Hams v DPP*, the accused was a policeman. On the 7th occasion, the authorities were enraged and planned a trap to arrest him. An alarm went off; Hams was seen on the 8th occasion, moving away from the scene of the breaking at the approach of detectives. A search did not yield the money. Harms had concealed it in the interval. He was charged with theft and convicted. The House of Lord, held that the evidence of the previous seven breakings were wrongly admitted. The reason was that Harm's has not been specifically connected with the theft on the previous occasions but merely suspected and therefore entitled to acquittal.

Kate stole office property, Sule murdered the Accountant, Yusuf burgled the Pilots house and robbed. Kate, Sule and Yusuf have a general resemblance: each of them is a criminal and a gad man.

The Police have arrested Duru and charged him to court for obtaining money under false practice (4-1-9). Three years also Duru, by false pretence deprived Adamu of ear which went to prison for 6 months.

Kene stole a box of trinket. Last year, Kene committed house breaking.

Three examples are similar facts evidence. Each of them shows

1. Resemblance

2. Propensity that accused either form past or future cause of conduct was likely to commit the defence charged

3. The bad side of the accused, and therefore likely prejudice and bias the mind of the judge

4. Irrelevance – merely showing that the accused committed other crimes.

5. Admission of such evidence would infringe the legal maxim; "*Res interaliosacta*" meaning: a man (or woman) should not be prejudiced by thing done behind his back.

The corollary of this is that the prosecution should not benefit in point of proof by reliance on crimes committed on other occasions.

If Ado is charged with obtaining money by false pretence (419) from Fatima, it is not open to this prosecutor to show that Ado had obtained money under false pretence form Folashade and/or Chukwu or has obtained money by other false pretence.

3.3 Exception to the Exception

The general rule is that Facts in Issue and relevant acts and no others are admissible.

An exception is that evidence of similar facts is not admissible to prove the facts in issue.

An exception to this exception is that similar Facts Evidence may be admissible if:

"there is a special connection (i.e. a nexus), between the facts in issue and the similar facts

This special connection or nexus may arise from:

1. Modus operandi, or system

2. Common origin

3. Abnormal propensities

Thus, if Kodjo had sought to adduce evidence that the beer he supplied to Haruna and Dogo were brewed together. That would be evidence of common source or origin.

If in Ado's case the prosecution sought to bring evidence that Ado obtained money from Folashade, Chukwu and Fatima by similar false pretence, this would be evidence system or evidence of modus operandi.

Suppose A is charged when obtaining N50,000.00 by false pretence that his ring is made of gold. Six months earlier he has obtained N35,000.00 by representing that he had a ring made of gold to sess. The inference are:

1. That A is a bad man, a criminal
2. Conduct shows particular resemblance
3. That A adopt a particular mode of obtaining by false practice
4. Resemblance via modus operandi in each case

On the other hand, the mere fact that the evidence adduced tends to show the commission of other crimes does not render it in admissible. If it be relevant to the crime before the jury and it may be so relevant if it bears upon the question whether the acts alleged to constitute the crime charged in the indictment were designed or accidental, or to rebut a defence which would otherwise be open to the accuses.

3.4 When Similar Facts Evidence is Relevant and Admissible

Evidence of similar facts are generally irrelevant and inadmissible. There are exceptions, which may be subject to the discretion of the judge to reject it where its judicial effect outweigh its relevance similar facts evidence as we shall see in the next unit is relevant to:-

1. Evidence which tents to rebut a defence of accident or mistake were the fact in issue is alleged crime or tort involving guilty knowledge or intention. In R v Geering (1849), G was charged with murder of her husband by administering arsenic poison. The prosecution to call evidence showing that:

- G cover for him and gave him his food. Her two sons who lived with her hand died of arsenic poisoning
- Her third son had taken ill form the same arsenic substance

The defence substance objected but the court overruled. Admitting the evidence, the court explained that it tended to show that the death of accused's husband had not occurred by mere accident but by deliberate design.

Zakari advertises falsely that he carries on trade as a dairyman and famer and obtains eggs on credit from Aremu. Subsequently by the same devices, Zakari also defrauds Kuku; and Danjuma on different occasions. The three different incidents are evidence of similar facts, and are admission to prove intention.

2. Evidence which tend to prove the main fact in issue.

   Eg. When the similar facts are intermixed with the fact in issue as to form one transaction – when the similar facts and the fact in issue form a series of acts done in pursuance of some one design, constituting a continuous course of action.

Usman is charged with stealing Gas from PHCN in February 2011. There was evidence that he had taken the Gas from the Gas Main, by means of a pipe, for use in his own factory. The evidence that Usman has been doing so over a number of years is evidence of similar facts admissible on the ground that it tends to show one continuous transaction

3. Evidence which tend to Establish Identity

Facts which establish the identity of any person or thing in issue.

Fact which fix the time and place connecting fact in issue to relevant fact or a party with some transaction.

Evidence of similarity of characteristics, age, photographs, handwriting, opportunity, finger prints possession of stolen goods, special knowledge or skill etc.

Kunle is indicted for murder of Mr. Rich. Evidence of Kunle's pecuniary embarrassment is relevant to show that his motive was to obtain deceased's property.

4. Evidence which tends to show that a conduct, which may be lawful or unlawful, depending on the intent with which it was done was, in fact, unlawful.

5. Evidence which tends to show that the material found in possession of the accused was possessed for an unlawful rather than a lawful purpose.
6. Evidence which tends to show a design, or systematic conduct
7. Evidence which tends to prove knowledge
8. Evidence which tends to corroborate the evidence of a prosecution witness

Similar Facts Evidence in Civil Matters

Similar Facts Evidence Rule applies also in Civil causes. In *Hollingham v Head* (1858) the issue was whether plaintiff contracted with the defendant subject to special terms. Evidence sought to be adduced was the fact of similar contracts with other persons, subject to these special terms. Held inadmissible; the fact that a man (or a woman) has once or more in his life acted in a particular way does not make it probable that he or she so acted on a given occasion.

Suppose P made the same contract D, Y, Z. The claim would probably have succeeded.

In an action for negligence for performing a surgical operation carelessly evidence that in other such operation, he had been negligent or skillful is inadmissible.

Evidence of identity of name and handwriting may be admissible also to prove execution of a document.

**4.0 CONCLUSION**

Evidence of general resemblance or of general similar facts are inadmissible. They merely shows propensity, bias and prejudice, is irrelevant and conflictual with the maxim *resinteraliasacta*. However, there are exception to this general exclusionary, rule. Hence similar fact evidence is admissible, when it shows evidence system - when it shows not merely a general resemblance but also such a particular resemblance as to fix the other party as the actor in each case.

## 5.0 SUMMARY

You must have been thrilled with the ebb and flew of similar fact evidence. It is contained in Section 17 of the Evidence Act. Reference was also made to Section 6, 46, 48 and 159. The current rule is exclusionary as formulated in Makin's case. You learned also when similar fact evidence may be admissible. In the next unit, you shall learn about *resgesta*.

## 6.0 TUTOR MARKED ASSIGNMENT

Similar Fats relate to past events and are irrelevant to facts in issue inadmissible in Evidence I proof of it.

## 7.0 REFERENCE/FURTHER READINGS

Evidence Act Supra

## UNIT 4: RES GESTAE

**CONTENT**

## 1.0 INTRODUCTION

A fact includes anything, state of things, or relation of things, capable of being perceived of the senses, and mental condition of which any person is conscious. A fact may also be the result of one or more facts. It may consist of a series of facts (as in a transaction), part of a the transaction accompany and explain it (accompanying facts). Res gesta refers to the central transaction whilst the constituent or accompany facts are parts of it – other acts, omissions, incidents and declarations which accompany, constitute or explain a fact in issue.

## 2.0 OBJECTIVES

When you have studied this unit, you should be able to:

1. Define or explain what the term “res gesta” or “res gestae”
2. Identify res gaesta or res gestae in any fact situation
3. Apply the rule of evidence which governs res gesta or res gestae
4. Identify (a) Fact constituting the matter in issue, (b) accompanying acts
5. Illustrate cases where
    a. Evidence is admissible
    b. Evidence is inadmissible
6. Critique res gesta/res gestae.

**3.0 MAIN CONTENTS**

3.1 This antiquated/ catch word, Res Gesta (singular) or res geatae (plural) is Latin expression meaning “thing done”. The term refers to:

– events in issue

- events contemporaneous with the events at issue.

- Facts which accompany and explain facts in issue

The Evidence Law permits the court to admit words and statements about res gestae. This res gestae embraces not only the actual facts of the transaction and the circumstances surrounding it but also the matters immediately antecedent to and having a direct causal connection with it; as well as acts immediately following it and so closely connected with it as to form in reality a part of the occurrence.

The Evidence Act did not use the term ‘res gesta or res gestae’.ut seeection 7: Relevancy of facts forming part of same transaction:

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

3.2 Criteria for admitting res gestae in Evidence

Ordinarily res gesta is a hearsay and prima facie irrelevant and inadmissible. However as an exception to hearsay rule, the things said, written or done which accompany and explain a relevant act – res gestae – is relevant and admissible. Before it can be admitted as res gestae the fact must satisfy the following criteria:

1. It must be contemporaneous, directly concerned and explain an event in issue

2. Accompanying fact must relate to the fact in issue

3. The statement must be made by the victim actor.

1. Contemporaneity

As Lord Normad said in Taper v R. (1952):

> "It is essential that the words sought to be proved by hearsay should be; if not absolutely contemporaneous with the action or event, at least so clearly associated with it in time, place and circumstances that they are part of the thing being done, and so an item or part of real evidence and not merely a reported statement."

Lord Atkin explained that the statement admissible under the head of *res gestae* is not admissible as rebutting the accuser's own evidence of the facts stated, but as evidence of facts within the knowledge or belief of the person making the statement. (*R v Christie*, 1914).

For a fact o be contemporaneous therefore, it must be;

- Inexplicably intertwined with the fact in issue ad to form part of the same transaction.
- It must occur at the same time as or about the same time as the fact in issue.
- It must be proximate to it and there must be no time lapse between making of the statement and occurrence of fact in issue.

Civil Matters

Because transactions in civil matters are long drawn, the requirement of contemporaneity is less strict than in criminal matters. In *Rawson v Hough*, (1824) the question for determination was whether the debtor had left the realm with a view of avoiding payment. A letter written by him during his absence from the United Kingdom was held admissible as part of *res gestae*. The reasoning was that his absence is a continuing ingredients of the alleged wrong and the letter written during the continuance of the said absence is regarded as part of the *res gestae*.

In *Homa v Newman* (1931), a title deed was deposited. A memoranda was made more than eighteen months thereafter. On the question as to the nature of transaction envisaged by the deposit of title deed, the court held that the memorandum was admissible to show that deposit was for a mortgage. The memorandum was also admissible as part of the *res gestae*since it was made during the continuance of the deposit.

Similarly in *Bryce v Bryce* (1933) the question is one of acquisition of domicile of choice. The acts done and the property acquired at different times and places by the propositions were admitted as part of *res gestae*.

Criminal Proceedings

In criminal cases, the requirement of contemporaneity is strict. The statements made must be practicably contemporaneous with the act in question unfortunately, decided cases have not been particularly, helpful as well be seen shortly. *R v Beddingfield* (1879).

The accused was charged with the murder of X. X ran out of the room with her throat particularly cut saying: "See what Beddingfield has done to me". Held: that the statement was not part of the res gestae and therefore not admissible as it was not contemporaneous, it was made in the absence of the accused. *R. v Bang Wegekan* (1943)

BW was charged with murder. The principal evidence against him was that the deceased, after he had been stabbed, said: "Bang has shot me". There was no evidence that:

1. BW was present
2. BW believed himself to be in danger of death

The other evidence against BW was not conclusive. The trial judge held it was admissible. On appeal, WACA, following Beddingfield, held that the evidence was inadmissible whether as a dying declaration or as part of *res gestae*. The appellant court found that the statement was made "an appreciable time" after the wound had been inflicted. Also See *R v Christie* (1914): where C was charged with assaulting a small boy and the House of Lords held that what the boy said to his mother a few minutes later describing the offence was not part of the *res gestae* and therefore inadmissible.

*Tepper v R.* (1952)

The accused was charged with maliciously setting fire to a shop with intent to defraud. One of the witnesses called for the prosecution, swore that after hearing the fire alarm he heard a woman shouting; "Your place burning and you going away from the fire". The witness also swore that immediately after this, he saw a man driving a car away, and that, that man

resembled the accused. The woman had shouted when some two hundred and twenty yards away from the shop, and did no twenty-six minutes after the fire had first started. On appeal to the Privy Council, the evidence was held inadmissible, not being part o the *res gestae*.

It is essential that the words sought to be proved by hearsay (e.g. the words heard by the witness) should be, if not absolutely contemporaneous with the action or event, at least so clearly associated with it that they formed part of the thing being done, and so were an item or part of the real evidence, out with merely a reported statement.

Where the words are sought to be proved for the purpose for identification in criminal trial, the action or event with which the words are associated must be the commission of the crime itself. This was certainly not so in the present case. The accused, if he did set fire to the shop, had already done so. The Woman's shouts were not associated with the commission of the crime and therefore the witness who heard her shout should not have given evidence as to what she shouted.

You may contrast the above cases with the following:

*R v. Forster* (1846)

The deceased had been run over. What he said immediately after the accident to the witness, who picked him up, that she had been knocked down by defendant carriage was held admissible in evidence when the accused was tried for manslaughter.

You may distinguish this case from *Tustin v Arnold& Sons (1915)* where a written account of a collision was made shortly after it occurred was held to be inadmissible.

*R. v Fowkes* (1856)

In a case of murder of X by shooting; evidence was admitted of a witness who was in X's room when he was shot, who said he saw a man with a gun pass the window and exclaimed "There's Butcher" (a name by which Fowkes was known)

*Mortimer v McCallan* (1840)

Z, a jobber, sold stock to M, a broker on account of K, (Ms' client). By stock Exchange usages, M would be responsible to Z for payment. Evidence of a request by Z to M after the transfer had been affected to give him K's cheque was admitted as part of the transaction of sale.

Accompanying statement and declarations must explain and relate to the fact in issue which they accompany and such that they regarded as forming part of it – not to any previous or subsequent fact. They are *pars reigestae* or as often described: part of the *res gestae*. Such statements and declaration are not:

- Proof of the fact which they accompany
- Evidence of the truth of the matter stated
- Exceptions to the hearsay rule

The statements and declarations are original evidence and must be established independently.

See the case of *Agassiz v London Trainway Ltd.* Defendants were sued for negligence and the fact in issue in this case was whether a collision had been caused by the driver of a train car. A few moments after the collision a conductor said to one of the passengers:

> "He (the driver) has already been reported for he has been off the rail five or six times today – he is a nar driver". The statement was held not part of *res gestae* and was inadmissible, the reason being that it did not relate to the collision which was the fact in issue. It merely related to past disconnected acts of the driver.

*Milner v Leister* (1862)

> The question before the court was whether C had sold certain goods to B formally or only to B acting as agents for A. The sale was conditional upon the result of an enquiry made to B who was upon the result of an enquiry made to B who was to give a reference. There was produced in court a letter written by C to his own agent requesting him to enquire of T as to the credit of C and also of B. The letter stated:

"B is making large purchases for A". Held: the letter is admissible as part of the transaction in corroboration of other evidence; but was of itself no proof that B's purchase of the goods was on behalf of A.

