COURSE GUIDE

PUL445
LAW OF EVIDENCE I

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INTRODUCTION

Evidence is central in the practice of law. This is because is only through the means of Evidence that facts can be made known to the courts for adjudication of disputes. It is through the process of adjudication that disputes are resolved and justice and good order is maintained in the society. It is for this reason that Law of Evidence is made a compulsory course in the course of study of law. Accordingly, a student of law ought to understand the rules and principles of evidence in order to be grounded as a law student as well as a practicing lawyer upon graduation.

This course, Law of Evidence 1, is the first part of the course Law of Evidence while Law of Evidence 11 is the second part. The central aim and objectives of the course are to broaden your knowledge on law of Evidence and to lay a solid foundation for the study of the second part of the course. Law of Evidence 1 covers such important and foundational topics such as definition and nature of Evidence, the classification of Evidence, the sources and application of the Nigerian Law of Evidence, relevancy and admissibility, presumption, admission, judicial notice etc. This course consists of 5 Modules which are subdivided into 16 Study Units. In Module 1 you will be introduced to concepts such as definitions of and nature of Evidence. In Module 2 you will be taught the sources of the Nigerian Law of Evidence while in Module 3 deals with the classification of Evidence. Module 4 introduces you to the issues of relevancy and res gestae wile admission, presumption and judicial notice are discussed in Module 5.

COURSE LEARNING OUTCOMES

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

1) define Evidence and its nature;
2) explain the classification, sources and application of Nigerian Law of Evidence;
3) examine the nature of relevancy and res gestae and
4) analyse presumption, admission and judicial notice.

WORKING THROUGH THIS COURSE

To complete this course, you are advised to read the study units, recommended books, relevant cases and other materials provided by NOUN. Each unit contains a Self-Assessment Exercise, and at points in the course you are required to submit assignments for assessment purposes. At the end of the course there is a final examination. The course should take you about 11 weeks to complete. You will find all the

components of the course listed below. You need to makeout time for each unit in order to complete the course successfully and on time.

COURSE MATERIALS

The major components of the course are.

a) Course Guide
b) Study Units
c) Textbooks
d) Self-Assessment Exercises
e) Presentation schedule.

MODULES AND STUDY UNITS

The discussion in this course is broken down to 16 (sixteen) study units that are broadly dividedinto FIVE Modules as follows –

Module I General Introduction

Unit 1 Law of Evidence and Applicability
Unit 2 Relevant Concepts in the Law of Evidence
Unit 3 Judicial Evidence

Module 2 Sources of Laws of Evidence

Unit 1 Scope of the Law of evidence
Unit 2 Origin of the Law of Evidence
Unit 3 Other Legal Source

Module 3 Types of Evidence

Unit 1 Classification
Unit 2 Direct Circumstantial Evidence
Unit 3 Primary and Secondary Evidence
Unit 4 Documentary Evidence

Module 4 Proof of Facts

Unit 1 Relevant Facts
Unit 2 Res gestae
Unit 3 Complaints

Module 5

Unit 1 Presumptions
Unit 2 judicial notice
Unit 3 Admissions

All these Units are demanding. They also deal with basic principles and values, which merit your attention and thought. Tackle them in separate study periods. You may require several hours for each.

We suggest that the Modules be studied one after the other, since they are linked by a common theme. You will gain more from them if you read them with the cases and Evidence Act, 2011. You will then have a clearer picture into which to paint these topics. Subsequent units are written on the assumption that you have completed previous units.

Each study unit consists of one week's work and includes specific Learning Outcomes, directions for study, reading materials and Self-Assessment Exercises *(SAE).* Together, these exercises will assist you in achieving the stated Learning Outcomes of the individual units andof the course.

REFERENCES/FURTHER READING

Certain books have been recommended in the course. You should read them where so directed before attempting the exercises.

ASSESSMENT

There are two aspects of the assessment of this course, the Tutor-Marked Assignments and a written examination. In doing these assignments you are expected to apply knowledge acquired during the course. The assignments must be submitted to your tutor for formal assessment in accordance with the deadlines stated in the presentation schedule and the Assignment file. The work that you submit to your tutor for assessment will count for 30% of your total score.

SELF-ASSESSMENT EXERCISES

There is a self-assessment exercise at the end for every unit. You are required to attempt all theassignments. You will be assessed on all of them, but the best three performances will be usedfor assessment. The assignments carry 10% each. Extensions will not be granted after the due date unless under exceptional circumstances.

FINAL EXAMINATION AND GRADING

The duration of the final examination for this course is three hours and will carry 70% of the total course grade. The examination will consist of questions, which reflect the kinds of self-assessment exercises and the tutor marked problems you have previously encountered. All aspects of the course will be assessed. You should use the time between completing the last unit and taking the examination to revise the entire course. You may find it useful to review yourself assessment exercises and tutor marked assignments before the examination.

HOW TO GET THE MOST FROM THIS COURSE

In distance learning, the study units replace the lecturer. The advantage is that you can read and work through the study materials at your pace, and at a time and place that suits you best. Think of it as reading the lecture instead of listening to a lecturer. Just as a lecturer might give you in-class exercises, your study units provide exercises for you to do at appropriate times. Each of the study units follows the same format. The first item is an introduction to the subject matter of the unit and how a particular unit is integrated with other units and the course as a whole. Next is a set of learning outcomes which will let you know what you should be able to do by the time you have completed the unit. You should use these objectives to guide your study. When you have finished the unit, you should go back and check whether you have achieved the objectives. If you make a habit of doing this, you will significantly improve your chances of passing the course.

Self-Assessment Exercises are interspersed throughout the units. Working through these tests will help you to achieve the objectives of the unit and prepare you for the assignments and the examination. You should do each Self-Assessment Exercise as you come to it in the study unit. Examples are given in the study units. Work through these when you have come to them.

ONLINE FACILITATION

There will be about 8 hours of online facilitation provided in support of this course. You will be notified of the dates, times and location of the facilitations, together with the name and phone number of your facilitator, as soon as you are allocated a facilitator who will take you through the course. He will keep a close watch on your progress and on any difficulties you might encounter. Your facilitator may help and provide assistance to you during the course.

Please do not hesitate to contact your facilitator by telephone or e-mail if:

- You do not understand any part of the study units or the assigned readings.
- You have difficulty with the self-assessment exercises.
- You have a question or a problem with an assignment, with your facilitator's comments on an assignment or with the grading of an assignment.

You should try your best to attend the online facilitation classes. This is the only chance to have face to face contact with your facilitator and ask questions which are answered instantly. You can raise any problem encountered in the course of your study. To gain the maximum benefit from the facilitations, prepare a question list before attending them. You will gain a lot from participating actively.

MAIN COURSE

MODULE I GENERAL INTRODUCTION

UNIT 1 LAW OF EVIDENCE AND APPLICABILITY

Unit Structure

1.1 Introduction

This unit examines the basic definition of the Law of Evidence and other related concepts which are necessary in other to properly comprehend the course work. A proper understanding of the Law of Evidence cannot be projected except we first understand what the word "Evidence" means. We shall therefore examine this concept both from the lay man's perspectives and from the Legal perspectives. The understanding of the two perspectives will be able to provide a more comprehensive understanding of the concept. Having therefore known what the word "Evidence" is, we shall further proceed to examine fully what makes up the "Law of Evidence" more particularly under the Nigerian Law.

1.2 Intended Learning Outcomes

By the end of this unit, you will be able to:

- define or explain what we mean by "Evidence"
- explain the concept of the Law of Evidence
- critique the legal definition of 'Evidence', and the 'Law of Evidence'
- identify the courts which must apply the Law of Evidence

1.3 Law of Evidence and Applicability

1.3.1 What is Evidence?

It is worthy of note that there is no statutory definition for the word "Evidence", notwithstanding this, the definition of the word can be derived from some other ways by which it is being applied in the day to day's activities. Evidence as a word can be understood from the ordinary English usage. On the other hand, according to the Legal writer, G. Eche Ada, Evidence can further be understood from both literal perspective and technical perspective. In the Literal sense, evidence is something which substantiates the existence of certain facts while the technical usage has been ascribed to definition by Blackstone which is "that which demonstrates, makes clear, or ascertains the truth of the very fact or point in issue".

Evidence in my own opinion can be said to be a declaration or proclamation made in order to establish or prove the existence of certain facts or incidents. Oxford Advanced Learner's Dictionary defines "Evidence" to mean information that gives a strong reason for believing something or prove something. Evidence is the foundation of proof. It is the acceptance of the statements or things presented by a person testifying in establishing the existence of certain facts by the Court that occasions a proven fact.

