



**NATIONAL OPEN UNIVERSITY OF NIGERIA
PLOT 91, CADASTRAL ZONE, NNAMDI AZIKWE EXPRESS
WAY, JABI - ABUJA**

**FACULTY OF LAW
DEPARTMENT OF PUBLIC LAW (PUL)**

OCTOBER/NOVEMBER EXAMINATION 2016

COURSE CODE: LAW 446(PUL 446)

COURSE TITLE: LAW OF EVIDENCE II

CREDIT UNIT: 4

TIME ALLOWED: 2 ½ HOURS

INSTRUCTIONS: ANSWER FOUR QUESTIONS ONLY.

QUESTION ONE IS COMPULSORY

QUESTIONS

- 1a. The theoretical foundation on which burden of proof is based is that anybody who asserts an allegation must prove same and not he who denies the allegation. Discuss. 12.5 marks
- 1b. Corroboration simply means a confirmation, ratification or additional evidence validating other evidence; particularly that which needs support. Discuss. 12.5 marks
2. Mr Bola Eko won a contract for the construction of a major highway in Abuja FCT. He flew to Abuja and had in his briefcase currencies including Naira, U.S Dollars and British Pounds. Accompanying him was his 7 year old son. He intended to place the son in a high brow children's nursery school in Abuja. Beyond that Mr Bola Eko wanted to use the opportunity of the trip to visit his friend who is a commercial attachee at the German embassy. When he arrived Abuja, he boarded an airport taxi when the taxi driver offered to take him to the German embassy to see his friend who is a commercial attachee at that embassy. Inside the airport taxi was another man who is the taxi driver's friend who wants to familiarize himself with the routes in Abuja. When he arrived at the residence of the commercial attachee, Mr Bola Eko took his briefcase and sought to come down from the taxi. As he made to alight from the taxi, the taxi driver snatched his briefcase from

him and the taxi driver's friend shot Mr Bola Eko in the leg. The 7 year old boy was frightened. The taxi driver and his friend drove off with a great speed. The commercial attachee immediately brought out his car and took his friend to the hospital but unfortunately Mr Bola Eko died on the way to the hospital. However, the taxi driver and his friend were subsequently arrested and charged to court for the murder of Mr Bola Eko and the stealing of Mr Bola Eko's briefcase and the contents. During trial, the following issues were raised. Discuss each issue with reference to a decided case and the provisions of the Evidence Act. (1) That the commercial attachee should not have been subpoenaed to testify. (2) That the 7 year old son of Mr Bola Eko is too young to be a witness. (3) That the wife of the taxi driver is not competent to testify and if competent is not compellable. (4) Mr Justice Jeyijeyi who claimed to have seen the incident is incompetent to testify. 15 marks

3. The character of parties in judicial proceedings is ordinarily irrelevant to the matter before the court. The character of the parties only becomes relevant and therefore admissible where the Evidence Act allows its admission or where the character is in issue. Discuss. 15 marks
4. Any statement made by persons other than the witness testifying is generally not receivable under the law of Evidence to prove the truth of the act stated. Such evidence is said to be hearsay evidence. Discuss. 15 marks
5. The National Assembly of BongoBongo Republic enacted an Act of Parliament which empowers a Director in the Federal Ministry of Works to close down a strategic Federal Highway for the purpose of maintenance and repair of the Highway. A Director in the Federal Ministry of Works, mandated by the Minister of Works on that behalf, exercised his discretion under the Act of Parliament and closed the Highway in question for the purpose of maintenance and repair. Mr. George Forrest, a human rights lawyer, has brought a suit against the Federal Ministry of Works and the Director that closed the Highway contending that the close of the Highway has caused untold suffering to the masses. The Federal Ministry of Works and the Director in issue in their defence, relied on the Act of Parliament as authorizing them to take the action. The learned trial judge in his judgment relied on the Act of Parliament as constituting a defence to the complaint of the Plaintiff. The Plaintiff being aggrieved with the judgment of the court has appealed to the Court of Appeal on the basis that the Act of Parliament was not proved in court and accordingly the court ought not to have relied on it in its judgment. Discuss the plaintiff's grievance. 15 Marks
6. The rule of Evidence which precludes a party to a suit from asserting or denying certain facts is referred to as estoppel per rem judicatam. Evaluate this statement. 15 Marks