Also in *Davies v Fortior Ltd* (1952). H died as a result of falling into a bath of Acid. Two minutes of being dragged out, he was heard to say "I shouldn't have done it". In an action for Negligence by H's widow, it was held that this statement was admissible as forming part of *res gestae* to support an inference that H had been guilty of some negligence misconduct.

In *R. v Hunt*, exclamations of those present at the meeting and the inscriptions on the flags and banners displayed, were admitted to prove that an assembly was unlawful and seditious. Sometimes the central transaction is referred to a s *res gestae* while the constituent or accompanying facts are regarded as "parts of the *Res Gestae*. But it is sometimes not easy to determine whether a declaration is part of the *res gestae* because it accompanies and explains some fact in issue.

Activity

Romeo and Juliet are on. Romeo promised to marry Juliet. He has broken his promise, and married another. Juliet is aggrieved. Romeo denies he broke any promise as there was, according to him, no promise at all but a puff.

Juliet cannot be heard to say there was a promise of marriage. That is a conclusion of law for this court to decide.

Juliet can only relied on what Romeo said and/or wrote to her.

Constituent facts

You would have notice that in a vast majority of cases, central transaction can be established only by proof of:

a. A series of acts or of similar facts e.g.

b. A continuing fact

c. Acts which form one continuous transaction

Self Assessment Exercise

Distinguish, in the context of *res gestae*, the following

a. Facts constituting the matter in issue

b. Accompanying facts

c. Statements and declarations

d. Relevant facts

e. Media of Proof

2.1 The traditional view is that statements and declarations which form past of *res gestae* are admissible to explain or corroborate the fact in issue which they accompany. They do not prove the truth of what they assert.

In reality, statements or declarations would be explanatory only if they are *prima facie* time (Nokes). In such a case, they are actually admitted as proof of the truth of what they assert. Isn't that a naked admission of hearsay?

The Schwalbe (1859) is a case of collision between two ships. In order prove that one of the ship was to blame, evidence was admitted that her Pilot, immediately after the collision, stamped his fool and exclaimed; "The dammed helm is still a – star boarded." This exclamation was admitted to prove that the helm was a-starboard and to prove it by the assertion of a person not called as a witness i.e. by hearsay evidence (Philipson).

2.2 Subject to certain conditions the court may permit a witness to testify as to:

. his or her own health and feelings at a given time coupled with the facts from which the condition may be inferred

. any statement made by a person whose health is in issue

The condition for admissibility of such evidence of health and feelings are

. they must relate to contemporaneous symptoms

. there are not the cause of health failure or feelings

. they are not past conditions

See the following two contrasting cases:

*R. v Johnson* (1846)

J was charged with the murder of D by poison shortly after administration of the poison, J appears to be and said he was in good health. Afterward he appeared to be and said he was suffering. Held: evidence of his health and feelings are admissible.

*R. v Gloster* (1888)

G was charged with murder of F by an illegal operation. F made a statement during her illness that G had operated on her, that her illness was caused thereby and what here symptoms had been some days before such statements. Held: the statements relate to cause of illness and the past and were accordingly rejected.

3. The person by whom the statement or declaration is made.

Legal writers have argued that it is a requirement of res gestae that the statement or declaration must be made by the victim or actor. But there judicial authorizes of statements made by non-actors and non-victims that have been admitted as part of the gestae.

In *R. v Fowkes* (supra). The statements "Here is Butcher" was made b y the victim's son but was admitted as part of res gestae.

In *Wilner v Leister*, an exclamation in the form o "shame" by bystanders in a running down case was held as part of res gestae.

Perhaps it is safe to say as a matter of practice, the court would receive statements and declarations of victims as well as those of assailants, non-victims or non-actors. Then rationale for admissibility of these statements and declarations in evidence may be explained on the ground that;

. human utterance is both a fact and a means of communication, and

. human action may be so interwoven with words that the disassociation of the words form the action would impede the discovery of the truth: per *Lord Normand in Tepper v R* (1952).

3.3 Res Gesta: Common Law and Evidence Act.

Res gestae is a common law doctrine and it has consequently been argued that it is not directly applicable under the Evidence Act.

At common law, res gestae are statements and declarations (oral or written) contemporaneously and tends to accompany or explain a fact in issue or relevant fact. There is tendency to misconstrue contemporaneity as synonymous with facts occurring at the same time and place. The requirement of contemporaneity may be strict in criminal law but it is less so in civil matters.

Evidence Act Section 7 permits the court to admit facts which form part of the same transaction whether they occur at the same time and place or at different times and places. The phrase 'at the same time and place answers the description of contemporaniety. The other phrase "or at different times and places" permits the admission of facts which may not be substantially contemporaneous as *res gestae*. This was the case of *Rawson v Heigh* and *Bryce v Bryce*. In *Uzowalu&Nwadialor v Onyia* the litigations occurring with different parties at different.

**4.0 CONCLUSION**

Res gestae (thing done) are the event in issue, constituent and accompanying facts which tend to explain the event or fact in issue. To be admissible, it must be contemporaneous, accompany and explain the event they accompany and perhaps also made by the actor or victim. The doctrine serves as cloak for admitting evidence which borders in hearsay, and self corroboration which should not be admitted, sane that they have met the criteria for admitting res gestae.

**5.0 SUMMARY**

Res gestae is a common law rule for evidence. It applies in Nigeria to the extent that it is contained in the Evidence Act. Section 7. The decline applies, as you have seen in both criminal and civil matters.

**6.0 TUTOR MARKED ASSIGNMENT**

**What is res gestae? Will facts which accompany and explains res gestae be admisissible?**

**7.0 REFERENCES/FURTHER READINGS**

**Evidence Act 2004**

**UNIT 5: COMPLAINT**

**CONTENTS**



**1.0. INTRODUCTION**

It is a general rule that hearsay is no evidence not only because what the other person said is not on oath but also because that other party who is to be affected by it has had no opportunity of cross examining him or her. But in certain circumstances, evidence of a recent or fresh complaint may be admissible upon the time of an indictment for rape or other related sexual offences. In this unit, you shall learn of the admissibility criteria of compliant.

## 2.0 OBJECTIVES

When you have studied this Unit, you should be able to:

1. Explain the term "complaint"
2. Enumerate the criteria for admissibility of evidence of complaint
3. Illustrate when evidence of complaint may be admissible
4. Illustrate when evidence of complaint may not be admissible.

## 3.0. MAIN CONTENT

The rule as to fresh complaint has been held to apply in trial of an indictment for rape, indecent assault on a boy under sixteen years of age, indecent assault on girl under thirteen, sexual intercourse with a females between 13 and 16 among other. But it is not in every such cases that evidence of complaint is admissible. The court exercises considerable discretion. It is important therefore to examined how the court has exercised this judicial discretion through cases.

### 3.2 Complaint

Ramatu was seen running out of a house, crying. She ran to her mother, Jumai screaming: "See what Harn's did to me" and showed her mother smells of semen all out her private part. Harris is charged with the offence of having unlawful carnal knowledge of Ramatu, a woman without her consent by force, or threat or intimidation.

In this case, Ramatu is the victim; also called the prosecuting the accused or defendant; Jumai is a stranger, or a third party.

At the trial, the prosecution seeks to call as a witness, Jumai (a stranger) to testify as to what the prosecutrix (Ramatu) said or did to her. What Ramatu said to Jumai was a "complaint" – see what Harris did to me....."

So a complaint is a statement made by a party to a stranger in the absence of the other party.

How relevant is this item of evidence? Is it admissible? Is a complaint receivable in evidence?

What Jumai is being asked to narrate is what Ramatu told her is not that a hearsay ? - Testimony by a witness who relates not what he or she knows personally but what others have seen that a witness is not allowed to repeat in court any statement (Oral or written) made by a third party who is not called as a witness for the purpose of proving the truth of the facts stated.

Thus if the purpose of the hearsay is to demonstrates the truth of the facts in issue, it is irrelevant and inadmissible. That is to say if the purpose of Jumai's narration is to show the Harn's in fact raped Ramatu, it is hearsay irrelevant, and inadmissible.

Remember Ramatu's complaint is not also sufficient contemporaneous with the fact in issue. Therefore it is no res geata.

But if the purpose of Jumai testimony is to prove that such a complaint was laid statement was ion fact made, it ceases to be hearsay. Ti is then an original and a direct evidence and as such is admissible.

### 3.2. Complaint in Sexual Offences.

In the early times, there was the requirement that before a person could be convicted of rape, there must be evidence that the prosecutors raised a "hue and cry". In modern times what is required is no longer hue and cry but evidence of a complaint. This applies in cases of sexual assault, e.g. Rape, indecent assault and similar offences on females and, indecent assault on and indecency with young males.

Since the close of the 19th Century, the Court began to emphasize that the words of the complaint are not to be accepted as evidence of the facts stated. The purpose of admitting the complaint is merely to prove "consistency of the conduct of the prosecution with the story told by her in the witness box, and as being inconsistent with her consent to that of which she complains.

In an old case of *R v Lillyman*(1896) the court had the opportunity to consider earlier authorities on complaint in rape and other kindred offences against women and children (including indecent assault and sexual intercourse with girls under thirteen and between thirteen and sixteen). It then came to this conclusion that the fact that a complaint was made by the prosecutor shortly after the alleged occurrence and the particular of such complaints may so far as they relate to the charge against the prisoner to be given in evidence by the prosecution. According to the court such evidence of complaints are not evidence of the facts complained of but evidence of the consistency of the conduct of the prosecution with the story told by her in the witness box and as negative consent on her part. The admissibility depends, however, on proof of the facts by sworn or other legalized testimony.

### 3.3. Criteria for Admissibility of Recent Complaint

To be admissible in evidence, the complaint must:

1. Be made at the earliest reasonable opportunity after the assault is committed. It may not necessarily be made at the very first opportunity. It may be made as soon as the child could speak to its mother. In *R v Cummings* (1948), a land |Army girl was raped. She returned to the camp in which he lived with other girl. She made no complaint to the Warden or to other girls. The next morning, she went two miles to visit an older woman whom she knew and made her complaint to that woman. Held: complaint was made at the first reasonable opportunity. Whenever the complaint was made on the first opportunity which reasonably offers itself after that offence is a matter for the court to decide. Complaint is inadmissible if it was made after a considerable time her elapsed between the offence and the complaint.

2. Have been made spontaneously and not in response to leading, intimidating or suggestive questions. Such as: who beat you? Why are you crying? Or what's the matter? *R v Osborne* (1905) was a case of indecent assault on a girl of 12 years of age. The questions put to the victim merely sought the reasons for her sudden decision to go home and did not in any way prompt the victim to say that she had been assaulted. The court and that evidence of fresh complaint is admissible "whether non-consent is legally necessary part of the issue or whether on the other hand, it is what may be called a collateral issue of fact" in consequence of story told by the complainant in the witness box and the complaint I not admissible merely as negativing consent but as being consistent with sworn evidence of the complainant.

3.3.1 Scope of Application of the Rule of Complaint

In *R.vCamelleri* (1922), a boy had complained to his parents of an indecent assault made on him. The evidence by his parents of the complaint was allowed at the criminal trial. The Rules of complaint are available irrespective of gender.

3.3.2 the Rules of complaints probably also apply to:

- complaints of cruelty in the matrimonial causes matters. See Fromhold v Fromhold (1952)
- charges of violence: See Jones v S.E. & Chatham Ry (1918) per Bankes, LJ.
- Charges of indecent assault upon a boy under 16 years of age.
- Charges of bagger, with a youth of 19

The court has refused as inadmissible the following complaints

- Complaint made on a Tuesday following, the offence having been committed on Monday
- Complaint on the day of occurrence as to something alleged to have been done by the Prisoner three weeks earlier.
- Complaint made after a day had elapsed between the assault and the complaint of the girls mother.

- Complaint by prosecutrix who has given no evidence and the complaint not being part if res gestae, is confirmatory only

- Complaint by a five year old prosecutrix, narrated by her grandmother was admitted by trial judge and jettisoned by the appellate court in circumstances where the client was placed in the witness but by the prosecution but was unable to give evidence.

- Compliant by the prosecutrix, not her own initiative but in answers to questions of a leading and inducing or intimidating chancily.

It is important that you note that evidence of complaint is admissible where:

- The prosecutrix does not so into the witness box or give evidence

- The consent of the victim is not in issue.

- Complaint and Corroboration

In all sexual matters, the courtey must require:

a. Corroboration, or

b. Warn itself of the danger of convicting without corroboration

Whether the victims are children and their evidence is unsworn, the law requires corroboration

In this regards, evidence of complaint is not to be regarded as corroboration.

The corroboration must come from an independence source. For example, in *R. v. Flack* (1969) with his sister was received as corroboration on a charge of incent.

It is for the judge to decide whether or not an evidence of a complaint is admissible: it is admissible:

. to prove the conduct of the prosecutrix at the time was constituent with the story which has been told by her in the witness box.

. to negative consent to that of which she complains.

. to prove that the story is not a recent invention.

The purpose of admissibility of evidence of fresh complaint is not to prove:

. the facts asserted in it

. corroboration of the facts

It is probable that the court may admit evidence as to the fact of the complaint and of the subsequent conduct of the witness. Thus the fact of a complaint and the conduct of the addressee in causing the suspect to be arrested and charged may be admissible to enable the court to infer the terms of the complaint.

See *R. v Wall Work* (1928)

Contra *R. v White head* (1928)

Generally, however, the court admits the actual terms of the statements in issue. This is to enable the court determine whether or not it is in the nature of a complaint. The complaint of a prosecution made not on her own initiative, but in answer to questions in generally inadmission, the mere fact that the statement is made in answer to question, is not in itself sufficient to make it inadmissible as a complaint.

As Archbold explains, the decision in each case is within the discretion of the judge; guided by

- Relationship between the questions and
- Te complainant (Prosecutrix)
- Other circumstances

**4.0. CONCLUSION**

Evidence of complaint may be relevant in rape and indecent assault. To be admissible, complaint must be made at the earliest reasonable opportunity. It must be spontaneous. The prosecutrix must herself give testimony in the witness box. Evidence of a complaint is not

evidence of facts complained of but evidence of the consistency of the conduct of the victim (rosecutrix) with the story told by her in the witness box and to negative consent on her part.

## 5.0. SUMMARY

Complaint is a statement made by the Prosecutrix to a stranger in the absence of the accused. You learnt about the circumstances when such evidence is admissible or inadmissible. You also learned a number of illustrations extracted form decided cases over the years and the purpose of its admissibility. Even when all the conditions for admissibility of evidence of complaint are met; the judge in exercising his judicial discretion, may still declare it inadmissible if it its prejudicial effect outweighs its probative value.

## 6.0.TUTOR MARKED ASSIGNMENT

**Account for the historical development of this Law of Evidence in Nigeria.**

**The Evidence Act is complete, exhausive and exclusive. It is illegitimate to impose the Common Law of Evidence into it. Discuss with reference to decided cases.**

## 7.0REFERENCES/FURTHER READING

**Elias T. Law on Developing Society**

**Obilade A. (2007) The Nigerian Legal Systems Spectrum Law Societies, Abuja**

**FGN 1960. The Independence Constitution**

**1963: The Republican Constitution**

**1979: The Constitution**

**1999: The Constitution**

**Babalola, A. (2001): Law & Practice of Evidence in Nigeria, Sibon Books Ltd., Ibadan**

# EVIDENCE ACT

**An Act to provide for the law of evidence to be applied in all judicial proceedings in or before courts in Nigeria.**

**PART I**

*Preliminary*

*Short title and interpretation*

**2. Short title and application**

(1) This Act may be cited as the Evidence Act

(2) This Act shall apply to all judicial proceedings in or before any court established in the Federal Republic of Nigeria but it shall not apply

(a) To proceedings before an arbitrator, or

(b) To a field general court martial.