The word "Evidence" has been subject of definition and description by several authors and for a proper understanding, some of these are hereby examined. Cross defines evidence in relation to evidence of fact. He says; "the evidence of a fact is that which tends to prove it- Something which may satisfy an inquirer of the fact's existence". On his own part, Phipson sees evidence as that which may be placed before the court in order that it may decide issues of fact. Taylor stipulates that Evidence includes the following:

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

The legal author, Aguda, suggests that Evidence is the means by which facts are proved but excluding inferences and arguments. 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" 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". Best also defines evidence as "any matter of fact, the effect, tendency or design of which is, to produce in the mind a persuasion, affirmative or dis-affirmative, of the existence, of some other matter of facts".

Worthy of note on the concept of "Evidence" is what has been expressed by Best and Nokes who presented the definition from the perspective of the Legal system. 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. Nokes defined Evidence as "Judicial evidence consisting of facts which are legally admissible, and the legal means of attempting to prove such facts.

It is also noteworthy that the definition of the concept "Evidence" has been judicially ascertained by the Supreme Court in the case of **Akintola and Another v. Solano [1986] 4 S.C. 141 at 184.** In that case, Oputa JSC stated as follows:

If a thing is self-evident, it does not require evidence. What therefore is evidence? Simply put, it is the means by which any matter of fact the truth of which is submitted to investigation may be established or disproved. Evidence is therefore necessary to prove or disprove an issue of fact.
Evidence has been said to mean the means by which fact in issue which are material evidence such as oral testimony, documentary evidence or real evidence are established by a judicial tribunal. Thus, from the above assertions, evidence can therefore be summed up to be something or that which is required to prove or disprove an issue of fact.

1.3.2 Definition of Law of evidence

In the opinion of Cross and Wilkins, the plaintiff or the prosecution is saddled with the responsibility of proving a great deal of evidence in establishing the facts of their cases and it therefore the law of evidence which tells them how they may go about it. Thus implying that the procedures as set out by which facts are proved are regarded as the law of evidence.

The Law of Evidence relates to the following items: I. Proof of facts before the court II. Who may prove

III. How facts may be proved, and
IV. What facts may not be proved in a court of law.
Law of Evidence according to Stephen is "that part of the Law of Procedure which, with a view to ascertain individual rights and liabilities in particular cases, must establish the following:
(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?

He states that this part of the Law of Procedure can be found in judicial decisions, statute Law and Text- Books, among others.
In the line of thought of Hon. Justice P.A. Onamade, Evidence is the means by which any matter of fact, the truth of which is submitted to investigation may be established or disproved. It is the means whereby apart from the argument and inference, the court is informed as to the issue of facts as ascertained by the pleading, that is, the testimony, whether oral, documentary or real, which may be legally received in order to prove or disprove some facts in dispute.

In a succinct form, the law of evidence can be said to involve the application of material evidence for proving and establishing facts upon which the claims, charges or defences of parties to a suit are based before the law court.

1.3.3 Critique of definitions of Evidence.

It is worthy of note that though there are several definitions of the concept of Evidence as given by several writers, all these definitions has been proved to be not all sufficient despite the fact that all those expressions are nonetheless useful in their different regards. It is the fact of this non sufficiency of each of the definitions that some of them have been subjected to one criticism or the other and these shall be examined herein accordingly.

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.

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 casuistic, themselves required to be first defined e.g. "facts".

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

Look at Phipson's definition; and the use of the conjunction "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 to a large extent been 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.

The projection of the Law of Evidence rightly presents 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 include:

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 Taylor's 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

Attempt these exercises to measure what you have learnt so far. This should not take you more than 6 minutes.

1. What do you understand by the concept of "Evidence"?
2. What in your own view will constitute the Law of Evidence?
3. What are the major characteristics/features that mark an item as a tax?
4. What is the best way to define or determine whether an item is a tax or not?

1.3.4 Application of the Law of Evidence

1.3.4.1 The Law of Evidence and application in Nigerian Courts

The Evidence Act 2011 invariably allows evidence to be given in any suit or proceeding whatsoever. Section 1 of the Act provide as follows:
Evidence may be given in any suit and proceedings of the existence or nonexistence of every fact in issue and of such other facts as are hereafter declared to be relevant and of no others.
The above notwithstanding, Section 256 (1) of the Evidence Act, 2011 excluded some of the Courts or Judicial proceedings in the Nigeria Legal System from the observation or application of the rule of evidence. Such excluded proceedings include; proceedings before an arbitrator, proceedings relating to general court martial, proceedings in civil matters before any Sharia Court of Appeal, Customary Court of Appeal, Area Court or Customary Court. The Section 256 (1) Evidence Act, 2011 provides as follows:

This Act shall apply to all judicial proceeding in or before any court established in the Federal Republic of Nigeria but it shall not apply to-

a) Proceeding before an arbitrator;
b) A field general court martial; or
c) Judicial proceeding in any civil cause or matter in or before any Sharia Court of Appeal, Customary Court of Appeal, Area Court or Customary Court, unless any authority empowered to do so under the constitution, by order published in the Gazette, confers upon any or all Sharia Courts of Appeal, Customary Courts of Appeal, Area Courts or Customary Courts in the Federal Capital Territory Abuja or a State, as the case may be, power to enforce any or all the provisions of this Act.

But by virtue of Section 256 (2) and (3) of the Evidence Act 2011 such courts or proceedings excluded from the application of the law of

evidence as above mentioned are mandated to apply the rule of the law of evidence while sitting over criminal cases. Section 256 (2) and

(3) of the Evidence Act 2011 provides as follows:

(2) In judicial proceeding in any criminal cause or matter, in or before an Area Court. the court shall be guided by the provisions of this Act and in accordance with the provisions of the Criminal Procedure Code Law.

(3) Notwithstanding anything in this section, an Area Court shall, in judicial proceeding in any criminal cause or matter be bound by the provisions or sections 134 to 140.

The Evidence Act of Nigeria provides for the procedures in conducting trials in the Nigerian courts, such items of the procedures include the following:

i. Manners of Calling witnesses
ii. Identifying which witness or witnesses to call
iii. Description of which questions may be asked
iv. Description of questions which may not be asked and if asked may not be answered
v. Statements of person who are not called, which may or may not be excluded
vi. Exhibits: documents or other tangible things, which may or may not be tendered
vii. Which fact or facts require proof by proving some other facts and how to prove it.
viii. Inference that may be legitimate from given fact(s) and situation(s). ix. What facts may not be proved e.g. State secrets, accused's bad character, facts forbidden by exclusionary rules of evidence.
x. Description of relevant Evidence.

All the above listed and many more not mentioned are provided for under the Evidence Act of 2011.

1.3.4.2 The Courts applying the Law of Evidence in Nigeria

The legal body saddled with the administration of Justice in the nation is the Judiciary and they operate through the instrumentality of the Court. Cases are presented in the court being presided over by either the Magistrate or the Judge. Cases of the litigants are presented before an official court through a process of laid down procedures known as the Law of Evidence.

The Meaning of Court:

The meaning of the word "Court" has been given in two different parts under the Evidence Act 2011, particularly in Section 252 and 258 (Interpretation Section) of the Act.

These sections provides as follows:

Section 252 provides:

In this Part- "Court" means a High Court or a magistrate's court and courts of similar jurisdiction.

Section 258 provides:
"Court" means a rule which, in a particular district, has, from long usage, obtained the force of law….

The Major Courts in Nigeria recognised under the Nigeria Legal system are hereby listed as follows:

1. Superior Courts

These are courts of record or courts of unlimited jurisdiction.

Examples are:

a) The Supreme Court of Nigeria
b) The Court of Appeal
c) The High Court (Federal and States)
d) The Sharia Court of Appeal (Federal and States)
e) The Customary Court of Appeal (Federal and State)
f) The National Industrial Court

And 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:

a) The Magistrates Courts
b) The Coroner's Courts
c) Juvenile Welfare Courts
d) The Rent Tribunals

3. Special Courts

These are specialist courts established for specific and specialised purpose with spelt - out jurisdiction. Examples are: The Judicial Tribunals like the Election Tribunals and e.t.c.; and The Court Martial which is a special Military Court which tries cases that involves military personnel against the military law.

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?

1.4 Summary

You have learned about the definitions of Evidence as it relates to the Law of Evidence and its application under the Nigerian Legal System. These definitions have been vividly considered and duly examined with imminent criticism. We have also learnt that the Law of Evidence provides for the procedures in conducting trials in the Nigerian courts.

1.5 References/Further Readings/Web Resources

C.C. Nweze: Contentious issues & Responses in Contemporary Evidence Law In Nigeria. [Institute for Development Studies: University of Enugu] 2003.

G. Eche Adah: The Nigerian Law of Evidence [Maltlhouse Press Limited: Lagos] 2000.

Hon. Justice P.A. Onamade: Documentary Evidence- Cases and Materials [Philade Co. Ltd: Lagos] 2002

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

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

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

The Evidence Act, 2011.

The Black's Law Dictionary, 5th Edition

1.6 Possible Answers to Self-Assessment Exercises.

SAE

1. Evidence belongs to the procedural branch of law. It is distinct from the substantive law which is concerned with the content of law. Evidence deals with facts.

2. Evidence is the ways and manner of making facts known to the courts. It is said to be different from inferences and arguments.

UNIT 2 RELEVANT CONCEPTS IN THE LAW OF EVIDENCE

Unit structure

2.1 Introduction

In every claim or litigation, the target is to establish rights and duties of an individual and there are processes by which these are achieved. This unit examines the processes by which rights and duties of an individual are established. One of the processes by which these rights and duties are established is through the law of evidence by the instrumentality facts and legal rights and these are hereby considered in this unit.

2.2 Intended Learning Outcomes

By the end of this unit, you will be able to:

- explain the processes of establishing rights and duties
- discuss what is meant by fact and legal rights in relation to the Law of Evidence

2.3 Relevant concepts in the law of evidence

2.3.1 Principle of rights and duties

It is worthy of note that the whole essence of having law in any given society is to be able to create an atmosphere by which the right and duties of an individual can be well established, thus providing for the protection of such rights and ensuring that such a person whose rights are protected will also perform is own part of the bargain by living up to his expectation in the society and this is the duty he ought to perform.

The core projection of the law of evidence is to provide procedures to be adopted in a suit, trial or proceedings for the purpose of establishing the

rights of an aggrieved person, claimant or complainant, thus making the law of evidence one of the processes of establishing rights and duties under the law.

The above assertion therefore motivates the consideration of the work of Professor John Henry Wigmore which provided the base upon which rights and duties can be established. He postulated the five stages or processes of asserting rights and duties and these are listed as follows:

1. The procurement of parties' appearance before the court;
2. The ascertainment of the subject of the dispute, that is pleadings;
3. The attempt at demonstration by parties of the respective positions, that is, the trial:
4. The determination of the dispute, namely, verdict or judgement
5. Enforcement.

According to the learned Professor, "evidence" lies at the third stage of the whole listed processes where all controversies surrounding a matter are well set out for resolution or judgement of the court. The learned Professor states that at this stage the Claimant or Plaintiff is saddled with a two-fold responsibility which are; the demonstration of the existence of rights of the Claimant or Plaintiff and establishes the liability of the Defendant in relation to his rights being claimed.

It is therefore the process by which the Claimant and the Defendant assert and refute claims that brings about the establishment of the existence of fact and legal right attached to it and this therefore give rise to two important concepts under the law of evidence which are "Fact" and "Law".

2.3.2 Fact and Law

2.3.2.1 Understanding Fact

This concept although have been subjected to several thoughts, it has been found to be better described than defined. In the ordinary sense, Oxford Advanced Learner's Dictionary defines fact to be a thing that is known or can be proved to have happened, to be true or to exist. Fact is said to be a thing which is in actual existence.

Black's Law Dictionary defines fact to be a thing done; an action performed or an incident transpiring; an event or circumstance; an actual occurrence; an actual happening in time space or an event mental or physical; that which has taken place. The Evidence Act 2011 under Section 258 (1) paragraph 9 defines Fact to include-

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

The erudite scholar W.M. Best has given us a clearer picture of what ''fact'' is by his breaking down of facts into classes and this shall be fully considered because of the importance to our line of study. Best subdivides fact into three types and these include:

a) Physical or psychological facts
b) Events or state of things
c) Positive/affirmative and negative facts

1. **Physical or Psychological Facts**: Physical facts are those that are visible to the eye whether animate or inanimate being while Psychological facts are those which are embedded only in animate being, such as the one that exist in the mind of an individual. Such includes the appeal to the senses, the ability to feel, recollect and be conscious of happenings. This classification is connected with the definition of fact as given in the second leg of the definition of the Evidence Act 2011 which talks about the mental condition of witnesses.

2. **Event or State of Things**: This is the occurrence of events or happenings, it has been said that this is called ''an act'' or ''an action''. The concept of Event infers the happening or incidence around a thing while State of things infers to the actual existence of that thing. This classification has been well illustrated by W. M. Best himself. The illustration describes the difference between Event and State of Things using ''A Tree". His analogy is based on the existence of a tree and the falling of that tree. He said the existence of a tree is ''A State of Things'' while the falling of the tree is ''Event".

3. **Positive/Affirmative And Negative Facts**: This class has been explained by W.M. Best who said the existence of certain state of things is a positive or affirmative fact while its non-existence is a negative fact.

2.3.3.2 Concepts of Fact under the Evidence Act

It is noteworthy that under the Evidence Act, four concepts relating to facts are noted and these are: Facts in Issue, Proved facts, Disproved Facts and facts not proved. All these are hereby examined as follows:

1. **Fact-in-Issue**: These are all the facts which the plaintiff/claimant or prosecution and the Defendant or accused must prove to succeed in his or her claim or defence. It is only on the fact-in-issue or facts relevant fact-in-issue that the court ought to make pronouncement. The plaintiff in civil cause is expected to substantiate or prove the fact -in-issue in order to succeed except in situations where the defendants has admitted such facts. Also in criminal cases, what the prosecution must establish in order to secure a conviction must be fact-in-issue. In whichever situation it applies, such facts must be proved beyond reasonable doubt. Facts-in-issue are those facts been contended and contested by the two parties to an action. A full definition of the facts-in-issue has been given by the interpretation section of the Evidence Act 2011, precisely Section 258 paragraph 10 where it states as follows:

''Fact 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.

According to the Black's Law Dictionary 5th Edition, Facts in issue are defined as those matters of fact on which the plaintiff proceeds by his action, and which the defendant controverts in his defense. Thus by the above assertions, it is necessary to establish that what makes facts to be in issue is the contention attached to it. So if the facts are not being contended, it will not qualify as facts in issue.

What constitutes facts in issue has been judicially determined in the case of **Olufosoye v. Olorunfemi (1989) 1 NWLR (Pt 95) pg 26,** where the Supreme Court of Nigeria held that an admitted fact is not in issue. It is only when facts are in dispute that they are said to be in issue.

It is worthy of note that facts admitted has been decided to be contained in the pleadings of the parties particularly in civil proceedings.. See the case of **Elimare v Ehonyo (1985) 1 NWLR pt 2 at pg 177,** here the conclusion of the court was to the extent that admitted facts are usually contained in the pleadings of the party in the civil proceedings. Therefore facts admitted are not in issue as the content is cleared and acceptable to all parties.

2. **Proved Facts**: This is enshrined under Section 121(a) of the Evidence Act 2011 which provides as follows: A Fact is said to be- *"proved" when, after considering the matters before it, the court either believe 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 exist:*

3. **Disproved Facts**: As provided for by the Section 121(b) of the Evidence Act 2011, A Fact is said to be- *"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;*
4. **Facts not proved**: This is provided under the Section 121(c) of the Evidence Act 2011, it says A fact is said to be- *"not proved" when it is neither proved nor disproved.*

Self-Assessment Exercise

Attempt these exercises to measure what you have learnt so far. This should not take you more than 6 minutes.

1. What is a fact?
2. What is a fact in issue?
3. What are the major characteristics/features that mark an item as a tax?
4. What is the best way to define or determine whether an item is a tax or not?

2.3.2.3 The Law in relation to Fact

Law has been defined to mean the legislative enactments of the country while facts are material evidence of events and happenings that surrounds a claim, suit or matter in a judicial proceeding.

Both Law and facts are needed in order to be successful in a suit but these must not be mixed together as they must be properly distinguished in order to get to a logical conclusion in a given case. The court's decision is based on opinion formed from the facts presented and the provision of the law in that regard, i.e, that is relevant to the matter. While it is expected that the court must know the law, the court can only form its opinion from facts placed before it.

According to the Black's Law Dictionary 5th Edition, ''Fact'' is very frequently used in r contrast with ''Law''. It states that questions of facts are for the jury while questions of law are for the court. Facts are based on the event of things while law is based on the principle laid down. Facts are the events of things to be proved upon which the rule of law is applied. Law is conceived while fact is actual. Law is a rule of duty while fact is that which has been according to or in contravention of the rule of law.