**2. Interpretation**

(1). In this Act , except as the context otherwise requires-

**"bank"** and **"banker"** means any person, persons, partnership or company carrying on the business of bankers and also include any saving bank established under the Federal Savings Bank Act, and also any banking company incorporated under any charter heretofore or hereafter granted, or under any Act heretofore or hereafter passed relating to such incorporation;

**'bankers' books"** means the expressions relating to bankers' books include ledgers, day books, cash books, account books and all other books used in the ordinary business of a bank;

**"court"** includes all judges and magistrates and except arbitrators, all persons legally authorized to take evidence:

**"custom"** is a rule which, in a particular district, has, from long usage, obtained the force of law;

**"document"** includes books, maps, plans, drawings, photographs and also includes any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of these means, intended to be used or which may be used for the purpose of recording that matter;

**"fact"** includes

(a) Anything, state of things, or relation of things capable of being perceived by the senses;
(b) Any mental condition of which any person is conscious;

**"facts in issue"** includes any fact from which either by itself or in connection with other facts the existence, non-existence, nature or extent of any right, liability or disability asserted or denied in any suit or proceeding necessarily follows;

**"proceedings"** includes arbitration under the Arbitration and Conciliation Act, and "court" shall be construed accordingly;

**"statement"** includes any representation of fact, whether made in words or otherwise.

**"wife"** and **"husband"** mean respectively the wife and husband of a monogamous marriage.

(2) A fact is said to be….

(a) **"proved"** when, after considering the matters before it, the court either believes it to exist or considers its existence so probable that a prudent man ought, in the circumstances of the particular case, to act upon the supposition that it does exists;

(b) **"disproved"** when, after considering the matters before it, the court either believes that it does not exist or considers its non-existence so probable that a prudent man ought, in the circumstances of the particular case, to act upon the supposition that it does not exist;

(c ) **"not proved"** when it is neither proved nor disproved.

**3. Relation of relevant facts**

One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

**4. Presumptions**

(1) Whenever it is provided by this Act that the court may presume a fact, it may either regard such fact as proved unless and until it is disproved, or may call for proof of it.

(2) Whenever it is directed by this Act that the court shall presume a fact, it shall regard such fact as proved unless and until it is disproved.

(3) When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

**5. Savings as to certain evidence**

Nothing in this Act shall

(a) prejudice the admissibility of any evidence which would apart from the provisions of this Act be admissible; or

(b) enable documentary evidence to be given as to any declaration relating to a matter of pedigree, f that declaration would not have been admissible as evidence if this Act had not passed.

## PART II

*Relevancy*

*Relevance of facts*

**6. Evidence may be given of facts in issue or relevant facts**

Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are be hereinafter declared to be relevant, and of no others: Provided that….

(a) The court may exclude evidence of facts which, though relevant or deemed to be relevant to the issue, appear to it to be too remote to be material in all the circumstances of the case; and

(b) This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force.

**7. Relevancy of facts forming part of the same transaction**

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

**8. Facts which are the occasion, cause and effect of facts in issue**

Facts which are the occasions, cause or effect, immediate or otherwise, of relevant facts or facts in issue, or which constitute the state of things under which they happened , or which afforded an opportunity for their occurrence or transaction are relevant .

**9. Motive, preparation and previous or subsequent conduct**

(1) Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

(2) The conduct of any party, or of any agent to any party, to any proceedings, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any

proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

(3) The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements; but provision shall not affect the relevancy of statements under any other section.

(4) When the conduct of any person is relevant, any statement made to him or in his presence and hearing which affects such conduct is relevant.

10. **Facts necessary to explain or introduce relevant facts**

Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for the purpose.

**11. Things said or done by conspirator in reference to common intention**

(1) Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or actionable wrong, anything said, done or written by any one of such persons in execution or furtherance of their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well as for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a arty to it; but statements made by individual conspirators as to measures taken in the execution of furtherance of any such common intention are not deemed to be relevant as such as against any conspirators, except those by whom or in whose presence, such statements are made.

(2) Evidence of acts or statements deemed to be relevant under this section may not be given until the court is satisfied that, apart from them, there are prima facie grounds for believing in the existence of the conspiracy to which they relate.

**12. When facts not otherwise relevant become relevant**

Facts not otherwise relevant are relevant -----

(a) if they are inconsistent with any fact in issue or relevant fact:

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

**13. Certain facts relevant in proceedings for damages**

In proceedings in which damages are claimed, any fact which will enable the court to determine the amount of damages which ought to be awarded is relevant

**14. What customs admissible**

(1) A custom may be adapted as part of the law governing a particular set of circumstances if it can be noticed judicially or can be proved to exist by evidence; the burden of proving a custom shall lie upon the person alleging its existence.

(2) A custom may be judicially noticed by the court if it has been acted upon by a court of superior or co-ordinate jurisdiction in the same area to an extent which justifies the court asked to apply it in assuming that the persons or the class of persons concerned in that area look upon the same as binding in relation to circumstances similar to those under consideration.

(3) Where a custom cannot be established as one judicially noticed it may be established and adopted as part of the law governing particular circumstances by calling evidence to show that persons or the class of persons concerned in the particular area regard the alleged custom as binding upon them:

Provided that in case of any custom relied upon in any judicial proceeding it shall not be enforced as law if it is contrary to public policy and is not in accordance with natural justice, equity and good conscience.

**15. Relevant facts as to how matter alleged to be custom understood**

Every fact is deemed to be relevant which tends to show how in particular instances a matter alleged to be a custom was understood and acted upon by person then interested.

**16. Facts showing existence of state of mind, or of body, or bodily feeling**

(1) Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will or goodwill towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant when the existence of any such state of mind or body or bodily feeling is in issue or relevant.

(2) A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question.

17. **Facts bearing on question whether act was accidental or intentional**

When there is a question whether an act was accidental or intentional, or done with a particular knowledge or intention, the fact that such act form part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

18. When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact.

***Admissions***

19. **'Admission" defined**

An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the person, and in the circumstances, hereinafter mentioned.

20. **Admissions by party to proceeding or his agent**

(1) Statements made by a party to the proceeding, or by an agent to any such party, whom the court regards, in the circumstances of the case, as expressly or impliedly authorized by him to make them, are admissions.

(2) Statements made by parties to suits, suing or sued in a representative character, are not admissions unless they were made while the party making them held that character.

(3) Statements made by

(a) persons who have any proprietary or pecuniary interest in the subject-matter of the proceedings, and who made the statement in their character of persons so interested; or

(b) persons from whom the parties to the suit have derived their interest in the subject-matter of the suit.

are admissions, if they are made during the continuance of the interest of the persons making the statements.

21. **Admissions by persons whose position must be proved as against party to suit**

Statements made by persons whose position or liability it is necessary to prove as against any party to the suit are admissions if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position or is subject to such liability.

22. **Admissions by persons expressly referred to by party to suit**

Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions.

23. **Proof of admission against persons making them, and by or on their behalf**

Admissions are relevant and may be proved as against the person who makes them or his representatives in interest, but they cannot be proved by or on behalf of the person who makes them or by his representative in interest, except in the following cases…

(a) an admission may be proved by or on behalf of the person making it when it is of such a nature that, if the person making it were dead, it would be relevant as between third parties under section 33 of this Act:

(b) an admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable; and

(c) an admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission.

24. **When oral admissions as to contents of documents are relevant**

Oral admissions as to the contents of a document are not relevant, unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the provisions of Part V of this Act, or unless the genuineness of a document produced is in question.

**25. Admissions in civil cases when relevant**

In civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given, or if circumstances from which the court can infer that the parties agreed together that evidence of it should not be given:

Provided that nothing in this section shall be taken to exempt any legal practitioner from giving evidence of any matter of which he may be compelled to give evidence under section 170 of this Act.

26. **Admissions not conclusive proof, but may estop**

Admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions of Part VIII of this Act.

*Confessions*

27. **Definition of 'confession'**

(1) A confessions is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed that crime.

**Voluntary confessions relevant against maker**

(2) Confessions, if voluntary, are deemed to be relevant facts as against the persons who make them only.

**Effects of confession on co-accused**

(3) Where more persons than one are charged jointly with a criminal offence and a confession made by one of such persons in the presence of one or more of the other persons so charged is given in evidence, the court, or a jury where the trial is one with a jury, shall not take such statement into consideration as against any of such other persons in whose presence it was made unless he adopted the said statement by words or conduct.

28. **Confession caused by inducement, threat or promise irrelevant in criminal proceedings**

A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of temporal nature.

29. **Facts discovered in consequence of information given by accused**

Where information is received from a person who is accused of an offence, whether such person is in custody or not, and as a consequence of such information any fact is discovered, the discovery of that fact, together with evidence that such discovery was made n consequence of the information received from the accused, may be given in evidence where such information itself would not be admissible in evidence.

30. **Confession made after removal of duress, relevant**

If such a confession as is referred to in section 28 of this Act is made after the impression caused by any such inducement, threat or promise has, in the opinions of the court, been fully removed, it is relevant.

31. **Confession otherwise relevant not to become irrelevant because of promise of secrecy**

If such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practiced on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such statement and that evidence of it might be given.

32. **Evidence in other proceedings amounting to a confession is admissible**

Evidence amounting to a confession may be used as such against the person who gives it, although it was given upon oath, and although the proceeding in which it was given had reference to the same subject-matter as the proceeding in which it is to be proved and although the witness might have refused to answer the questions put to him; but if after refusing to answer any such questions, the witness is improperly compelled to answer it, his answer is not a voluntary confession.

*Statement By Persons Who Cannot Be Called As Witnesses*

33. **Cases in which statement of relevant fact by person who is dead is relevant: dying declaration**

(1) Statements, written or verbal, or relevant facts made by a person who is dead are themselves relevant facts in the following cases

(a) when the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the case of that person's death comes into question; such statements are relevant only in trials for murder or manslaughter of the deceased person and only when such person at the time of making such declaration believed himself to be in danger of approaching death although he may have entertained at the time of making it hopes of recovery.

(b) when the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made

by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgement written or signed by him or the receipt of money, goods, securities or property of any kind; or for a document used in commerce written or signed by him; or of the date of a letter or other document usually dated, written or signed by him.

(c) when the statement is against the pecuniary or proprietary interest of the person making it and the said person had peculiar means of knowing the matter and had no interest to misrepresent it.

(d) when the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter had arisen;

(e) subject to the conditions hereinafter mentioned, when the statement relates to the existence of any relationship by blood, marriage or adoption between persons as to whose relationship by blood, marriage or adoption the person making the statement had special means of knowledge.

(2) The conditions above referred to are as follows

(a) such a statement is deemed to be relevant only in a case in which the pedigree to which it relates is in issue, and not to a case in which it is only relevant to the issue;

(b) it must be made by a declarant shown to be related by blood to the person to whom it relates, or by the husband or wife of such a person: except that

(i) a declaration by a deceased parent that he or she did not marry the other parent until after the birth of a child is relevant to the question of the illegitimacy of such child upon any question arising as to the right of the child to inherit real or personal property under the Legitimacy Act, and

(ii) in proceedings for the legitimacy of any person a declaration made by a person who, if a decree of legitimacy were granted, would stand towards the petitioner in any of the relationships mentioned in paragraph (b) of this subsection, is deemed relevant to the question of the identity of the parent of the petitioner;

(c) it must be made before the question in relation to which it is to be proved has arisen, but it does not cease to be deemed to be relevant because it was made for the purpose of preventing the question from arising.

**Declarations by testators**

3(a) the declarations of a deceased testator as to his testamentary intentions, and as to the contents of his will, are deemed to be relevant

(i) when his will has been lost, and when there is a question as to what were its contents, or

(ii) when the question is whether an existing will is genuine or was improperly obtained; or

(II)when the question is whether any and which of more existing documents than one constitute his will;

(b) it is immaterial whether the declarations were made before or after the making or loss of the will.

34. **Relevance of certain evidence for proving, in subsequent proceeding, the truths of facts therein stated**

(1) Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceedings, or in a later stage of the same judicial proceedings, the truth of the fact which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or when his presence cannot

be obtained without an amount of delay or expense which, in the circumstances of the case, the court considers unreasonable;

Provided

(a) That the proceeding was between the same parties or their representatives in interest;

(b) That the adverse party in the first proceeding had the right and opportunity to cross-examine; and

(c) That the questions in issue were substantially the same in the first as in the second proceeding.

(2) A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

**Absence of public officers**

(3) in the case of a person employed in the public service of the Federation or of a State who is required to give evidence for any purpose connected with a judicial proceeding, it shall be sufficient to account for his non-attendance at hearing of the said, judicial proceedings if there is produced to the court, either a Federal Gazette, or a telegram or letter purporting to emanate from the head of his department, sufficiently explaining to the satisfaction of the court his apparent default.

35. **When statement may be used in evidence**

A statement in accordance with the provision of sections 290 and 291 or section 319 of the Criminal Procedure Act may afterwards be used in evidence on the trial of any person accused of an offence to which the same relates, if the person who made the statement be dead, or the court be satisfied that for any sufficient cause his attendance cannot be procured, and if reasonable notice of the intention to take such statement was served upon the person against whom it is to be read in evidence and had or might have had if he has chosen to be present full opportunity of cross-examining the person making the same.

36. **Admission of written statements of investigating police officers in certain cases**

Notwithstanding the provisions of this Act or of any other law but subject as herein provided, where in the course of any criminal trial, the court is satisfied that for any sufficient reason, the attendance of the investigating police officer cannot be procured, the written and signed statement of such officer may be admitted to evidence by the court if….

(a) the defence does not object to the statement being admitted, and

(b) the court consents to the admission of the statement

37. **Statement of accused at preliminary investigation**

Any statement made by an accused person at a preliminary investigation or at a coroner's inquest may be given in evidence.

*Statements made in special circumstances*

38. **Entries in books of account, when relevant**

Entries in books of accounts, regularly kept in the course of business, are relevant whenever they refer to a matter into which the court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability

39. **Relevancy of entry in public records made in performance of duty**

An entry in any public or other official book, register or record, stating a fact in issue or relevant fact and made by a public servant in the discharging of his official duty or by any other person in performance of duty specially enjoined by the law of the country in which such book, register or record is kept, is itself a relevant fact.

40. **Relevancy of statements in maps, charts and plans**

Statement of facts in issue or relevant facts made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of Government, as to matters usually represented or stated in such maps, charts or plans are themselves relevant facts.

41. **Relevancy of statement as to fact of public nature contained in certain Acts or notifications**

When the court has to form an opinion as to the existence of any fact of a public nature, any statement of it ,made in recital contained in any enactment or in any proclamation or speech of the President in opening the National Assembly or any legislation of the United Kingdom still applicable to Nigeria or in any proclamation or speech, or in any statement made in a Government or public notice appearing in the Federal Gazette or in a State notice or a State public notice appearing in a State Gazette or in any printed paper purporting to be the London Gazette or the Government Gazette of any part of the Commonwealth is a relevant fact.

42. **Certificates of specified government officers to be sufficient evidence in all criminal cases**

(1) (a) Either party to the proceedings in any criminal case may produce a certificate signed by the Government Chemist, the Deputy Government Chemist, and Assistant Government Chemist, a Government pathologist or entomologist, or the Accountant-General or any other chemist so specified by the Government Chemist of the Federation or of the State, any pathologist or entomologist specified by the Director of Medical Laboratories of Federation or of the State, or any Accountant specified by the Accountant-General of the Federation or of the State (whether any such officer is by that or any other title in the service of a State or of the Federal Government), and the production of any such certificate may be taken as sufficient evidence of the facts stated therein:

Provided that, notwithstanding the provisions herein contained, the court shall have the power, on the application of either party or of its own motion, to direct that any such officer shall be summoned to give evidence before the court if it is of the opinion that, either for the purpose of cross-examination or for any other reason, the interest of justice so require.

(b)Where a certificate purports to be signed by an officer of the Central Bank of Nigeria who himself adds after his signature the words “duly authorized by the Governor of the Central Bank of Nigeria for the purposes of section 42 of the Evidence Act” it shall be accepted by all courts and persons as sufficient evidence of the facts stated in the

certificate, and no certificate shall be questioned on the ground only of the authorisation; but subject thereto, the proviso to paragraph (a) of subsection (1) of this section shall have effect with regard to any such certificate.

(2) Notwithstanding the provisions of subsection (1) of this section any certificate issued and produced by any officer in charge of any laboratory established by the appropriate authority may be taken as sufficient evidence of facts stated therein;

Provided that, notwithstanding the provisions herein contained the court shall have the power, on the application of either party or of its own motion, to direct that any such officer shall be summoned to give evidence before the court if it is of the opinion that, either for the purpose of cross-examination or for any other reason, the interest of justice so requires.

(3) In this section, unless the context otherwise requires

"appropriate authority" means the Inspector-General of Police, the Director of Customs and Excise or the Minister of Health;

"officer" means any officer-in-charge of any laboratory established pursuant to this Act;

"specified" means specified by notice as may be published in the Federal Gazette.

(4) The President may by notice in the Federal Gazette declare that any person named in such notice, being an officer in the public service of the Federation employed in a forensic science laboratory in a rank not below that of Medical Laboratory Technologist, shall for the purposes of subsection (1) be empowered to sign a certificate relating to any subject specified in the notice and while such declaration remains in force the provisions of subsection (1) shall apply in relation to such person as they apply in relation to an officer mentioned in that subsection:

Provided that a certificate signed b such person shall not be admissible in evidence if, in the opinion of the court, it does not relate wholly or mainly to a subject so specified as aforesaid.

43. where any such certificate is intended to be produced by either party to the proceedings, a copy thereof shall be sent to the other party at least ten clear days before the day

appointed for the hearing and if it is not so sent the court may, if it thinks fit, adjourn the hearing on such terms as may seem proper.

44. The court shall in the absence of evidence to the contrary, presume that the signature to any such certificate is genuine and that the person signing it held the office which he professed at the time when he signed it.

*Facts relevant in special circumstances*

45. **Family or communal tradition in land cases**

Where the title to or interest in family or communal land is in issue, oral evidence of family or communal tradition concerning such title or interest is relevant.

46. **Acts of possession and enjoyment of land**

Acts of possession and enjoyment of land may be evidence of ownership or of a right of occupancy not only of the particular piece or quantity of land with reference to which such acts are done, but also of other land so situated or connected therewith by locality or similarity that what is true as to the one piece or land was likely to be true of the other piece of land.

47. **Evidence of *scienter* upon charge of receiving stolen property**

(1) Whenever any person is being proceeded against for receiving any property, knowing it to have been stolen, or for having in his possession stolen property, for the purpose of proving guilty knowledge there may be given in evidence at any stage of the proceedings

(a) the fact that other property stolen within the period of twelve months preceding the date of the offence charged was found or had been in his possession;

(b) the fact that within the five years preceding the date of the offence charged he was convicted of any offence involving fraud or dishonesty.

(2) This last mentioned fact may not be proved unless

(a) seven-days' notice in writing has been given to the offender that proof of such previous conviction is intended to be given; and

(b) evidence has been given that the property in respect of which the offender is being tried was found or had been in his possession.

*How much of a statement is to be proved*

48. **What evidence is to be given when statement forms part of a conversation, document, book or series of letters or papers**

When any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, book, or series of letters or papers as the court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances in which it was made.

*Judgments of courts of justice when relevant*

49. **Previous judgments relevant to bar a second suit or trial**

The existence of any judgment, order or decree which by law prevents any court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such court ought to take cognizance of such suit or to hold such trial.

50. **Relevancy of certain judgments in certain jurisdiction**

(1) A final judgment, order or decree of a competent court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when he existence of any such legal character, or the title of any such persons to any such thing relevant.

(2) Such judgment, order or decree is conclusive proof

(a) that any legal character which it confers accrued at the time when such judgment, order or decree came into operation;

(b) that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, order or decree declares it to have accrued to that person;

(c) that any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree declared that it had ceased or should cease; and

(d) that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree declares that it had been or should be his property.

51. **Relevance and effect of judgments other than those mentioned in section 50**

Judgments, orders or decrees other than those mentioned in section 50 of this Act are relevant if they relate to matters of a public nature relevant to the inquiry; but such judgments, orders or decrees are not conclusive proof of that which they state.

52. **Judgments, etc., other than those mentioned in sections 49 to 51, when relevant**

Judgments, orders or decrees, other than those mentioned in sections 49,50 and 51 of this Act, are irrelevant, unless the existence of such judgment, order or decree is a fact in issue, or is relevant under some other provision of this or any other Act.

53. **Fraud or collusion in obtaining judgment or incompetency of court, may be proved**

Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under section 49,50 or 51 of this Act and which has been proved by the adverse party, was delivered by a court without jurisdiction, or was obtained by fraud or collusion.

54. **Judgment conclusive of facts forming ground of judgment**

Every judgment is conclusive proof, as against parties and privies, of facts directly in issue in the case, actually decided by the court, and appearing from the judgment itself to be the ground on which it was based; unless evidence was admitted in the action in

which the judgment was delivered which is excluded in the action in which that judgment is intended to be proved.

55 **Effect of judgment not pleaded as estoppel**

(1) If a judgment is not pleaded by way of estoppels, it is as between parties and privies deemed to be a relevant fact, whenever any matter, which was, or might have been, decided in the action in which it was given, is in issue, or is deemed to be relevant to the issue, in any subsequent proceeding.

(2) Such a judgment is conclusive proof of the facts which it decides, or might have decided, if the party who gives evidence of it had no opportunity of pleading it as an estoppel.

56. **Judgment conclusive in favour of judge**

When any action is brought against any person for anything done by him in a judicial capacity, the judgment delivered, and the proceedings antecedent thereto, are conclusive proof of the fats therein stated, whether they are or are not necessary to give the defendant jurisdiction, if assuming them to be true, they show that he had jurisdiction.

*Opinion of third persons when relevant*

57. **Opinions of experts**

(1) When the court has to form an opinion upon a point of foreign law, native law or custom, or of science or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, native law or custom, or science or art, or in questions as to identity of handwriting or finger impressions, are relevant facts.

(2) Such persons are called ‘experts’.

58. **Opinion as to foreign law**

(1) Where there is a question as to foreign law the opinions of experts who in their profession are acquainted with such law are admissible evidence thereof, though such experts may produce to the court books which they declare to be works of authority upon the foreign law in question, which books the court, having received all necessary explanations from the expert, may construe for itself.

(2) Any question as to the effect of the evidence given with respect to foreign law shall, instead of being submitted to the jury, in the case of trial with a jury, be decided by the judge alone.

59. **Opinions as to native law and custom**

In deciding questions of native law and custom the opinions of native chiefs or other persons having special knowledge of native law and custom and any book or manuscript recognized by natives as a legal authority are relevant.

60. **Facts bearing upon opinions of experts**

Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when such opinion are relevant.

61. **Opinion as to handwriting, when relevant**

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

(2) A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

62. **Opinion as to existence of 'general custom or right', when relevant**

(1) When the court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, or persons who would be likely to know of its existence if it existed are relevant.

(2) The expressions 'general custom or right" include customs or rights common to any considerable class of persons.

63. **Opinions at to usages, tenets, when relevant**

When the court has to form an opinion as to ----

(a) the usages and tenets of any body of men or family; or

(b) the constitution and government of any religious or charitable foundation; or

(c) the meaning of words or terms used in particular districts or particular classes of people,

The opinions of persons having special means of knowledge thereof, are relevant facts.

64. **Opinion on relationship, when relevant**

When the court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge other subject, is a relevant fact:

Provided that such opinion shall not be sufficient to prove a marriage in proceedings for a divorce or in a petition for damages against any adulterer or in a prosecution for bigamy.

65. **Grounds of opinion, when relevant**

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

66. **Opinions generally irrelevant**

The fact that any person is of opinion that a fact in issue, or relevant to the issue, does or does not exist is irrelevant to the existence of such fact except as proved in sections 57 to 65 of this Act.

*Character, when relevant*

67. **In civil cases, character to prove conduct imputed irrelevant**

In civil cases the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed o him is irrelevant, except in so far as such character appears from facts otherwise relevant.

68. **In criminal proceedings, previous good character relevant**

In criminal proceedings the fact that the person accused is of a good character is relevant.

69. **Evidence of character of the accused in criminal proceedings**

(1) Excerpt as provided in this section, the fact that an accused person is of bad character is irrelevant in criminal proceedings.

(2) The fact that an accused person is of bad character is relevant---

(a) when the bad character of the accused person is a fact in issue;

(b) when the accused person has given evidence of his good character.

(3) An accused person may be asked questions to show that he is of bad character in the circumstances mentioned in paragraph (d) of the proviso to section 160 of this Act.

(4) Whenever evidence of bas character is relevant evidence of a previous conviction is also relevant.

70. **Character as affecting damages**

In civil cases the fact that the character of any person is such as to affect the amount of damages which he ought to receive, is relevant.

71. **In libel and slander notice must be given of evidence of character**

In actions for libel and slander in which the defendant does not by his defence assert the truth of the statement complained of the defendant is not entitled on the trial to give evidence in chief with a view to mitigation of damages, as to the circumstances under which the libel or slander was published, or as to the character of the plaintiff, without the ;leave of the judge, unless seven days at least before the trial he furnishes particulars to the plaintiff of the matters as to which he intends to give evidence.

72. **Meaning of the word 'character'**

In section 67 to 71 of this Act the word "character" means reputation as distinguished from disposition, and except as previously mentioned in those sections, evidence may be given only of general reputation, and not of particular acts by which reputation or disposition is shown.

**PART III**

*Proof*

*Facts which need not be proved*

73. **Fact judicially noticeable need not be proved**

No fact of which the court must take judicial notice need he proved.

74 **Facts of which court must take judicial notice**

(1 )The court shall take judicial notice of the following facts

(a) all laws or enactments and any subsidiary legislation made thereunder having the force of law now or hereto fore in force or hereafter to be in force, in any part of Nigeria.

(b) all public Act passed or hereafter to be passed by the National Assembly and all subsidiary legislation made thereunder, and all local and personal Acts directed by the National Assembly to be judicially noticed;

(c) the courses of proceeding of the National Assembly and of the Houses of Assembly of the States of Nigeria;

(d) The assumption of office of the President and of any of seal used by the President;

(e) All seals of which English courts take judicial notice; the seals of notaries public, and all seals which any person is authorized to use by any Act of the National Assembly or other enactment having the force of law in Nigeria;

(f) the existence, title and national flag of every State or Sovereign recognized by Nigeria;

(g) the divisions of time, the geographical divisions of the world, the public festivals, fasts and holidays notified in the Federal Gazette or fixed by Act.

(h) The territories within the Commonwealth or under, the dominion of the British Crown;

(i) The names of the members and officers of the court and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all legal practitioners and other persons authorized by law o appear or act before it;

(j) The rule of the road on land or at sea;

(k) All general customs, rules and principles which have been held to have the force of law in or by any of the superior courts of law or equity in England, the Supreme Court of Nigeria or the Court of Appeal or by the High Court of the State or of the Federal Capital Territory, Abuja or by the Federal High Court and all customs which have been duly certified to and recorded in any such court.

(l) The course of proceeding and all rules of practice in force, in the High Court of Justice in England and in the High Court of State and of the Federal Capital Territory, Abuja and in the Federal High Court.

(2) In all cases in subsection (1) of this section and also on all matter of public history, literature, science or art, the court may resort for its aid to appropriate books or documents of reference.

(3) If the court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

75 **Facts which need not be proved**

No fact need to proved in any civil proceedings which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings;

Provided that the court may in its discretion, require the fact admitted to be proved otherwise than by such admissions.

**PART IV**

*Oral evidence and the inspection of real evidence*

76. **Proof of fact by oral evidence**

All facts, except the contents of documents, may be proved by oral evidence.

77. **Oral evidence must be direct**

Oral evidence must, in all cases whatever, be direct----

(a) if it refers to a fact which could be seen, it must be the evidence of a witness who says he heard that fact;

(b) if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard that fact;

(c) if it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived that fact by that sense or in the manner;

(d) if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds;

Provided that

(i)The opinion of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatise if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the court regards an unreasonable,

(ii) If oral evidence refers to the existence or condition of any material thing other than a document, the court may, if it thinks fit, require the production of such material thing for its inspection, or may inspect or may order or permit a jury to inspect any movable or immovable property, the inspection of which may be material to the proper determination of the question in dispute and in the case of such inspection being ordered or permitted, the court shall either be adjourned to the place however the subject matter of the said inspection may be and the proceedings shall continue at that place of sitting or to some other place of sitting or the court shall attend and make an inspection of the subject matter only, evidence, if any, of what transpired there being given in court afterwards; in either case the accused, if any, shall be present.

## PART V

*Documentary evidence*

*Affidavits*

78. **Court may order proof by affidavit**

A court may in any civil proceeding make an order at any stage of such proceeding directing that specified fact may be proved at the trial by affidavit with or without the attendance of

the deponent for cross –examination, notwithstanding that a party desires his attendance for cross-examination and that he can be produced for that purpose.

79. **Affidavits to be filed**

Before an affidavit is used in the court for any purpose, the original shall be filed in the court, and the original or an office copy shall alone be recognized for any purpose in the court.

80. **Before who sworn**

Any affidavit sworn before any judge, officer or other person in the commonwealth to take affidavits, may be used in the court in cases where affidavits are admissible.

81 **Sworn in foreign parts**

Any affidavit sworn in any foreign parts out of Nigeria or out of any part of the commonwealth before a magistrate, being authenticated by the official seal of the court to which he is attached, or by a public notary, or before a British minister or consul, may be used in the court in all cases where affidavits are admissible.

82. **Proof of seal and signature**

The fact that an affidavit purports to have been sworn in manner hereinbefore prescribed shall be *prima facie* evidence of the seal or signature, as the case may be, of any such court, Judge, magistrate or other officer or person therein mentioned , appended or subscribed to any such affidavit, and of the authority of such court, Judge, magistrate or other officer or person administer oaths.

83 **Affidavit not to be sworn before certain persons**

An affidavit shall not be admitted which is proved to have been sworn before a person on whose behalf the same is offered, or before his legal practitioner, or before a partner or clerk of his legal practitioner.

84. **Defective in form**

The court may permit an affidavit to be used, notwithstanding it is defective in form according to this Act, if the court is satisfied that it has been sworn before a person duly authorized.

85. **Amendment and re-swearing**

A defective or erroneous affidavit may be amended and re-sworn by leave of the court, on such terms as to time ,costs or otherwise as seem reasonable.