2.3.3 Essence of the Rule of Evidence

Evidence Rules according to the Black's Law Dictionary 5th edition is the rules which govern the admissibility of evidence at hearings and trials. The coming into existence of the rule of evidence is not just for legislative activism or the move to add to the bulk of the laws of the nation which majority are nonetheless ineffective under the Nigerian Legal system as at present. The rule of evidence is rather framed for the purpose of arresting certain problems that relates to presentation of facts before the court. These problems have been identified to be four and are discussed as follows:

1. **Who is saddled with the burden of proving facts?-** The Rule of evidence points out the party who must discharge the burden of proof in a suit. The party who claims or assert must of importance be the person to discharge the burden of proof except in certain situations where the burden of proof shifts to the other party like in the case of the sanity of a person. For example, where someone alleges that another person is insane, it is this person that is referred to as insane who must discharge the burden of proving his sanity. Thus, the party who will lose when certain facts are not established must be the one to discharge the burden of proof.
2. **What facts may be proved?-** These facts are those material to the sustenance of a case. They are the material facts which, if not established, will make the party who ought to depend on it fail. The only exceptions to these material facts are facts which are already admitted in evidence as stated under Section 123 of the Evidence Act 2011 and facts which the court must take judicial notice of as provided for under Section 122 (1), (2), (3), and (4).

Facts to be judicially noticed include the following:

a) All laws or enactments and any subsidiary legislation made under them having the force of law now or previously in force in any part of Nigeria;
b) All public Acts or Laws passed or to be passed by the National Assembly or a State House of Assembly, as the case may be, and all subsidiary legislation made under them and all local and personal Acts or Laws directed by the National Assembly or a State House Assembly to be judicially noticed:
c) The course 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, a State Governor or Chairman of a Local Government Council. and of any seal used by any such public officer:

e) The seals of all the courts of Nigeria, the seals of notaries public . and all seals which any person is authorised 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 recognised by Nigeria:
g) The divisions of time, the geographical divisions of the world, the public festivals, and holidays notified in the Federal Gazette or fixed by an Act:
h) The territories within the Commonwealth;
i) The commencement, continuance and termination of hostilities between the Federal Republic of Nigeria and any other State or body of persons:
j) 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 authorised by law to appear or act before it;
k) The rule of the road on land or at sea:
l) All general customs, rules and principles which have been held to have the force of law in any court established by or under the Constitution and all customs which have been duly certified to and recorded in any such court; and
m) The course of proceeding and all rules of practice in force in any court established by or under the Constitution. In all cases in subsection (2) of this section and also on all matters of public history. Literature, science or art, the court may resort for its aid to appropriate books or documents or reference.

The Act provides that a party who wants the court to take judicial notice of certain facts or its existence may be required to produce such evidence. This is provided for under **Section 122 (4) of the Evidence Act 2011** which provides thus:

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.

3. What facts ought to be jettisoned from court's proceedings?- Facts are the pillar upon which a case rests but more importantly, not all facts are relevant to the suit and these facts are the ones that must be excluded from any given evidence by the court. It is only the establishment of facts in issue or relevant to the facts in issue that must be used to substantiate a matter in law as they the only admissible facts.

4. **What is the acceptable mode of proof? -** The mode by which evidence are given in court has been validly projected by the rule of evidence. The rule of evidence establishes the medium of presenting evidence in court and these include; oral testimony, real evidence, documentary evidence. Under the present Evidence Act we have proof by electronic equipment.

2.4 Summary

There are certain concepts that will help to foster a better and quick understanding of the rule of evidence as they are the background upon which the rule of evidence is based and these have been discussed herein. Such concepts includes; the principle of legal rights and liabilities of parties, the principle of law and fact and their relevance to the rule of evidence.

2.5 References/Further Readings/Web Resources

C.C. Nweze: Contentious issues & Responses in Contemporary Evidence Law in Nigeria. [Institute for Development Studies: University of Enugu] 2003

G. Eche Adah: The Nigerian Law of Evidence [Malthouse Press Limited: Lagos] 2000

Hon. Justice P.A. Onamade: Documentary Evidence- Cases and Materials [Philade Co. Ltd: Lagos] 2002

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The Evidence Act, 2011.

The Black's Law Dictionary, 5th Edition

2.6 Possible Answers to Self-Assessment Exercises.

SAE

1. A fact is "Anything, state of things, or relation of things capable of being perceived by the senses; and b) Any mental condition of which any person is conscious"

2. These are all the facts which the plaintiff/claimant or prosecution and the Defendant or accused must prove to succeed in his or her claim or defence. It is only on the fact-in-issue or facts relevant fact-in-issue that the court ought to make pronouncement.

UNIT 3 JUDICIAL EVIDENCE

Unit structure

3.1 Introduction

There can never be a proper presentation of evidence upon which a litigant can sustain his/her case without a proper understanding of what kind of evidence that should be presented. It is therefore because of the necessity to project a full understanding of this that this unit examines the definition of judicial evidence, basic items of the Law of Evidence and classification of the law of evidence. The understanding of these concepts will nonetheless help the preparation of a counsel for the presentation of his case before the court.

3.2 Intended Learning Outcomes

By the end of this unit, you will be able to:

- define or explain what we mean by "Judicial Evidence"
- identify and discuss main items of Judicial Evidence
- discuss the classification of Judicial Evidence.

3.3 Judicial Evidence

3.3.1 What is Judicial Evidence?

These are evidences that are acceptable before a proceeding of the Court. It could also mean the process by which such material evidences are presented before a competent court of law. According to the Black' Law Dictionary, 5th Edition, judicial evidence has been described to be those evidence sanctioned law, of ascertaining in a judicial proceeding the truth respecting a question. Judicial evidence, according to Nokes, consists of the following:

1. Facts which are legally admissible, and

2. The legal means whereby such facts may be proved

Legally admissible facts include: Facts in issue, Hearsay evidence except where it is forbidden or excluded, Opinion of experts, Character evidence except where it is excluded or forbidden, and Privilege where it is applicable.

The Legal means of proving such facts include: Witness(es), Oaths or affirmation, Documents, Formal admissions or confession and Corroboration.

We also have Special Means of proving facts and these include: Judicial Notice and Presumption of facts. All the above related concepts as given by Nokes constitute the items of judicial evidence and some of them shall be briefly examined in the next unit.

Self-Assessment Exercise

Attempt these exercises to measure what you have learnt so far. This should not take you more than 6 minutes.

What is Judicial Evidence?

3.3.2 Items of Judicial Evidence

This involves all the substance or make up of judicial evidence. They are concepts that must be present in the presentation of evidence before the court of law. Five of these items have been identified and treated by C. Eche Adah and they include the following; Fact, Fact in Issue, Hearsay, Testimony and Thing. These are hereby examined as follows:

a. **Facts:** these are anything, state of things or relation of things capable of being perceived by the senses and any mental condition of which any person is conscious.

See Section 258 (1) of the Evidence Act 2011.

b. **Facts in Issue**: these are the facts which the plaintiff or prosecution and the defendant or accused must prove to succeed in his claim or defence. They are facts necessary in order to prove or disprove, to establish or refute a case. These are the facts which by the pleadings of the parties are in dispute.

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. See Section 258 (1) of the Evidence Act 2011.

The only fact or facts upon which the court must make its pronouncement are the facts in issue. Therefore the plaintiff in a civil proceeding or the prosecution in a criminal matter must be dutiful in discharging this burden in other to succeed in their matters.

c. **Hearsay**: Hearsay evidences are the evidence given which project the claim of another person apart from the person testifying in court. That is to say that the person given the testimony did not personally witness the incidence been testified about but such are given or made available to him/her from someone else who claims the knowledge of such fact. See Section 37-38 of the Evidence Act 2011.

Hearsay has been identified to be of two kinds and these include; Hearsay in the technical sense and Hearsay in the non-technical sense. Hearsay **in the technical sense** occurs when an assertion is made as evidence of the truth alleged and such will be inadmissible except it comes under the recognised exceptions. On the other hand, Hearsay **in the non-technical sense** happens when a witness is required to present before the court another person's statement for some other purpose different from using it to convince the court to accept such statement as the truth.

According to Adah, such situations occur in the case of sedition, where a witness is allowed to repeat the seditious statement for the purpose of accepting same as having been made but not for the purpose of establishing its truthfulness.

Subject to the provisions of the Evidence Act 2011, admissible evidence will be one that is direct and not hearsay. See Section 126 (a-d) of the Act. This section provides for the rule against hearsay and the basis for this rule includes:

a. The unreliability of the original maker of the statement who is not in court and not cross-examined
b. The depreciation of the truth arising from repetition
c. Opportunities for fraud
d. The tendency of such evidence to lead to prolonged inquiries and proceedings
e. The admission of hearsay evidence tends to encourage the substitution of weaker for stronger evidence

The above notwithstanding, there are circumstances in which hearsay will be deemed admissible and such situations include the following:

i. Dying declarations. See Section 39 (a) Evidence Act 2011
ii. Evidence of traditional or communal history of land. See Section 43 of the Evidence Act 2011
iii. Admissibility of documents under Section 83 of the Evidence Act 2011
iv. Admissions under Section 20 of the Evidence Act 2011
v. Confession under Section 28 of the Evidence Act 2011 vi. Affidavit evidence under Section 108 of the Evidence Act 2011
vii. Res Gestae under Section 4 of the Evidence Act 2011
viii. Expert Opinion under Sections 68-71 of the Evidence Act 2011.See the case of

Kate Enterprises Ltd. V Daewoo Nig. Ltd (1985)7 S.C. 1

ix. Evidence admitted on the principle of corporate personality

d. **Testimony**: This can be viewed in two ways which are the general term and in the practise sense. Generally speaking, testimony simply means the evidence given by a competent witness under oath or affirmation different from evidence derived from writings and other sources. It connotes the evidence of a live witness before a judicial proceeding.

According to the Black's Law Dictionary, 5th edition, testimony in common parlance is interchangeably used with the word ''Evidence". Testimony properly so called has been described to mean only such evidence as is delivered by a witness on the trial of a cause, either orally or in the form of affidavits or depositions. Testimony means oral or written statement made by a person in court as proof of the truth of that which is being stated or asserted, it could be direct evidence or hearsay.

e. **Things:** These are the objects upon which a person exercises dominion. They are the objects of a right. Things falls into the category of what the law stipulates to be the object over which a person exercises a right, and with reference to which another person lies under a duty. These are permanent objects not being persons who can respond to situations through their senses either by perceptions or feelings.

Things according to the Black's Law Dictionary, 5th edition, ''things'' are in three types which are:

I. Things real or immovable:- This comprises of lands, tenements and hereditaments. These are particularly fixed to the ground as they cannot be moved from one place to another.

Things personal and movable:- These comprise of goods and chattels, properties that you can move from one place to another.

II. Things mixed:- These share both characteristics of things real and things personal as above described. It includes such things as a title-deed, a term for years e.t.c. These can qualify as real and personal at the same time.

3.3.3 Classification of Judicial Evidence

Evidence or Judicial evidence has been subjected to several classifications from different perspectives. We have classification according to legal writers and classification in compliance with the provisions of the Act. We shall attempt the examination of the classifications from both sides for a proper understanding.

C. Eche Adah has classified judicial evidence into five, although this classification has been subject to several criticisms. This author classified judicial evidence into: Primary and Secondary Evidence, Direct or Testimonial Evidence, Circumstantial Evidence, Insufficient, prima facie and conclusive Evidence, Real Evidence. These are examined as follows:

a) **Primary and Secondary Evidence**: These terms are used in connection with documents. Primary evidence are those termed to be the best as there is no other better than it while secondary evidence is that which suggests that there is a better evidence other than itself. Original documents are primary evidence and have overriding effect above other types of evidence while the copy of such evidence is secondary evidence of its content. See Section 85-87 of the Evidence Act 2011

b) **Direct or Testimonial Evidence**: This is said to be applicable in two ways; either as the direct evidence as testimony made by a witness in the law court and as statement of witness based on perception of the fact in issue or relevant facts. But this evidence is rather used in the first way as it refers to the direct evidence of a witness who saw the occurrence of an incidence.

c) **Circumstantial Evidence**: This deals with the type of evidence in which the fact in issue may be inferred from a given situation or occurrence. This kind of evidence is only made applicable when there is the absence of direct evidence. This assertion has been

subject of judicial decision in the case of **Udo-debia & others v. The State [1976] 11 S.C. 133**, where the Supreme Court held as follows:

Where direct testimony of eye-witness is not available, the court is permitted to infer from the facts proved, the existence of other facts that may be logically inferred.

Circumstantial evidence is one which projects a number of circumstances in which inference can be made of the occurrence of a situation, thus becoming the facts upon which the case rests. Example of such situation came up in the case of **Francis Idika Kalu v. The State [1993] 7 S.C.N.J. (Part I) 113.** Here the accused and the deceased were the only persons in a room. The deceased was found dead with his throat cut and the accused was found standing with a blood-stained machete in his hand beside the corpse. Even though there was no direct evidence, the Supreme Court upheld the conviction of the appellant on the ground that from the surrounding circumstances, ‘’the evidence adduced cogently, irresistibly and unmistakenly pointed to the appellant as the murderer’’.

It is worthy of note that for a circumstantial evidence to be relied on, it must be that which is cogent, unequivocal, strong and compelling and must lead to the irresistible conclusion that the accused and no other person committed the offence, such evidence must make no room for any reasonable doubt.

d) **Insufficient, prima facie and conclusive Evidence**: **Insufficient evidence** is that which is not adequate to lend a support to the case of the party giving it, thus, making it unappealing to a reasonable man to make it the basis of a judgement. Example of such situation is the case of **Uche and Nwosu v. The Queen [1964] 1 All N.L.R. 195**. In this case, the only evidence against the second Appellant in a case of robbery was that he was seen entering the same bus with the first Appellant who had overwhelming evidence against him for the commission of the offence. It was held that the conviction of the second Appellant was not valid as the evidence against him was insufficient.

When a case is undefended, evidence adduced in support of the case, may be held to be insufficient by the court.

Prima facie evidence on its own part is that which would entitle a party to a judgement in his favour unless such evidence is contradicted. The term ‘’prima facie’’ is a Latin expression which means ‘’on the face of it’’ on the first impression or at the first sight. When a prima facie evidence is established by a party, it shifts the burden of proof to the other

party and in the absence of any or further evidence to the contrary, the prima facie evidence becomes a conclusive proof. This term is normally invoked at a stage of a no ‘’case submission’’ in a criminal trial. In a criminal case, a prima facie evidence is established when the prosecution has presented sufficient evidence to render reasonable a conclusion on the face of the evidence that the accused is convictable in the absence of a contrary evidence.

A prima facie evidence has been described as not synonymous with conclusive or sufficient proof, it is the evidence which on the face of it is sufficient to sustain the charge preferred against the accused.

Conclusive evidence is that evidence which cannot be contradicted. An example of this is the criminal culpability of a child under seven years of age under the Section 50 (a) of the Penal Code which provides that: ‘’No act is an offence’’ if it done ‘’by a child under seven years of age’’. The implication of this is that if in any criminal case, the accused or the offender is found to be younger or lesser than seven years of age, he would not be held liable as he is not capable of committing a criminal offence under the law.

e) **Real Evidence**: The definition of this has been presented in the expression of Phipson as ‘’material objects, other than documents produced for the inspection of the court. Real evidence has been classified into six different types and these are as follows:

i. **Material Objects**: These are any kind of evidence produced for the proving of facts in issue or relevant fact in a judicial proceeding.
ii. **Appearance of a person**: This entails the procurement of a person’s physical appearance in court for the purpose of establishing certain facts like injury sustained, claim on paternity of a child or the determination of the age of a child.
iii. **Demeanour of Witnesses**: This deals with the character of a witness either within or without the court. The behaviour of a witness observed as to truthfulness, deceitfulness vengeful or otherwise could be used as evidence before the court and this constitutes real evidence.
iv. **View:** This deals with the inspection of the place of occurrence of an event upon which a case is established. This in law is what is referred to the visit to the ‘’locus in quo’’. Locus in quo is the scene of a crime or where an act been disputed occurred.
v. **Tape-Recording**: This is an aspect of electronic evidence as provided for under the Evidence Act 2011. When a tape recording

is allowed to be played in court for the purpose of putting words expression from it into evidence, it becomes real evidence.

vi. **Documents**: This involves the usage of a document in evidence as a chattel and not for the purpose of the perusal of its content. Example of this is the presentation of an alleged stolen book that is recovered and now presented in court as evidence.

Take note that the above treated classifications according to Eche Adah has been duly criticised by C.C. Nweze on the ground that it is not co-extensive with the main division of judicial evidence given under the Evidence Act. He said the classifications cannot be correct as it will only fit as a sub classification of certain evidence like documentary evidence. He further argued that the classification of Adah which project insufficient, prima facie and conclusive evidence is not accurate as they are mere terminologies employed in relation to the burden of proof.