86. **Contents of affidavits**

Every affidavit used in the court shall contain only a statement of facts and circumstances to which the witness deposes , either of his own personal knowledge or form of information which he believes to be true.

87. **No extraneous matter**

An affidavit shall not contain extraneous matter, by way of objection, or prayer, or legal argument or conclusion.

88. **Grounds of belief to be stated**

When a person deposes to his belief in a matter of fact, and his belief is derived from any source other than his own personal knowledge, he shall set forth explicitly the facts and circumstances forming the ground of his belief.

89. **Informant to be named**

When such belief is derived from information received from another person, the name of his informant shall be stated, and reasonable particulars shall be given respecting the informant, and the time, place and circumstances of the information.

90. **Provisions in taking affidavits**

The following provision shall be observed by persons before whom affidavits are taken--

(a) every affidavit taken in a cause or matter shall be headed in the court and in the cause or matter;

(b) it shall state the full name, trade or profession, residence, and nationality of the deponent;

(c ) it shall be in the first person, and divided into convenient paragraphs, numbered consecutively;

(m) any erasure, interlineations or alteration made before the affidavit is sworn, shall be attested by the person before whom it is taken, who shall affix his signature or initial in the margin immediately opposite to the interlineations, alteration or erasure;

(n) where an affidavit proposed to be sworn is illegible or difficult to read, or is in the judgment of the person before whom it is taken so written as to facilitate fraudulent alteration, he may be refuse to swear the deponent, and require the affidavit to be rewritten in an unobjectionable manner;

(f) the affidavit when sworn shall be signed by the witness or, if he cannot write, marked him with his mark, in the presence of the person before whom it is taken;

(g) (i) the jurat shall be written without interlineations, alteration or erasure immediately at the foot of the affidavit, and towards the left side of the paper, and shall be signed by the person before whom it is taken;

(ii) it shall state that the date of the swearing and the place where it is sworn;

(iii) it shall state that the affidavit was before the person is taking the same;

(iv) where the deponent is illiterate or blind it shall state the fact, and the affidavit was read over(or translated into his own language in the case of a witness not having sufficient knowledge of English), and that the witness appeared to understand it;

(v) where the deponent makes a mark instead of signing, the jurat shall state that fact, and that the mark was made in the presence of the person before whom it is taken;

(vi) where two or more persons join in making an affidavit their several names shall be written in the jurat and it shall appear by the jurat that each of them has been sworn to the truth of the several matters stated by him in the affidavit;

(h) The person before whom it is taken shall not allow an affidavit, when sworn to be altered in manner without being re-sworn;

(i) If the jurat has been added and signed the person before whom it is taken shall add a new jurat on the affidavit being re-sworn; and in the new jurat he shall mention the alteration;

(j) The person before whom it is taken may refuse to allow the affidavit to be re-sworn, and may require a fresh affidavit;

(k) The person before whom an affidavit is taen may take without oath the declaration of any person affirming that the taking of any oath whatsoever is, according to his religious belief, unlawful, or who, by reason of immature age or want or religious belief, ought not, in the opinion of the person taking the declaration, to be admitted to make a sworn affidavit and the person taking the declaration shall record in the attestation the reason of such declaration being taken without oath.

*Admissibility of documentary, evidence*

91. **Admissibility of documentary evidence as to facts in issue**

(1) In every civil proceeding where direct oral evidence of a fact would be admissible, any statement made by a person in a document and tending to establish that fact, on production of the original document, be admissible as evidence of that fact if the following conditions are satisfied---

(a) If the maker of the statement either

(i) had personal knowledge of the mattes dealt with by the statement, or

(ii) where the document in question is or forms part of a record purporting to be a continuous record, made the statement (in so far as the matters dealt with thereby are not within his personal knowledge) in the performance of a duty to record information supplied to him by a person who had, or might reasonably be supposed to have, personal knowledge of those matter; and

(b) If the maker of the statement is called as witness in the proceedings:

Provided that the condition that the maker of the statement shall be called as a witness need not be satisfied if he is dead, or unfit by reason of his bodily or mental condition to attend as a witness, or if he is beyond the seas and it is not reasonably practicable to secure his attendance, or if all reasonable efforts to find him have been made without success.

(2) In any civil proceedings, the court may at any stage of the proceedings, if having regard to all the circumstances of the case it is satisfied that undue delay or expense would otherwise be caused, order that such a statement as is mentioned in subsection(1) of this section shall be admissible as evidence or may, without any such order having been made, admit such a statement in evidence

(a) notwithstanding that the maker of the statement is available but is not called as a witness;

(b) notwithstanding that the original document is not produced, if in lieu thereof there is produced a copy of the original document or of the material part thereof certified to be a true copy in such manner as may be specified in the order or as the court may approve, as the case may be.

(3) Nothing in this section shall render admissible as evidence any statement made by a person interested at a time when proceedings were pending or anticipated involving a dispute as to any fact which the statement might tend to establish.

(4) For the purpose of this section, a statement in a document shall not be deemed to have been made by a person unless the document or the material part thereof was written, made or produced by him with his own hand, or was signed or initialled by him or otherwise recognized by him in writing as for the accuracy of which he is responsible.

(5) For the purpose of deciding whether or not a statement is admissible as evidence by virtue of the foregoing provisions, the court may draw any reasonable inference from the form or contents of the document in which the statement is contained, or from any other circumstances, and may, in deciding whether or not a person is fit to attend as a witness, act on a certificate purporting to be the certificate of a registered medical practitioner, and where the proceedings are with a jury, the court may in its discretion reject the statement notwithstanding that the requirements of this are satisfied with respect thereto, if for any reason it appears to it to be inexpedient in the interests of justice that the statement should be admitted.

92. **Weight to be attached to evidence**

(1) In estimating the weight, if any, to be attached to a statement rendered admissible as evidence by this Act, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement, and in particular to the question whether or not the statement was made contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not the maker of the statement had any incentive to conceal or misrepresent facts.

(2) For the purpose of any rule of law or practice requiring evidence to be corroborated or regulating the manner in which uncorroborated evidence is to be treated, a statement rendered admissible as evidence by this Act shall not be treated as corroboration of evidence given by maker of the statement.

*Primary and secondary documentary evidence*

93. **Proof of contents of documents**

The contents of documents may be proved either by primary or by secondary evidence.

94. **Primary evidence**

(1) Primary evidence means the document itself produced for the inspection of the court.

(2) where a document has been executed in several parts ,each part shall be primary evidence of the document.

(3) Where a document has been executed in counterpart being executed by one or some of the parties only, each counterpart shall be primary evidence as against the parties executing it.

(4) Where a number of documents have all been made by one uniform process , as in the case of printing, lithography, or the rest; but where they are all copies of a common original, they shall not be primary evidence of the contents of the original.

95. **Secondary evidence**

Secondary evidence includes---

(a) certified copies given under the provisions hereinafter contained;

(b) copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies;

(c ) copies made from or compared with the original;

(d) counterparts of documents as against the parties who did not execute them;

(e) oral accounts of the contents of a document given by some person who has himself seen it.

96. **Proof of documents by primary evidence**

Documents must be proved by primary evidence except in the cases hereinafter mentioned.

97. **Cases in which secondary evidence relating to documents may be given**

(1) Secondary evidence may be given of the existence, condition or contents of a document in the following cases---

a. when the original is shown or appears to be in the possession or power---

(i) of the person against whom the document is sought to proved, or

(ii) of any person legally bound to produce it, and when, after the notice mentioned in section 98 of this Act, such person does not produce it;

b. when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest.

c. when the original has been destroyed or lost and in the latter case all possible search has been made for it;

(d) when the original is of such a nature as not to be easily movable;

(e) when the original is a public document within the meaning of section 109 of this Act;

(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in Nigeria, to be given in evidence;

(g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in the court, and the fact to be proved is the general result of the whole collection;

(h) when the document is an entry in a banker's book;

(2) The secondary evidence admissible in respect of the original documents referred to in the several paragraphs of subsection(1) of this section is as follows---

(a). in paragraph (a), (c) and (d) any secondary evidence of the contents of the document is admissible;

(b). in paragraph(b) the written admission is admissible;

(c). in paragraph (e) or (f) a certified copy of the document, but no other kind of secondary evidence, is admissible;

(d). in paragraph (g) evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents;

(e) in paragraph(h) the copies cannot be received as evidence unless it can first be proved that the book in which the entries copies were made was at the time of making one the ordinary books of the bank, and that the entry was made in the usual and ordinary course of business, and that the book is in the custody and control of he bank, which proof may be given orally or by affidavit by a partner or officer of the bank, and that the copy has been examined with the original entry and is correct, which proof must be given by some person who has examined the copy with the original entry and may be given orally or by affidavit.

3.When a seaman sues for his wages he may give secondary evidence of his ship's articles and of any agreement supporting , his case, without notice to produce the originals.

98. **Rules as to notice to produce**

Secondary evidence of the contents of the documents referred to in paragraph (a)of section 97 of this Act, shall not be admissible unless the part proposing to give such

secondary evidence has previously given the party in whose possession or power the document is, or to a legal practitioner employed by such party, such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as the court considers reasonable in the circumstances of the case;

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the court thinks fit to dispense with it---

a. When the document to be proved is itself a notice;
b. When, from the nature of the case, the adverse party must know that he will be required to produce it;
c. When it appears or is proved that the adverse party has obtained possession of the original by fraud or force;
d. When the adverse party or his agent has the original in court;
e. When the adverse party or his agent has admitted the loss of the document

99. **Proof that bank is incorporated under law**

The fact of any bank having duly made a return to the Board of Inland Revenue in Nigeria` may be proved in any legal proceedings by production of a copy of its return verified by the affidavit of a partner or officer of the bank, or by the production of a copy of a newspaper purporting to contain a copy of such return published by the said Board of Inland Revenue; the fact that any saving bank is established under the Federal Saving Bank Act, may be proved by a certificate purporting to be under the hand of the Managing Director in charge of such savings bank; the fact of any banking company having been incorporated under any charter hereafter or herebefore granted may be proved by the production of a certificate of a partner or officer of the bank that it has been duly incorporated under such charter.

*Proof of execution of documents*

100. **Proof of signature and handwriting of person alleged to have signed or written document produced.**

If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as it alleged to be in the person's handwriting must be proved to be in his handwriting.

101. **Identification of person signing a document**

(1) Evidence that a person exists having the same name, address, business or occupation as the maker of a document purports to have, is admissible to show that such document was written or signed by that person.

(2) Evidence that a document exists to which the document the making of which is in issue purports to be a reply, together with evidence of the making and delivery to a person of such earlier document, is admissible to show the identity of the maker of the disputed document with the person to whom the earlier document was delivered.

102. **Evidence of sealing and delivery of a document**

(1) Evidence that a person signed a document containing a declaration that a seal was his seal is admissible to prove that he sealed it.

(2) Evidence that the grantor on executing any document requiring delivery expressed an intention that it should operate at once is admissible to prove delivery.

103. **Proof of instrument to validity of which attestation is necessary**

(1) In any proceedings, whether civil or criminal, an instrument to the validity of which attestation is required by law may, instead of being proved by an attesting witness, be proved in the manner in which it might be proved if no attesting witness were alive;

Provided that nothing in this section shall apply to the proof of wills or other testamentary documents.

(2) If no attesting witness is alive, an instrument to the validity of which attestation is required by law is proved by showing that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the documents is in the handwriting of that person.

104. **Admission of execution by party to attested document**

The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.

105. **Cases in which proof of execution or of handwriting unnecessary**

(1) A person seeking to prove the due execution of a document is not bound to call the party who executed the document or to prove the handwriting of such party or of an attesting witness in any case where the person against whom the document is sought to be proved---

(a) produces such document and claims an interest under it in reference to the subject-matter of the suit; or

(b) is a public officer bound by law to produce its due execution and he has dealt with it as a document duly executed.

(2) Nothing in this section contained shall prejudice the right of a person to put in evidence any document in the manner mentioned in section 97 and 123 of this Act.

106. **Proof when attesting witness denies the execution**

If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

107. **Proof of document not required by law to be attested**

An attested document not required by law to be attested may be proved as if it was unattested.

108. **Comparison of signature, writing, seal or finger impressions with others admitted or proved**

(1) In order to ascertain whether a signature, writing, seal or finger impression is that of the person by whom it purports to have been written or made, any signature, writing, seal or finger impression admitted or proved to the satisfaction of the court to have been written or made by that person may be compared with the one which is to be proved although that signature, writing, seal or finger impression has not been proved for any other purpose.

(2) The court may direct any person present in the court to write any words or figures or to make finger impressions alleged to have been written or made by such person:

Provided that where an accused person does not give evidence he may not be so directed to write any words or figure or to make finger impressions.

(3) After the final termination of the proceedings in which the court required any person to make his finger impressions such impressions shall be destroyed.

*Public and private documents*

109. **Public documents**

The following documents are public documents

(a) documents forming the acts or records of the acts

i. of the sovereign authority

ii. of official bodies and tribunals, and

iii. of public officers, legislative, judicial and executive, whether of Nigeria or elsewhere;

(b) public records kept in Nigeria of private documents.

110. **Private documents**

All documents other than public documents are private documents

111. **Certified copies of public documents**

(1) Every public officer having the custody of a public document which any person has a right to inspect shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be called certified copies.

(2) Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

112. **Proof of documents by production of certified copies**

Such certified copies may be produced in the proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

113. **Proof of other official documents**

The following public documents may be proved as follows---

(a) Acts of the National Assembly or Law of a State legislature, proclamations, treaties or other acts of States, orders, notifications, nominations, appointments and other official communications of the Government of Nigeria or of any State thereof or of any Local Government.

i. which appear in the Federal Gazette or the Gazette of a State, by the production of such Gazette, and shall be *prima facie* proof of any fact of a public nature which they were intended to notify,

ii. by a copy thereof certified by the officer who authorized or made such order or issued such official communication,

iii. by the records of the departments respectively or by the Minister or in respect of matter to which the executive authority of a State extends by the Governor or any person nominated by him, or

iv. by any document purporting to be printed by order of Government;

(b) the proceedings of the Senate or the House of Representatives---

By the minutes of that body or by published Acts or abstracts, or by copies purporting to be printed by order of Government;

(c) the proceedings of a State House of Assembly---

By the minutes of that body or by published Laws, or by copies purporting to be printed by order of Government;

(d) the proceedings of a municipal body in Nigeria---

By a copy of such proceedings, certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body;

(e) Acts of parliament of the United Kingdom and other statues thereof enacted including proclamations, orders or regulations issued by Her Majesty or by the Privy Council, or by any department of Her Majesty's Government---

by copies or extracts contained in the London Gazette, or purporting to be printed by the Queen's Printer;

(f) the Acts or Ordinances of any other part of the commonwealth, and the subsidiary legislation made under authority thereof---

By a copy purporting to be printed by the Government Printer of any such country;

(g) treaties or other acts of States of the United Kingdom or proclamations, treaties of State of any other country

By journals published by their authority, or commonly received in that country as such, or by copy certified under the seal of the country or sovereign;

(h) books printed or published under the authority of the Government of a foreign country, and purporting to contain the statues, code or other written law of such country , and also printed and published books of reports of decisions of the courts as evidence of the law of such country shall be admissible as evidence of the law of such foreign country;

(I) any judgment, order or other judicial proceeding outside Nigeria or any legal document filed or deposited in any court

(i) by a copy sealed with the seal of foreign or other court to which the original document belongs, or, in the event of such court having no seal, to be signed by the judge, or, if there be more than one judge, by any one of the judges of the said court, and such judge must attach to

his signature a statement in writing on the said copy that the court whereof he is judge has no seal, or

(ii) by a copy which purports to be certified in any manner which is certified by any representative of Nigeria or if there is no such representative appointed then by any representative of United Kingdom in or for such country to be the manner commonly in use in that country for the certification of copies of judicial records.

(j) public documents of any other class elsewhere than in Nigeria

By the original, or by a copy certified by the legal keeper thereof, with a certified under the seal of a notary public, or of a consult or diplomatic agent that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country

*Presumptions as to documents*

114. **Presumption as to genuineness of certified copies**

(1) The court shall presume every document purporting to be a certificate, certified copy or another document, which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer in Nigeria who is duly authorized thereto to be genuine, provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

(2) The court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.

115. **Presumption as to documents produced as record of evidence**

Whenever any document is produced before any court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence or to be a statement or confession by any prisoner or accused person, taken in accordance with law , and purporting

to be signed by any judge or magistrate, or by any such officer as aforesaid, the court shall presume---

(a) that the document is genuine;

(b) that any statement as to the circumstances in which it was taken, purporting to be made by the person signing it, are true; and

(c) that such evidence, statement or confession was duly taken:

116. **Presumption as to gazettes, newspapers, private Acts of the National Assembly and other documents**

The court shall presume the genuineness of every document purporting to be the official Gazette of Nigeria or a State or the Gazette of any part of the commonwealth or to be a newspaper or journal, or be a copy of the resolutions of the National Assembly to be a document is kept substantially in the form required by law and is produced from proper custody.

117. **Presumption as to document admissible in United Kingdom without proof of seal or signature**

When any document is produced before any court, purporting to be a document which by the law in force for the time being in any part of the Commonwealth would be admissible in proof of any particular in any court of justice in any part of the commonwealth, without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the court shall presume---

(a) that such seal, stamp or signature , is genuine; and

(b) that the person signing it held, at the time when he signed it, the judicial or official character which he claims

And the document shall be admissible for the same purpose for which it would be admissible in the United Kingdom.

118. **Presumption as to powers of attorney**

The court shall presume that every document purporting to be a power of attorney, and to have been executed before and authenticated by a notary public, or any court, Judge, magistrate, consul or representative of Nigeria or, as the case may be, of the President, was so executed and authenticated

119. **Presumption as to public maps and charts**

(1) All maps or charts made under the authority of any Government; or of any public municipal body, and not made for the purpose of any proceedings, shall be presumed to be correct, and shall be admitted in evidence without further proof.

(2) Where maps so made are reproducing by the printing, lithography, or other mechanical process, all such reproductions purporting to be reproduced under the authority which made the originals shall be admissible in evidence without further proof.

120. **Presumption as to books**

The Court may presume that any book to which it may refer for information on matters of public or general interest, the statements of which are relevant facts and which is produced for its inspection, was written and published by the person, and at the time and place, by whom or at which it purports to have been written or published.

**121. Presumption as to telegraphic messages**

The court may presume that a message, forwarded from a telegraph office to the person to whom such message purports to be addressed, corresponds with a message delivered for transmission at the office from which the message purports to be sent; but the court shall not make any presumption as to the person by whom such message was delivered for transmission.

122. **Presumption as to due execution not produced**

The court shall presume that every document, called for and not produced after notice to produce given under section 98 of this Act, was attested, stamped and executed in the manner required by law.

123. **Presumption as to documents twenty years old**

Where any document, purporting or proved to be twenty years old, is produced from any custody which the court in the particular case considers proper, the court may presume that the signature and every other part of such document which purports to be in the handwriting of any particular person is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

124. **Meaning of expression 'proper custody'**

Documents are said to be in proper custody within the meaning of sections 116 to 123 of this Act if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

125. **Presumption as to date of document**

When any document bearing a date has been proved, it is presumed to have been made on the day on which it bears date, and if more documents than one bear date on the same day, they are presumed to have been executed in the order necessary to effect the object for which they were executed, but independent proof of the correctness of the date will be required if the circumstances are such that collusion as to the date might be practiced, and would if practiced, injure any person, or defeat the objects of any law.

126. **Presumption as to stamp of a document**

When any document is not produced after due notice to produce, and after being called for, it is presumed to have been duly stamped unless it be shown to have remained unstamped for some time after its execution.

127. **Presumption as to sealing and delivery**

When any document purporting to be, and stamped as a deed, appears or is proved to be or to have been signed and duly attested, it is presumed to have been sealed and delivered although no impression of a seal appears thereon .

128. **Presumption as to alterations**

(1) No person producing any document which upon its face appears to have been altered in a material part can claim under it the enforcement of any right created by it, unless the alteration was made before the completion of the document or with the consent of the party to be charged under it or his representative in interest; the provisions of this subsection shall extend to cases any way in which the alteration was made by a stranger, whilst the document was in the custody of the person producing it, but without his knowledge or leave.

(2)Alteration and interlineations appearing on the face of a deed are, in the absence of all evidence relating to them, presumed to have been made before the deed was completed.

(3) Alterations and interlineations appearing on the face of a will are, in the absence of all evidence relating to them, presumed to have been made after the execution of the will.

(4) There is no presumption as to the time when alterations and interlineations appearing on the face of writing s not under seal were except that it is presumed that they were so made that the making would not constitute an offence.

(5) An alteration is said to be material when, if it had been made with the consent of the party charged, it would have affected his interest or varied his obligations in any way whatever.

(6) An alteration which in no way affects the rights of the parties or the legal effect of the instrument is immaterial.

129. **Presumption as to age of parties to a document**

The persons expressed to be parties to any conveyance shall, until the contrary is proved, be presumed to be of full age at the date thereof.

130. **Presumption as to statements in documents twenty years old**

Recitals, statements and descriptions of facts, matters, and parties contained in the deeds, instruments, Acts of the National Assembly, or statutory declarations. Twenty years old at the date of the contract, shall, unless and except so far as they may be proved to be inaccurate, be taken to be sufficient evidence of the truth of such facts, matters and descriptions.

131. **Presumptions as to deeds of corporations**

In favour of a purchaser a deed shall be deemed to have been duly executed by a corporation aggregate if its seal be affixed thereto in the presence of and attested by its clerk, secretary , or other permanent officer or his deputy, and a member of the board of directors, council, or other governing body of the corporation; and where a seal purporting to be the seal of a corporation has been affixed to a deed, attested by a persons accordance with the requirements of this section, and to have taken effect accordingly.

## PART VI

*The exclusion of oral by documentary evidence*

132. **Evidence of terms of judgments, contracts, grants and other dispositions of property reduced to a documentary form**

(1) When any judgment of any court or any other judicial or official proceedings, or any contract, or any grant or other disposition of property has been reduced to the form of a document or series of documents, no evidence may be given of such judgment or proceedings, or of the terms of such contract, grant or disposition of property except the document itself, or secondary evidence of its contents in cases in which secondary evidence I admissible under the provisions hereinbefore contained; nor may the contents of any such document be contradicted, altered, added to or varied by oral evidence:

Provided that any of the following matters may be proved---

(a) Fraud, intimidation, illegality; want and due execution; the fact that it is wrongly dated; existence, or want or failure, or consideration; mistake in fact or law; want of capacity

Documentary memorandum of it was made, if such memorandum was not intended to have legal effect as a contract, grant or disposition of property.

(1) Oral evidence of the existence of a legal relationship is not excluded by the fact that it has been created by a document, when the fact to be proved is the existence of the relationship itself, and not the terms on which it was established or is carried on.

133. **Evidence as to the interpretation of documents**

(1) Evidence may be given to show the meaning of illegible or not commonly intelligible characters of foreign, obsolete, technical, local and provincial expressions, of abbreviations and words used in a peculiar sense.

(2) Evidence may not be given to show that common words, the meaning of which is plain, and which do not appear from the context to have been used in a peculiar sense, were in fact so used.

(3) If the words of a document are so defective or ambiguous as to the unmeaning, no evidence can be given to show what the author of the document intended to say.

(4) In order to ascertain the relation of the words of a document to facts, every fact may be proved to which it refers, or may probably have been intended to refer, or which identifies any person or thing mentioned in it. Such fact are hereinafter called the circumstances of the case.

(5) If the words of a document have a proper legal meaning, and also a less proper meaning, they must be deemed to have their proper legal meaning, unless such a construction would be unmeaning, in reference to the circumstances of the case, in which case they may be interpreted according to their less proper meaning.

(6) If the document has one distinct meaning in reference to the circumstances of the case, it must be construed accordingly, and evidence to show that the author intended to express some other meaning is not admissible.

(7) If the document applies in part but not with accuracy or not completely to the circumstances of the case, the court may draw inferences from those circumstances as to the meaning of the document, whether there is more than one, or only one thing or person to whom or to which the inaccurate description may equally well apply and in such cases no evidence can be given of statements made by the author of the document as to his intentions in reference to the matter to which the document relates, though evidence may be given as to his circumstances, and as to his habitual use of language or names for particular persons or things.

(8) If the language of the document, though plain in itself, applies equally well to more objects than one, evidence may be given both of the circumstances of the case and of statements made by any party to the document as to his intentions in reference to the matter to which the document relates.

(9) If the document is of such a nature that the court will presume that it was executed with any other than its apparent intention, evidence may be given to show that it was in fact executed with its apparent intention.

134 **Application of this Part**

(1) Sections 132 and 133 of this Act apply only to parties to documents, and their representatives in interest, and only to cases n which some civil rights or civil liability is dependent upon the terms of a documents in question.

(2) Any person other than a party to a document or his representative in interest may, notwithstanding the existence of any document, prove any fact which he is otherwise entitled to prove.

(3) Any party to any document or any representative in interest of any such party may prove any such fact for any purpose other than that of varying or altering any right or liability depending upon the terms of the document.

(4) Nothing in this art contained shall be taken to affect any of the provisions of any enactment as to the construction of wills.

## PART VII

*Production and effect of evidence*

*Of the burden of proof*

135. **Burden of proof**

(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exists.

(2) when a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

136. **On whom burden of proof lies**

The burden of proof in a suit or proceedings lies on that person who would fail if no evidence at all were given on either side.

137. **Burden of proof in civil cases**

(1) In civil cases the burden of first proving the existence or non-existence of a fact lies on the party against whom the judgment of the court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings.

(2) If such party adduces evidence which ought reasonably to satisfy a jury that the fact sought to be proved is established, the burden lies on the party against whom judgment would be given if no more evidence were adduced; and so on successively, until all the issues in the pleadings have been dealt with.

(3) Where there are conflicting presumptions, the case is the same as if there were conflicting evidence.

138. **Burden of proof beyond reasonable doubt**

(1) If the commission of a crime by a party to any proceeding is directly in issue in any proceeding civil or criminal, it must be proved beyond reasonable doubt.

(2) The burden of proving that any person has been guilty of a crime or wrongful act is, subject to the provisions of section 141 of this Act, on the person who asserts it, whether the commission of such act is or is not directly in issue in the action.

(3) If the prosecution prove the commission of a crime beyond reasonable doubt, the burden of proving reasonable doubt is shifted on to the accused.

139. **Burden of proof as to particular fact**

The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any

particular person, but the burden may in course of a case be shifted from one side to the other; in considering the amount of evidence necessary to shift the burden of proof regard shall be had by the court to the opportunity of knowledge with respect to the fact to be proved which may be possessed by the parties respectively.

140. **Burden of proving fact to be proved to make evidence admissible**

(1) The burden of proving any fact necessary to be proved in order

(a) to enable a person to adduce evidence of some other fact; or

(b) to prevent the opposite party from adducing evidence of some other fact, lies on the person who wishes to adduce, or to prevent the adduction of such evidence, respectively.

(2). The existence or non-existence of facts relating to the admissibility of evidence under this section is to be determined by the court.

141. **Burden of proof in criminal cases**

(1) Where a person is accused of any offence the burden of proving the existence of circumstances bringing the case within any exception from, or qualification to, the operation of he law creating the offence with which he is charged is upon such person.

(2) The burden of proof placed by this Part of this Act upon an accused charged with a criminal offence shall be deemed to be discharged if the court is satisfied by evidence given by the prosecution, whether on cross-examination or otherwise, that such circumstances in fact exist.

(3) Nothing in section 138, 142 of this Act or in subsection (1) or (2) of this section shall

(a) prejudice or diminish in any respect the obligation to establish by evidence according to law any acts, omissions or intentions which are legally necessary to constitute the offence with which the person accused is charged; or

(b) impose on the prosecution the burden of proving that the circumstances or facts described in subsection (2) of this section do not exist; or

Affect the burden placed on an accused person to prove a defence of intoxication or insanity.

142. **Proof of facts especially within knowledge**

when any fact is especially within the knowledge of any person, the burden or proving that fact is upon him.

143. **Exceptions need not be proved by prosecution**

any exception, exemption, proviso, excuse, qualification, whether it does or does not accompany in the same section the description of the offence in the Act, order, bye-law, regulation, or other document creating the offence, may be proved by the accused, but need not be specified or negative in the charge, and, if so specified or negative, no proof in relation to the matter so specified or negative shall be required on the part of the prosecution.

144. **Presumption of death from seven years' absence and other facts**

(1) A person shown not to have been heard of for seven years by those, if any, who, if he had been alive, would naturally have heard of him, is presumed to be dead unless the circumstances of the case are such as to account for his not being heard of without assuming his death; but there is no presumption as to the time when he died, and the burden of proving his death at any particular time is upon the person who asserts it.

(2) For the purpose of determining title to property where two or more persons have died in circumstances in which it s uncertain which survived the other, they are presumed to have died in order of seniority.

(3) There is no presumption as to the age at which a person died who is shown to have been alive at a given time.

145. **Burden of proof as to relationship in case of partners, landlord and tenant, principal and agent**

When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that

they do not stand, or have ceased to stand, to each other in those relationships respectively, is on the person who affirms it.

146. **Burden of proof as to ownership**

When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

147. **Proof of good faith in transactions where one party is in relation of active confidence**

Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

148. **Birth during marriage usually conclusive proof of legitimacy**

Without prejudice to section 84 of the Matrimonial Causes Act, where a person was born during the continuance of a valid marriage between his mother and any man, or within 280 days after dissolution, the mother remaining unmarried, the court, shall presume that the person in question is the legitimate son of that man.

149. **Court may presume existence or facts**

The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case, and in particular the court may presume

(a) that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for has possession;

(b) that a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or states of things or states of things usually ceases to exist, is still in existence;

( c ) that the common course of business has been followed in particular cases;

(c) That evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it,

(d) That when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

150 **Presumptions of regularity and of deeds to complete title**

(1) When any judicial or official act is shown to have been done in a manner substantially regular, it is presumed that formal requisites for its validity were complied with.

(2) When it is shown that any person acted in a public capacity it is presumed that he had been duly appointed and was entitled so to act.

(3) When a person is possession of any property is shown to be entitled to the beneficial ownership thereof, there is a presumption that every instrument has been executed which it was the legal duty of his trustees to execute in order to perfect his title.

(4) When a minute is produced purporting to be signed by the chairman of a company incorporated under the Companies and Allied Matters Act, and purporting to be a record of proceedings at a meeting of the company, or of its directors, it is presumed, until the contrary is shown, that such meeting was duly held and convened and that all proceedings thereat have been duly had, and that all appointments of directors, managers and liquidators are valid.