The criticism of Nweze is rather out of place in all ramification giving regards to the fact that Adah never said that the classifications are based on the express provisions of the Evidence Act. Thus it is a classification based on a voyage of academic pursuit for the purpose of easy identification of necessary concepts under the law of evidence.

Furthermore, Nweze agreed that Adah's classification could fit into a sub division of documentary evidence that therefore means that such classifications are not in any way out of place if it can still be deemed to be somehow relevant. It is my candid opinion that the attempt to classify judicial evidence according to the express provision of the Evidence Act should not in any way invalidate Adah's definition which has been able to project a good academic understanding of the different types of judicial evidence. Adah's definition does not in any way preclude the given of any other classification as may be deemed necessary like the one given under the Evidence Act.

Having therefore examined the classifications of judicial evidence according to legal writers, it will be necessary for us to examine the classification of judicial evidence in accordance with the express provision of the Evidence Act. The classification of Judicial Evidence under the Evidence Act is traditional three types which include: **Oral Evidence, Evidence of Material Things/Real Evidence and Documentary Evidence**, but the Evidence Act 2011 seems to have added an extra classification which is **Electronic Evidence**. All these four identified will now be discussed as follows:

A. **Oral Evidence**: This is the testimony given in person by a witness before a law court. It is the presentation of evidence by word of mouth while testifying in the witness box. The witness is normally

put on oath or allowed to affirm based on his/her religious belief before proceeding to give evidence. Oral evidence of facts is expected to be given in a trial. See Section 125 of the Evidence Act 2011 provides that ‘’All facts, except the contents of documents, may be proved by oral evidence’’.

Nevertheless it is noteworthy that the meaning of oral evidence has been expanded by the Evidence Act by virtue of its provision for written evidence for those witnesses with speech challenges. This therefore qualifies the literal meaning of oral evidence as the evidence given by such with speech disability is deemed to be oral evidence by the Act. Section 176 (1) and (2) provides as follows:

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 ill open court.*
2. *Evidence so given shall be deemed to be oral evidence*
   Oral evidence in a proceeding is very important to the court because it allows the court to take certain facts surrounding the witness composure at trial into consideration in forming its opinion about the authenticity and truthfulness of the evidence being given by the witness. During the different stages of examination of witness, i.e. Examination in Chief, Cross Examination and Re-Examination, the testimony of the witness is being vividly observed in other to determine the accuracy of the evidence been given by the witness.

B. **Evidence of Material Things/Real Evidence**: This kind of evidence has been described to be objective or demonstrative evidence derived by the court from the inspection of physical objects other than documents which could be a place, a person, animal or thing. It always occurs when there is a reference to it by oral evidence in a court’s proceeding. What qualifies as Real Evidence has been set out in Section 127 (1) and (2) as follows:

(I) If oral evidence refers to the existence or condition of any material thing other than a document, the court may, if it deems fit

(a) require the production of such material thing for its inspection. or

(b) inspect an)' moveable or immovable property the inspection of which may be material to the proper determination of the question in dispute.

(2) When an inspection of property under this section is required to be held at a place outside the courtroom, the court shall either-

(a) be adjourned to the place where the subject-matter of the said inspection may be and the proceeding shall continue at that place until the court further adjourns back to its original place of sitting, or to some other place of sitting; or

(b) attend and make an inspection of the subject-matter only, evidence, if any, of what transpired there being given in court afterwards, and if) either case the defendant if any, shall bepresent.

An example of the presentation of real evidence before the court is the case of **Lyon v. Taylor (1862) 3 F & F., 731.** In this case the court ordered the production of a fierce and mischievous dog in court for the purpose of examination.

C. **Documentary Evidence**: This kind of evidence deals with the production of documents in a judicial proceeding for the purpose of proving its content. According to Hon. Justice P.A. Onamade, Documentary evidence is of tremendous importance in court proceeding. To him, Documentary Evidence forms part of the entire gamut of the Law of Evidence. It is the yardstick by which the veracity of oral testimony is tested. The importance of documentary evidence is well enunciated in the dictum of Lord Mcnaghten when he asserted in **Hennessey v. Keating (1908) 421 L.T.R. 169** that the eye is no doubt the best test. This therefore implies that what the eyes of the court see via documents tendered in trial helps the formation of better opinion on the matter.

Documentary evidence simply put will qualify for the usage of documents in giving evidence in a proceeding. The kinds of documents which are regarded under the law are provided for under Section 258(1) of the Evidence Act 2011. The Paragraphs 8 of that section defines the word ‘’documents’’ which is said to include;

(a) books., maps, plans, graphs., 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;

(b) any disc. tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced from it, and

(c) any film, negative, tape or other device in which one or more visual Images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced from it; and

(d) any device by means of which information is recorded., stored or retrievable including computer output:

It is settled law that documentary evidence is a veritable aid for assessing oral testimony. The tendering of Evidence is believed to have a very important purpose but not just for fun and this has been established in the Supreme Court case of **Salawu Ajide v. Kadiri Kelani (1985) 3 NWLR part 12, 248 at 270** here Oputa JSC held as follows:

… every document tendered by a party to a case must be tendered with some end in view. The document may be tendered to advance and further strengthen the case of the party who tendered it or adversely to weaken or destroy the case of his adversary.

D. **Electronic Evidence**: This kind of evidence deals with the tendering of the output of electronic gadgets or equipment as evidence in court. Particularly Section 84 of the Evidence Act 2011 provides for the acceptability and admissibility of statements generated from computers as evidence in the law court. The Section 84 (1) and (2) of the Evidence Act 2011 provides as follows:

(]) In any proceeding a statement contained in a document produced by a computer shall be admissible as evidence of any fact stated in it of which direct oral evidence would be admissible if it is shown that the conditions in subsection (2) of this section are satisfied in relation to the statement and computer in question.

(2) The conditions referred to in subsection (l) of this section are

(a) that the document containing the statement was produced by the computer during a period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period, whether for profit or not by anybody, whether corporate or not, or by any individual;

(b) that over that period there was regularly supplied to the computer in the ordinary course of those activities information of the kind contained in the statement or of the kind from which the information so contained is derived;

(c) that throughout the material part of that period the computer was operating properly or, if not, that in any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of its contents; and

(d) that the information contained in the statement reproduces 01' is derived from information supplied to the computer in the ordinary course of those activities.

The Evidence Act 2011 officially provides for the recognition of recording machines, computers and the likes as one of the means by which evidence can be given in a judicial proceeding. Data and sound track of a recording gadgets and output of a computer are regarded as evidence by the Act. See Section 258(1) paragraph 8 (b)-(d), it provides as follows:

(b) any disc. tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced from it, and

(c) any film, negative, tape or other device in which one or more visual Images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced from it; and

(d) any device by means of which information is recorded., stored or retrievable including computer output:

3.4 Summary

Here we have examined what judicial evidence is, the items and classification of judicial evidence. We understand that under the Evidence Act 2011, the classification of evidence is now expanded to include acceptability of output of recording gadgets and computers as evidence in a judicial proceeding.

3.5 References/Further Readings/Web Resources

C.C. Nweze: Contentious issues & Responses in Contemporary Evidence Law In Nigeria. [Institute for Development Studies: University of Enugu] 2003

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The Black's Law Dictionary, 5th Edition.

3.6 Possible Answers to Self-Assessment Exercises.

Judicial evidence consists of facts which are legally admissible, and the legal means whereby such facts may be proved.

MODULE 2 SOURCES OF LAWS OF EVIDENCE

UNIT 1 SCOPE OF THE LAW OF EVIDENCE

Unit structure

1.1 Introduction

Knowledge of the scope and source of the Law of Evidence enhances our appreciation of its application in practise. This unit therefore focuses on the classification of the law of evidence and its source.

1.2 Intended Learning Outcomes

By the end of this unit, you will be able to:

- identify the coverage area of the law of evidence in relation to its classification
- discuss historical development of the Law of Evidence.

1.3 Scope of The Law of Evidence

Scope simply put means the range or extent of matters being dealt with, studied and e.t.c. Thus, in regard to the law of evidence, the scope refers to the area of coverage of the law of evidence and this finds its bearing with one of the divisions of law as classified. This therefore will lead us into considering the classification of law by legal writers.

1.3.1 Classification of Law

Law is that which is laid down, ordained or established. It is a rule or method according to which phenomena or actions co-exist or follow each other. It can be a rule of action within a given society. The full understanding of the concept of law can be derived from its classification most especially in relation to practical application of its principles.
According to Black's Law Dictionary, 5th edition, classification means arrangement into groups or categories on the established criteria. This can have two meanings, one primarily signifying a division required by statutes, fundamental and substantial, and the other secondary, signifying an arrangement or enumeration adopted for convenience only.