## PART VIII

*Estoppel*

151 **Estoppel**

When one person has by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative in interest shall allowed, in any proceedings between himself and such person or such person's representative in interest, to deny the truth of that thing.

152. **Estoppel of tenant: and of license of person in possession**

No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the license of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such license was given.

153 **Estoppel of bailee, agent and licensee**

No bailee, agent or licensee is permitted to deny that the bailor, principal or licensor, by whom any goods were entrusted to any of them respectively, was entitled to those goods at the time when they were so entrusted.

Provided that any such bailee, agent or licensee may show that he was compelled to deliver up any such goods to some person who had a right to them as against his bailor, principal or licensor, or that his bail, principal or license or wrongfully and without notice to the bailee, agent or licensee, obtained the goods from a third person who has claimed them from such bailee, agent or licensee.

154. **Estoppel of person signing bill of lading**

Every bill of lading in the hands of a consignee or endorsee for valuable consideration, representing goods to have been shipped on board a vessel, is conclusive proof of that shipment as against the master or other person signing the same, notwithstanding that some goods or some part thereof may not have been so shipped, unless such holder of the bill of lading had actual notice at the time of receiving the same that the goods had not been in fact laden on board;

Provided that the master or other person so signing may exonerate himself in respect of such misrepresentation by showing that it was caused without any default on his part, and wholly by the fraud of the shipper or of the holder or some person under whom the holder holds.

PART IX

*Witnesses*

*Competence of witnesses generally*

155. **Who may testify**

(1) All persons shall be competent to testify, unless the court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by reason of tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

(2) A person of unsound mind is not incompetent to testify unless he is prevented by his mental infirmity from understanding the questions put to him and giving rational answers to them.

156. **Dumb witnesses**

(1) A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open court.

(2) Evidence so given shall be deemed to be oral evidence.

157. **Case in which banker not compellable to produce books**

A banker or officer of a bank shall not, in any legal proceeding to which the bank is not a party, be compellable to produce any banker's book the contents of which can be proved in the manner provided in section 97 of this Act or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of the court made for special cause.

158. **Parties to civil suit, and their wives or husbands**

Subject to the proviso contained in section 148 of this Act, in all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses.

159. **Competency in criminal cases**

Subject to the provision of this Part of this Act, in criminal cases the accused person, and his or her wife or husband, and any person and the wife or husband of any person jointly charged with him and tried at the same time, is competent to testify.

160. **Competency of person charged to give evidence**

Every person charged with an offence shall be a competent witness for the defence at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person.

(a). A person so charged shall not be called as a witness in pursuance of this section except upon his own application;

(b) The failure of any person charged with an offence to give evidence shall not be made the subject of any comment by the prosecution;

(c ) A person charged and being a witness in pursuance of this section may be asked any question in cross-examination notwithstanding that it would tend to criminate him as to the offence charged;

(d) A person charged and called as a witness in pursuance of this section shall not be asked, and if asked, shall not be required to answer, any question tending to show that he has committed or been convicted of or been charged with any offence other than that wherewith he is then charged, or is of bad character, unless

(i) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged, or

(ii) he has personally or by legal practitioner asked questions of the witnesses for the prosecution with a view to establish his own good character or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution, or

(iii) he has given evidence against any other person charged with the same offence;

(e) when the only witnesses to the facts of the case called by the defence is the person charged he shall be called as a witness immediately after the close of the evidence for the prosecution;

(f) every accused person called as a witnesses in pursuance of this section shall, unless otherwise ordered by the court, give his evidence from the witnesses box or other place form which the other witnesses give their evidence;

(g) nothing in this section shall affect the right of the person charged to make a statement without being sworn;

(h) in cases where the right of reply depends upon the question whether evidence has been called for the defence, the fact that the person charged has been called as a witness shall not of itself confer on the prosecution the right of reply;

161. **Evidence by husband or wife: where compellable**

(1) Where person is charged----

(a) with an offence under any of the enactments contained in sections 217,218, 219,221, 222, 223, 224, 225, 226, 231, 300, 301, 340, 341, 357, ro 362, 369, 370, and 371, of the Criminal Code; or

(b) subject to the provisions of section 36 of the Criminal Code, with an offence against the property of his or her wife or husband; or

(c) with inflicting violence on his or her wife or husband; the wife or husband of the charged shall be a competent and compellable witness for the prosecution or defence without the consent of the person charged.

**When competent**

(2) When a person is charged with an offence other than one of those mentioned in the preceding subsection, the husband or wife of such person respectively is a competent and compellable witness but only upon the application of the person charged.

**Communications made during marriage**

(3) Nothing in this section shall make a husband compellable to disclose any communication made to him by his wife during the marriage or a wife compellable to disclose any communication made to her by her husband during the marriage.

**Failure to give evidence not to be commented on**

(4) the failure of the wife or husband of any person charged with an offence to give evidence shall not be made the subject of any comment by the prosecution.

162. **Communications during Islamic marriage priviledged**

When a person charged with an offence is married to another person by a marriage other than a monogamous marriage such last named person shall be a competent and compellable witness on behalf of either the prosecution or the defence;

Provided that in the case of a marriage by Islamic law neither party of such marriage shall be compellable to disclose any communication made to him or her by the other party during such marriage.

*Competency in Proceedings Relating to Adultery*

**163. Evidence by spouse as to adultery**

the parties to any proceedings instituted in consequence of adultery and the husbands and wives of the parties shall be competent to give evidence in the proceedings, but no witness in any such proceedings whether a party thereto or not, shall be liable to be asked or bound to answer any question tending to show that he or she has been guilty of adultery, unless he or she has already given evidence in the same proceeding in disproof of the alleged adultery.

*Communications during marriage*

**164. Communications during marriage**

No husband or wife shall be compelled to disclose any communication made to him or her during marriage by any person to whom he or she is or has been married; nor shall he or she be permitted to disclose any such communication, unless the person who made it, or that person's representative in interest, consents, except in suits between married persons, or proceedings in

which one married person is prosecuted for an offence specified in subsection (1) of section 161 of this Act.

*Official and Privileged Communication*

165. **Judges and magistrates**

No. Judge and, except upon the special order of the High Court of the State, or of the Federal Capital Territory, Abuja or the Federal High Court, no magistrate shall be compelled to answer any questions as to his own conduct in court as such judge or magistrate, or as to anything which came to his knowledge in court as such Judge or magistrate; but he may be examined as to other matters which occurred in his presence whilst he was so acting.

**166. Information as to commission of offences**

No magistrate or police officer shall be compelled to say whence he got any information as to the commission of any offence, and no officer employed in or about the business of any branch of the public revenue shall be compelled to say whence he got an information as to the commission of any offence against the public revenue.

**167. Evidence as to affairs of state**

Subject to any directions of the President in any particular case, or of the Governor where the records are in the custody of a State, no one shall be permitted to produce any unpublished official records relating to affairs of State, or to give any evidence derived therefrom, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

**168. Official communication**

No public officer shall be compelled to disclose communications made to him in official confidence, whom he considers that the public interests would suffer by the disclosure.

**169. Communication between jurors**

A juror may not give evidence as to what passed between the jurymen in the discharge of their duties, except as to matters taking place in open court.

**170. Professional communication**

(1) No Legal practitioner shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such legal practitioner by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted, or to disclose any advise given by him to his client in the course and for the purpose of such employment:

(1) Provided that nothing in this section shall protect from disclosure----

(a) Any such communication made in furtherance of any illegal purpose :

(b) Any fact observed by any legal practitioner in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

(2) It is immaterial whether the attention of such legal practitioner was or was not directed to such fact by or on behalf of his client.

(3) The obligation stated in this section continues after the employment has ceased.

**171. Sections 170 to apply to interpreter and clerks**

The provisions of section 170 of this Act shall apply to interpreters, and the clerks and agents of legal practitioners.

**172. Privilege not waived by volunteering evidence**

If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section 170 of this Act, and, if any party to a suit or proceedings calls any such legal practitioner as a witness, he shall be deemed to have consented to such disclosure only if he questions such legal practitioner on matters, which, but for such question he would not be at liberty to disclose.

**173. Confidential communication with legal advisers**

No one shall be compelled to disclose to the court any confidential communication which has taken place between him and a legal practitioner consulted by him, unless he offers himself as a

witness, in which case he may be compelled to disclose any such communications as may appear to the court necessary to be known in order to explain any evidence which he has given, but no others.

**174. Production of title-deeds of witness not a party**

No witness who is not a party to a suit shall be compelled to produce his title deeds to any property or any document in virtue of which he holds any property as pledge or mortgagee or any document the production of which might tend to incriminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom he claims.

**175. Production of documents which another person could refuse to produce**

No one shall be compelled to produce documents in his possession which any other person would be entitled to refuse to produce if they were in his possession, unless such last mentioned person consents to their production.

**176. Witness not to be compelled to incriminate himself**

No one is bound to answer any question if the answer thereto would, in the opinion of the court, have a tendency to expose the witness or the wife or husband of the witness to any criminal charge, or to any penalty or forfeiture which the judge regards as reasonably likely to be proffered or sued for:

Provided that---

(a) A person charged with an offence, and being a witness in pursuance of section 160 of this Act, may be asked and is bound to answer any question in cross-examination notwithstanding that it would tend to incriminate him as to the offence charged;

(b) No one is excused from answering any question only because the answer may establish or tend to establish that he owes a debt or is otherwise liable to any civil suit either at the instance of the State or any other persons;

(c) Nothing in this section contained shall excuse a witness at any inquiry by direction of the Attorney-General of the Federation, or of the Attorney-General of a State, under Part 49

of the Criminal Procedure Act, from answering any question required to be answered under the provisions of section 458 of that Act.

*Corroboration*

**177. In actions for breach of promise**

No plaintiff in any action for breach of promise of marriage can recover a verdict, unless his or her testimony is corroborated by some other material evidence in support of such promise; and the fact that the defendant did not answer letters affirming that he had promised to marry the plaintiff is not such corroboration.

**178. Accomplice**

(1) An accomplice shall be a competent witness against an accused person and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice:

Provided that in cases tried with a jury when the only proof against a person charged with a criminal offence is the evidence of an accomplice, uncorroborated in any material particular implicating the accused, the Judge shall warn the jury that it is unsafe to convict any person upon such evidence, though they have a legal right to do so and in all other cases the court shall so direct itself.

(2) Where accused persons are tried jointly and any of them gives evidence on his own behalf which incriminates a co-accused, the accused who gives such evidence shall not be considered to be an accomplice

**179. Number of witnesses**

(1) Except as provided in this section, no particular number of witnesses shall in any case be required for the proof of any fact.

**Treason and treasonable offences**

(2) (a) No person charged with any of the felonies mentioned in sections 40, 41 and 42 of the Criminal Code can be convicted, except on his own plea of guilty, or on the evidence in open

court of two witnesses at the least of one overt act of the kind of treason or felony alleged, or the evidence of one witness to another overt act of the same kind of treason or felony.

(b) This subsection does not apply to cases in which he covert act of treason alleged is the killing of the President, or a direct attempt to endanger the life or injure the person of the President.

**Evidence on charge of perjury**

(3). A person shall not be convicted of committing perjury or of counseling or procuring the commission of perjury, upon the uncorroborated testimony of one witness, contradicting the oath on which perjury is assigned, unless circumstances are proved which corroborate such witnesses.

**Exceeding speed limit**

(4) A person charged under the Road Traffic Law of a State with driving at a speed greater than the allowed maximum shall not be convicted solely on the evidence of one witness that in his opinion he was driving at such speed.

**Sedition and sexual offences**

(5) A person shall not be convicted of the offences mentioned in paragraph (b) of subsection (1) of section 51 or in section 218, 221, 223 or 224 of the Criminal Code upon the uncorroborated testimony of one witness.

## PART X

*Taking oral evidence and the examination of witnesses*

*The taking of oral evidence*

### 180. Oral evidence to be on oath or affirmation

Save as otherwise provided in sections 182 and 183 of this Act all oral evidence given in any proceedings must be given upon oath or affirmation administered in accordance with the provisions of the Oaths Act.

**181. Absence of religious belief does not invalidate oath**

Where an oath has been duly administered and taken, the fact that the persons to whom the same was administered had, at the time of taking such oath, no religious belief, does not for any purpose affect the validity of such oath.

**182 Cases in which evidence not given upon oath may be received**

(1) Any court may on any occasion, if it thinks it just and expedient, receive the evidence, though not given upon oath, of any person declaring that the taking of any oath whatsoever is, according to his religious belief, unlawful, or who by reason of want of religious belief, ought not, in the opinion of the court, to be admitted to give evidence upon oath.

(2) The fact that in an case evidence not given upon oath has been received, and the reasons for the reception of such evidence, shall be recorded in the minutes of the proceedings.

**183. Unsworn evidence of a child**

(1) In any proceeding for any offence the evidence of any child who is tendered as a witness and does not, in the opinion of the court, understand the nature of an oath, may be received, though not given upon oath, if, in the opinion of the court, such child is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth.

(2) If the court is of opinion as stated in subsection (1) of this section, the deposition of a child may be taken though not on oath and shall be admissible in evidence in all proceedings where such deposition if made by an adult would be admissible.

(3) A person shall not be liable to be convicted of the offence unless the testimony admitted by virtue of this section and given on behalf of the prosecution is corroborated by some other material evidence in support thereof implicating the accused.

(4) If any child whose evidence is received as aforesaid willfully gives false evidence in such circumstances that he would if the evidence had been given on oath have been guilty of perjury, he shall be guilty of an offence against section 191 of the Criminal Code and, on conviction, shall be dealt with accordingly.

**184. Evidence of first and second class chiefs**

Where in any suit brought by or against a first or second class chief in either his official or personal capacity such chief desires to give evidence, or where in any other suit the evidence of such a chef is required, the evidence of the chief shall not be given at the hearing in accordance with the terms of an order to that effect to be made by the court, and the evidence so taken shall be admissible at the hearing if when it was so taken the other party to the suit has an opportunity of being present and of cross-examining.

Provided that the evidence of the chief shall be given at the hearing of the suit if he so desires, or if the court, having regard to all the circumstances, considers it to be necessary that his evidence should be so given and makes an order to that effect.

*The examination of witnesses*

**185. Order of production and examination of witnesses**

The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the court.

**186 Judge to decide as to admissibility of evidence**

(1) When either party proposes o 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; and the court shall admit the evidence if it thinks that the fact, if proved, would be relevant and not otherwise.

(2) If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last mentioned fact must be proved before evidence is given of

the fact first mentioned, unless the party undertakes to give proof of such fact, and the court is satisfied with such undertaking.

(3) If the relevancy of one alleged fact depends upon another alleged fact being first proved, the court may, in its discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

**187. Ordering witnesses out of court**

(1) On the application of either party or of its own motion, the court may order witnesses on both sides to be kept out of court; but this provision does not extend to the parties themselves or to their respective legal adviser, although intended to be called as witnesses.

**Preventing communication with witnesses**

(2) The court may during any trial use such means as it considers necessary and proper for preventing communication with witnesses who are within the court house or its precinets awaiting examination.

**188. Examination-in-chief**

(1) The examination of a witness by the party who calls him shall be called his examination-in-chief.

**Cross-examination**

(2) The examination of a witness by a party other than the party who calls him shall be called his cross-examination.

**Re-examination**

(3) Where a witness has been cross-examined and is then examined by the party who called him, such examination shall be called his re-examination.

**189. Order of examination**

(1) Witnesses shall be first examined-in-chief, then, if any other party so desires, cross-examine, then, if the party calling him so desires, re-examined.

(2) The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

**Direction of re-examination**

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

**190. Cross-examination by co-accused of prosecution witness**

In criminal proceedings where more than one accused is charged at the same time each accused shall be allowed to cross-examine a witness called by the prosecution before the witness is re-examined.

**191. Cross-examination by co-accused of witness called by an accused**

Where more than one accused is charged at the same time a witness called by one accused may be cross-examined by the other accused and if cross-examined by the other accused such cross examination shall take place before cross-examination by the prosecution.

**192. Production of documents without giving evidence**

Any person, whether a party or not, in a cause may be summoned to produce a document without being summoned to give evidence, and if he cause such document to be produced in court the court may be dispense with his personal attendance.

**193. Cross-examination of person called to produce a document**

A person summoned to produce a document does not become a witness by the mere fact that he produces it and cannot be cross-examined unless and until he is called as a witness.

**194. Witnesses to character**

Witnesses to character may be cross-examined and re-examined.

**195. Leading question**

Any question suggesting the answer which the person putting it wishes or experts to receive is called a leading question.

**196. When they must not be asked**

(1) Leading questions must not, if objected to by the adverse party, be asked in examination-in-chief, or in re-examination, except with the permission of the court.

(2) The court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

**197. When they may be asked**

Leading questions may be asked in cross-examination.

**198. Evidence as to matters in writing**

(1) Any witness may be asked, whilst under examination, whether any contract , grant or other disposition of property, as to which he is giving evidence, was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any documents, which, in the opinion of the court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it.

(2) A witness may however give oral evidence of statement made by other persons about the contents of a document if such statements are in themselves relevant facts.

**199. Cross-examination as to previous statements in writing**

A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question in the suit or proceeding in which he is cross-examined without such writing being shown to him, or being proved; biut, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

**200. Questions lawful in cross-examination**

When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend---

(a) to test his accuracy, veracity or credibility; or

(b) to discover who he is and what is his position in life; or

(c.) to shake his credit, by injuring his character;

Provided that a person charged with a criminal offence and being a witness may be cross-examined to the effect, and under the circumstance, described in paragraph (d) of the proviso to section 160 of this Act.

**201. Court to decide whether question shall be asked and when witness compelled to answer**

(1) if any such question relates to a matter not relevant to the proceedings, except in so far as it affects the credit of the witness by injuring his character, the court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it.

(2) in exercising its discretion, the court shall have regard to the following consideration---

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

(3) The court may, if it sees fit, draw, from the witness's refusal to answer, the inference that the answer if given would be unfavorable.

**202. Question not to be asked with reasonable grounds**

No such question as it referred to in section 201 of this Act ought to be asked, unless the person asking it has reasonable grounds for thinking that the imputation which is conveys is well founded.

**203. Procedure of court in case of question being asked without reasonable grounds**

If the court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any legal practitioner, report the circumstances of the case to the Attorney General of the Federation or other authority to which legal practitioner is subject in the exercise of his profession.

**204. Indecent and scandalous question**

The court may forbid any questions or inquiries which it regards as incident or scandalous, although such questions or inquiries may have some bearing on the questions before the court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

**205. Questions intended to insult or annoy**

The court shall forbid any questions which appear to it to be intended to insult or annoy, or which, though proper in itself, appears to the court needlessly offensive in form.

**206. Exclusion of evidence to contradict answers to questions testing veracity**

When a witness has been asked and has answered any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him; but, if he answers falsely, he may afterwards be charged with an offence against section 191 of the criminal code and, on conviction, shall be dealt with accordingly:

Provided that

(a) If a witness asked whether he has been previously convicted of any crime and denies it, evidence may be given of his previously conviction;

(b) If a witness is asked any question tending to impeach his impartiality and answers it by denying the facts suggested he may be contradicted.

**207. How far a party may discredit his own witness**

The party producing a witness shall not be allowed to impeach his credit by general evidence of bad character , prove hostile, but he may, in case the witness shall, in the opinion of the court, prove hostile, contradict him by other evidence, or by leave of the court, prove that he has made at other times a statement inconsistent with his present testimony; but before such last mentioned proof can be given the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness and he must be asked whether or not he has made such statement.

**208. Proof of contradictory statement of hostile witness**

If a witness upon cross-examination as to a former statement made by him relative to the subject-matter of the trial, and inconsistent with his present testimony, does not distinctly admit that he has made such statement, proof can given that he did in fact make it; but before such proof may be given the circumstances of the supposed statement sufficient to designate the particular occasion must be asked whether or not he made such statement.

**209. Cross-examination as to previous statements in writing**

A witness may be cross-examined as to previous statements made by him in writing relative to the subject-matter of the trial without such writing being shown to him, but if it is intended to contradict such witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him:

Provided always that it shall be competent for the court at any time during the trial, to require the production of the writing for its inspection, and the court may thereupon make use of it for the purpose of the trial, as it shall think fit.

**210. Impeaching credit of witness**

The credit of a witness may be impeached in the following ways by any party other than the party calling him or the consent of the court by the party who calls him---

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

(b) by proof that the witness has been bribed, or has accepted the offer of bribe, or has received any other corrupt inducement to give his evidence.

(c) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted.

**211. Cross-examination of prosecutrix in certain cases**

When a man is prosecuted for rape or for attempt to commit rape or for indecent assault, it may be shown that the woman against whom the offence is alleged to have been committed was of a generally immoral character, although she is not cross-examined on the subject; the woman may in such a case be asked whether she has had connection with other men, but her answer cannot be contradicted and she may also asked whether she has had connection on other occasions with the prisoner, and if she denies it may be contradicted.

**212. Evidence of witness impeaching credit**

A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, five reasons for his belief, but he may be asked his reasons in cross –examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with an offence against section 191 of the criminal code and, on conviction, shall be dealt

**213. Questions tending to corroborate evidence of relevant fact, admissible**

When a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the court is of opinion that such circumstances, if

proved, would corroborate the testimony of the witness as to the relevant fact which he testifies.

**214. Former statements of witness may be proved to corroborate later testimony as to the same fact.**

In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

**215. What matters may be proved in connection with proved statement relevant under section 33 or 34**

Whenever any statement relevant under section 33 or 34 of this Act is proved, all matters may be proved either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved it that person had been called as a witness and had denied upon cross-examination the truth of the matters suggested.

**216. Refreshing memory**

(1) A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of their transaction concerning which he is questioned, or so soon afterwards that the court considers it likely that the transaction was at that time fresh in his memory.

(2) The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it he knew it to be correct.

(3) An expert may refresh his memory by reference to professional treaties.

**217. Testimony as to facts stated in document mentioned in section 216**

A witness may also testify to facts mentioned in any such document as is mentioned in section 216, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

**218. Right of the adverse party as to writing used to refresh memory**

Any writing referred to under the provisions of the two last preceding sections must be produced and shown to the adverse party if he requires it: such party may, if he pleases, cross-examine the witness thereupon.

**219. Production of documents**

(1) A witness, subject to the provisions of section 220 of this Act, summoned to produce a document shall, if it is in his possession or power, bring it to the court, notwithstanding any objection which there may be to its production or to its admissibility and the validity of any such objection shall be decided by the court.

**Inspection of documents**

(2) The court, if it sees fit, may inspect the document or take other evidence to enable it to determine on its admissibility.

**Translation of documents**

(3) If for such a purpose, it is necessary to cause any document to be translated, the court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence and, if the translator disobeys such direction, he shall b e held to have committed an offence under subsection (1) of section 97 of the Criminal Code.

**220. Exclusion of evidence on grounds of public interest**

(1) The Minister, or in respect of matters to which the executive authority of a State extends, the Governor or any person nominated by him, may in any proceedings object to the production of documents or requests the exclusion of oral evidence, when, after consideration, he is satisfied that the production of such document or the giving of such oral evidence is against public interest; and any such objection taken before trial shall be by affidavit and any such objection taken at the hearing shall be by certificate produced by a public officer.

(2) Any such objection, whether by affidavit sworn by the Minister or by certificate under his hand (or by affidavit sworn by or certificate under the hand of the Governor or person nominated by him as aforesaid), shall be conclusive and the court shall not inspect such

documents or be informed as to the nature of such oral evidence but shall given effect to such affidavit or certificate.

**221. Giving as evidence of document called for and produced on notice**

When a party calls for a document which he has given the other party notice o produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so.

**222. Using as evidence, of document production of which was refused on notice**

When a party refuses to produce a document which he has had noticed to produce, he cannot afterwards use the document as evidence without the consent of the other party or the order of the court.

**223. Judge's power to put questions or order production**

The court or any person empowered by law to take evidence may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in form, at any time, of any witness, or of the parties about any fact relevant or irrelevant : and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order or, without the leave of the court, to cross-examine any witness upon any answer given in reply to any such question:

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:

Provided further that this section shall not authorize any Judge to compel any witness to answer any question or to produce any document which such witness wo0uld be entitled to refuse to answer or produce under section 162 to 176 of this Act, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 201 or 202 of this Act, nor shall be dispense with primary evidence of any document, except in the cases hereinbefore excepted.

**224. Power of jury or assessors to put questions**

In cases tried by jury or with assessors, the jury or assessors may put any questions to the witnesses, through or by leave of the Judge, which the Judge himself might put and which he considers proper.

## PART XI

*Evidence of Previous Conviction*

### 225. Proof of previous conviction

(1) Where it is necessary to prove a conviction of a criminal offence the same may be proved

(a) by the production of a certificate of conviction containing the substance and effect of the conviction only, purporting to be signed by the registrar or other officer of the court in whose custody is the record of the said conviction;

(b) if the conviction was before a customary court by a similar certificate signed by the clerk of court or scribe of the court in whose custody is the record of the said conviction; or

(c) by a certificate purporting to be signed by the Director of Prisons or officer in charge of the records of a prison in which the prisoner was confined giving the offence for which the prisoner was convicted, the date and the sentence.

(2) If the person alleged to be the person referred to in the certificate denies that he is such person the certificate shall not be put in evidence unless the court is satisfied by the evidence that the individual in question in the person named in the certificate are the same.

**Proof of previous conviction outside Nigeria**

(3) (a) A previous conviction in a place outside Nigeria may be proved by the production of a certificate purporting to be given under the hand of a police offer in the country where the conviction was had, containing a copy of the sentence or order and the finger prints of the person so convicted, together with evidence that the finger prints of the person so convicted are those of the accused person.

**Certificates under subsection (3)(a) *prima facie* evidence**

A Certificate given under paragraph (a) of this subsection shall be prima facie evidence of all facts therein set forth without proof that the officer purporting to sign the same did in fact sign it and was empowered so to do.

**226. Additional mode of proof in criminal proceedings of previous conviction**

(1) For the purposes of this section "the central registrar" means of the person in charge of the principal registry of criminal records established under the provisions of the Prevention of Crimes Act.

(2) A previous conviction may be proved against any person in any criminal proceedings by the production of such evidence of the conviction as is mentioned in this section, and by showing that his finger prints and those of the person convicted are the finger prints of the same person.

(3) A certificate

(a) purporting to be signed by or on behalf of the central registrar; and

(b) containing particulars relating to a conviction extracted from the criminal records kept by him or a photographic copy certified as such particulars relating to a conviction as entered in the said records: and

(c ) certifying that the copies of the finger prints exhibited to the certificate are copies of the finger prints appearing from the said records to have been taken from the person convicted on the occasion of the conviction.

Shall be evidence of the conviction and evidence that the copies of the finger prints exhibited to the certificate are copies of the finger prints of the person convicted.

(4) A certificate

(a) Purporting to be signed by or on behalf of the superintendent of a prison in which any person has been detained in connection with any criminal proceedings or by a

police officer who has had custody of any person charged with an offence in connection with any such proceedings; and

(b) Certifying that the finger prints exhibited thereto were taken from such person while he was so detained or was in such custody as aforesaid,

(c) Certifying that the finger prints exhibited thereto were taken from such person while he was so detained or was in such custody as aforesaid,

Shall be evidence in those proceedings that the finger prints exhibited to the certificate are the finger prints of that person.

(5) A certificate

(a) Purporting to be signed by or on behalf of the central registrar, and

(b) Certifying that

(iii) The finger prints, copies of which are certified as aforesaid by or on behalf of the central registrar to be copies of the finger prints of a person previously convicted; and

(iv) The finger prints certified by or on behalf of the superintendent of the prison or the police officer as aforesaid, or otherwise shown, to be the finger prints of the person against whom the previous conviction is sought to be proved,

Are the finger prints of the same person,

Shall be evidence of the matter so certified.

(6) The method of proving a previous conviction authorized by this section shall be in addition to any other method authorized by law for proving such conviction.

## PART XII

*Wrongful admission and rejection of evidence*

### 227. Wrongful admission or exclusion of evidence

(1) The wrongful admission of evidence shall not of itself be a ground for the reversal of any decision in any case where it shall appear to the court on appeal that the evidence so admitted cannot reasonably be held to have affected the decision and that such decision would have been the same if such evidence had not been admitted.

(2) The wrongful exclusion of evidence shall not of itself be a ground for the reversal of any decision in any case if it shall appear to the court on appeal that had the evidence so excluded been admitted it may reasonably be held that the decision would have been the same.

(3) In this section the term **"decision"** includes a judgment, order, finding or verdict.

**PART XIII**

*Service and execution throughout Nigeria of process to compel the attendance of witnesses before courts of the States and the Federal Capital Territory, Abuja and the Federal High Court*

228. **Interpretation**

In this Part----

**"court"** means a High Court or a magistrate court.

**229. Subpoena or witness summons may be served in another State**

(1) When a subpoena or summons has been issued by any court in any State or in the Federal Capital Territory, Abuja or by the Federal High Court in the exercise of its civil jurisdiction in accordance with any power conferred by law requiring any person to appear and give evidence or to produce books or documents in any proceedings, such subpoena or summons may upon proof that the testimony of such person or the production of such books or documents is necessary in the interests of justice by leave of such court on such terms as the court may impose be served on such person in any other State or Federal Capital Territory, Abuja.

(2) if a person upon whom a subpoena or summons has been served in accordance with subsection (1) fails to attend at the time and place mentioned in such subpoena or summons such court may on proof that the subpoena or summons was duly served on such person and that the sum prescribed by law was tendered to him for his expenses issue such warrant for the

apprehension of such person as such court might have issued if the subpoena or summons had been served in the State or Federal Capital Territory, Abuja in which it was issued.

(3) Such warrant may be executed in such other State or the Federal Capital Territory, Abuja in the manner provided in Chapter 12 of the Criminal Procedure Act in the case of warrants issued for the apprehension of persons charged with an offence.

**230. Orders for production of prisoners**

(1) Where it appears to any court of a State or Federal Capital Territory, Abuja that the attendance before the court of a person who is undergoing sentence in any State or Federal Territory, Abuja is necessary for the purpose of obtaining evidence in any proceeding before the court, the court may issue an order directed to the superintendent or officer in charge of the prison or place where the person is undergoing sentence requiring him to produce the person at the time and place specified in the order.

(2) Any order made under this section may be served upon the superintendent or officer to whom it is directed in whatever State or Federal Capital, Abuja he may be and shall thereupon produce in such custody as he thinks fit the person referred to in the order at all the time and place specified therein.

(3) The court before which any person is produced in accordance with an order issued this section may make such order as of the costs of compliance with this order as to the court may seem just.