Classifications are given for ease of reference and clarity of intent and content, thus the need to give the classification of law by legal writers. For a proper understanding of the concept of ''Law'', Legal writers have given a clear division of it into two branches which are: (a) Substantive and (b) Adjectival or Adjective Law.

a. Substantive Law

This branch of law is one that defines rights, duties and liabilities of parties to a transaction in issue. It is simply referred to as the basic law of rights and duties. It 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 of these are: The Criminal Code and The Penal code.

b. Adjectival Law

This is also referred to as the law of procedures or law of practice. This branch of law governs the machinery by which substantive law is lifted from the statute book and administered in practice. It regulates the manner and style by which a judicial proceeding is carried out and it deals with the establishment of facts upon which rights, duties, and liabilities are founded in a judicial proceeding. It is that part of law which provides a method for enforcing or maintaining rights, or obtaining redress for their invasion. Examples of this branch of law are; Criminal Procedure Code, Criminal Procedure Act and Evidence Act.

It is worthy of acknowledgement that adjectival law deals with procedure and evidence. This term ''procedure'' is often used to embrace evidence, especially in proceedings where evidence is required.

Self-Assessment Exercise

Attempt these exercises to measure what you have learnt so far. This should not take you more than 6 minutes.

Discuss the classifications of law

1.3.2 Theories of Sources of Law

We cannot properly consider the sources of law of evidence without first understanding the sources of law itself. It is therefore in this light that the sources of law will be based on the theories of the sources of law. The theories of Sources of Law have been explained to include: the Consensus theory, the Conflict theory and the Middle-of-the-Road theory.

These are hereby discussed as follows:

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. They exercise the political and legal powers of the state but not necessarily to protect their positions, statues or class interests.

It is worthy of note that 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.

1.3.3 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, it is asserted that the Law of Evidence derives its source from the following:

a. Informal (Traditional) or non-formal source. The rules from this source may be legal but they are not authoritative. These are persuasive only.
b. Formal source of law. A formal source gives validity to the law. It is also in the nature of the will and common consciousness of the people of Nigeria; -
c. Material Source. This may be divided into historical and legal
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:
i. The legislature, which through legislations, brings into existence, received and local statutes,
ii. The courts which through authoritative judicial decisions, create judicial precedents eg common law, doctrines of Equity and local precedents
iii. Customs, the origin of customary laws.

1.3.4 Historical development of Law of Evidence

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

a. Local laws and custom
b. Received English Law, to wit;

i. The English Common Law b. the doctrines of Equity
The statutes of general application in force in England as at January 1, 1900

ii. Local legislations and the judicial interpretation based on them

iii. The Law Reports
iv. Text Books and Monographs on Nigerian Law
v. Judicial Precedents.

1.4 Summary

In this unit we have examined classification of Law, theories of the Sources of Law of Evidence and the Sources of the Law of evidence. We have been able to learn that under the Evidence Act 2011, the classification of evidence has become expanded with the introduction of the acceptability of the output of recording gadgets and computers as evidence in a judicial proceeding.

1.5 References/Further Readings/Web Resources

C.C. Nweze: Contentious issues & Responses in Contemporary Evidence Law in Nigeria. [Institute for Development Studies: University of Enugu] 2003

G. Eche Adah: The Nigerian Law of Evidence [Malthouse Press Limited: Lagos] 2000 3. Hon. Justice P.A. Onamade: Documentary Evidence- Cases and Materials [Philade Co. Ltd: Lagos] 2002

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

The Evidence Act, 2011.

The Black's Law Dictionary, 5th Edition

1.6 Possible Answers to Self-Assessment Exercises.

SAE

Broadly, law can be classified into substantive and adjectival law

UNIT 2 ORIGIN OF THE LAW OF EVIDENCE

Unit structure

2.1 Introduction

Our perception of the law of evidence will be incomplete and vague without a vivid description of the origin of the law of evidence. The understanding of the origin of the law of evidence will be an addition to the wealth of knowledge on this concept.

2.2 Intended Learning Outcomes

This unit deals with the study of the origin of the law of evidence in Nigeria from the primitive stage of the indigenous Nigerian Societies unto the present modern and well enunciated law of evidence.

2.3 Origin of The Law of Evidence

It is most appropriate to trace the origin of the law of evidence in Nigeria to the English law. This is because prior to the advent of British rule in Nigeria the indigenous Nigerian societies were known to have their own system of adjudication during which different procedures were adopted in order to be able to get the desired result.

These indigenous practices continued until the advent of the Colonial British rule by which the English legal system became introduced into the area Nigeria. Thus, by virtue of the introduction of the English Law into the Nigerian legal system, the system of adjudication changed and the new system with its procedure became reformed progressively into what we now have as the present Law of Evidence.

According to C C. Nweze, the Law of Evidence in Nigeria is traceable to certain main sources which are the primary or authoritative sources; legal sources and contextual derivation or historical sources.

2.3.1 Historical Origin of the Law of Evidence in Nigeria

The origin of the law of evidence as it relates to the Nigerian Legislation will be examine in three stages of its advent in the Nigeria Legal system and these stages include; the PreColonial Nigeria, The Colonia Era and the Post- Colonial Nigeria.

2.3.1.1 Pre-Colonial Era.

As earlier stated above, the law of evidence was visible, real and applicable within the Precolonial settlements and communities of Nigeria. The Pre-Colonial Nigeria Era was constituted by settlements, communities, villages, towns and most especially kingdoms and empires such as the Oyo Empire in the South-west, the Borno Empire in the North and the Igbo communities in the East.

As it normally occurs in any given gathering of humans, these kingdoms and communities were not without their conflicts, disputes and challenges which were adequately and promptly attended to by the adjudicative system constituted by the various rulers of the then Nigeria Community.

Though very unofficial and sometimes very crooked, these communities had a kind of traditional legal system of adjudication where complaints were attended to by a constituted council or authority and issues were addressed through laid down procedures similar to the rules of evidence as we now have under the modern system of government.

Such laws which were applied in the pre-colonial settlements, Empires and Kingdoms which now constitute Nigeria include:

1. The Moslem Law of the Maliki School which applied the Islamic laws in the in Islam dominated areas of the Northern Nigeria. These Islamic Laws as applicable then were written laws.
2. The Customary Law which were applicable in the non-Islamic areas of the PreColonial Nigeria. These laws as applied were wholly unwritten or partly written.

2.3.1.2 Colonial Law of Evidence

At the invasion of Nigeria by the British authourity, the laws applicable in England were gradually and progressively made applicable in the Nigerian British Colonies. By Ordinance, No 3, of 1863, Her Royal

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 Colonial period in Nigeria witnessed the introduction of the English Legal system which sets up English types of courts to enforce and administer the introduced laws as above stated. Examples of such courts are:

a. The Consular Court
b. The Equity Court.
c. 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.
d. 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.

The introduction of the English Law notwithstanding, the existing local laws were not in any way jettisoned as the local laws and customs, which were not repugnant to natural justice, equity and good conscience or incompatible with local statutes, were given recognition and allowed to pass as applicable laws co-existing with the English laws. 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 customs declined and the received 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 criminal 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:

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

By the 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.

2.3.1.3 Post-Colonial Era

This Era marked the spate of the highest form of development to the law of Evidence in Nigeria. This period particularly witnessed a lot of legislative activism by the Nigerian legislators though not much difference has been made to the Evidence law as received in relation to the content but the efforts have been nonetheless commendable.

Both the Independent Constitution of 1960 and the Republican Constitution of 1963 vested the power to legislate on residual matters of the Constitution which includes the law of evidence on the Regional Government. The then Northern Nigeria enacted the Evidence Law, Cap 40, Laws of Northern Nigeria, 1963 while the then Eastern Region Enacted the Evidence Law, Cap 49, Laws of Eastern Nigeria, 1963, both of these laws were almost the same with the provisions of the Evidence Act.

A further development to the Law of Evidence was provoked by the advent of the 1979 Constitution which placed any matter relating to the Law of Evidence under the Exclusive Legislative list. By this new development the laws of evidence of the defunct regional government ceased to be operative as they became devoid of the legal force to make them operational. The Evidence ordinance became incorporated in the Laws of the Federation of Nigeria as the Evidence Act, Cap 112, Laws of the Federation of Nigeria 1990.

In the recent times there have been several other legislative activisms for the reformation of the Evidence act and these gave birth to the present operational Evidence Act 2011, Cap E.14, Laws of the Federation of Nigeria. This Evidence Act has 259 Sections.

It is noteworthy that the Evidence Act did not in any way exclude the admissibility of evidence which is made admissible under other known legislations which are applicable in Nigeria. Section 3 of the Evidence Act 2011 provides as follows:

Nothing in this Act shall prejudice the admissibility of any evidence that is made admissible by any other legislation validly in force in Nigeria.
The implication of this can be understood in two ways. Firstly, it implies that evidence that shall be deemed admissible under other legislations in Nigeria shall not be deemed admissible and secondly, it implies that where the Evidence Act is silent or deficient on any issue, recourse will be made to the law prevailing before the Act, such as the Common Law. This assertion has been judicially determined in the Supreme Court case of **R v. Agaragariga Itule [1961] 1 All N.L.R. 462**. Here the court tried to determine whether the part of a confession which was in favour of an accused was admissible as evidence in favour of the accused. It was held by the court that such matter was not expressly provided for under the Evidence Act and therefore the common law shall be applicable under Section 5(a) of the Act.

2.3.2 Contextual Origin of the Law of Evidence

The reference to this source is in relation to where its contents are derived from. The Nigerian Law of Evidence is derived from several other relative legal materials and documents among which is ‘’A Digest of the Law of Evidence” being the work of Sir James Fitzgerald Stephen. This writer is also credited with the drafting of the Indian Evidence Act which provisions were drawn largely from his Digest of the Law of Evidence. It is believed that the Nigerian Evidence Act by its contents is largely derived from the Indian Evidence Act of 1872.

It has been substantiated that the Digest of the Law of Evidence by Sir James Fitzgerald Stephen was an attempt made by him to codify the common law rules of evidence in England but it could not gain the stamina to replace the common law of England. It is also believed that the Kenyan and Tanzanian Evidence Acts were largely derived from the Indian Evidence Act.

It is also believed that the Nigerian Law of Evidence have some of its content derived from the English Statutes. Particularly, Section 180 (g) of the Evidence Act 2011 is believed to be based on Section 1 of the

Criminal Evidence Act of England 1898. Also Section 209 of the Evidence Act 2011 is derived partially from Section 38 of the Children and Young Persons' Act of England.

2.3.3 The Primary, Authoritative or Legal Origin of the Law of Evidence

This talks of the principal source of the law of evidence in Nigeria. This source is the direct and official derivation of the Nigerian Evidence. This is credited to three main sources which are:

1. The Evidence Act of 1945. The Evidence Act 1945 was passed into Law in 1943 and it became operational in the month of June, 1945
2. The English Common Law rules of Evidence, now applicable under Section 3 of the Evidence Act 2011 and
3. The Rules of Evidence Found in Local Statutes.

Self-Assessment Exercise

Attempt these exercises to measure what you have learnt so far. This should not take you more than 6 minutes.

1. Discuss the legal origin of the Nigerian law of Evidence.

2.4 Summary

In this unit, you have learned about the origin 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 1st 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.

2.5 References/Further Readings/Web Resources

C.C. Nweze: Contentious issues & Responses in Contemporary Evidence Law in Nigeria. [Institute for Development Studies: University of Enugu] 2003

C. Eche Adah: The Nigerian Law of Evidence [Malthouse Press Limited: Lagos] 2000

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

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The Constitution 1979

The Constitution 1999

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

2.1 Possible Answers to Self-Assessment Exercises.

SAE

The Evidence Act, 1945, the Common law rules of Evidence and other local statutes

UNIT 3 OTHER LEGAL ORIGIN OF THE LAW OF EVIDENCE

Unit structure

3.1 Introduction

In this concluding unit on Sources of Law of Evidence, you shall learn 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.

3.2 Intended Learning Outcomes

By the end of this Unit, you will be able to:

- discuss or explain the Nigeria Constitution as a Source of Law of Evidence
- discuss the extent to which the Law of Evidence is alien or home grown
- critique the Law of Evidence within the context of its source or historical evolution.

3.3 Other Legal Origin of the Law of Evidence

There are other legal sources which are believed to be a derivation for the Nigerian Evidence Act and these include; Judicial Precedent, Statutes, Legal Text and the Constitution. All these are briefly examined in relation to their area of connection as follows:

3.3.1 Judicial Precedent:

In the early application of law, there was no organised system of Law reporting. Records of court 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 Mansfield 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 and Keble" (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.

3.3.2 Statutes:

According to Black's Law Dictionary, 5th Edition, statute is referred to as an act of the Legislature declaring, commanding, or prohibiting something. It is a particular law enacted and established by the will of the legislative department of government. A statute may also mean a single act of a legislature or a body of acts which are collected and arranged according to a scheme or for a session of a legislature department.

Nigerian Laws are referred to as Nigerian Statutes and some of them also contain some rules of evidence which are nonetheless applicable and acceptable to be used in any judicial proceeding which relates to its coverage areas. Examples of such statutes include:

a. The Road Traffic Law: 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.
b. The Companies and Allied Matters act: The existence of a company became provable by the production of a certificate of incorporation
c. The Marriage Act: Proof a marriage can now be established on presentation of a marriage certificate

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

3.3.3 Legal Text:

These are books on issue of laws whether generalised or specialised. They are books which presents principles on any branch of law. Legal Texts are books written by legal luminaries in different or particular areas of law. These kinds of books are of persuasive authority in a judicial proceeding. Text Books written by knowledgeable people in law can be a Ssource of Law of Evidence. Here are a number of legal literatures 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, Hon Justice Onamade: Documentary Evidence-Cases and Materials, Chitty on Contract, Babalola, Afe: Law and Practice of Evidence in Nigeria and many more others.

3.3.4 The Nigerian Constitution:

According to Black's Law Dictionary, 5th Edition, a constitution is the organic and fundamental law of a nation or state, which may be written or unwritten, establishing the character and conception of its government, laying the basic principles to which its internal life is to be conformed, organising the government and regulating, distributing, and limiting the functions of its different departments, and prescribing the extent and manner of the exercise of sovereign powers.

A constitution can either be written or unwritten; it can also be rigid or flexible depending on the style and modality adopted by a given government. A written constitution is a document which embodies all the rules, regulation and directions for the operations of the government of a given society in relation with its citizenry generally.

The constitution can also provide for rules of evidence like we have in the Nigerian Constitution. The rules of evidence as featured in the Nigerian constitution will be examined in this unit with reference to the past and present Nigerian Constitutions which include: the Independence Constitution of 1960, The Republican Constitution of 1963, the 1979 Constitution and the 1999 Constitution.

a. Independence Constitution, 1960: Section 3 (1) o f The Nigerian (Constitution) Order-in-Council, 1960 provided as follows:

> *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 and Concurrent legislative lists of the constitution were silent on the issues of Law of Evidence in 1960 but the constitution empowered both the Central Government and the Regional Government to make laws on any matter as shall be deemed fit. Item 28 of the Concurrent Legislative List empowered both the Central and Regional Governments to legislate on "any matter that is incidental or supplementary to any matter mentioned elsewhere in this list."

This constitutional stand therefore implies that the Regional Government can legislative on matters relating to the rules of evidence except where such legislative activism is inconsistent with the Act of the Parliament at the Central level. See Section 64 (4) & (5):

(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 to any matter that is not included in the Exclusive Legislative List.

But it is worthy of note that this power of the Regional Government to make such legislations will be made manifest only when the Parliament at the Central Level has not made any law in that regard. See Section 77 of the Constitution

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

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

c.

	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.

d. The 1979, 1999 and 2011 Constitutions

These Constitutions by their Section 4 provides for the powers of the Federal Legislature to make laws for the whole country particularly on matters contained in the Exclusive legislative list to the exclusion of the State Legislature. Sections 4 (2) and (3) of the 2011 Constitution 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 any 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.*

Section 4(3) of the 1999 and 2011 Constitution of the Federal Republic of Nigeria empowers only the National Assembly to legislate on matters or items included in the Exclusive Legislative List of the Constitution. Section 4 (3) provides as follows:

The power of the national assembly to make laws for the peace, order and good government of the Federation with respect to any matter included in the Exclusive Legislative List shall save, as otherwise provided in this constitution, be to the exclusion of the Houses of Assembly of States

Item 23 of the Exclusive Legislative List 2nd Schedule enlisted matters of Evidence within the purview of the Federal Legislature and this implies that the exercise of such power is to the exclusion of the power of State Legislature to act upon matters of evidence.

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.

It is worthy of note that the Nigerian 1999 and 2011 Constitution expressly provided for some rules of evidence particularly as regards Right to Fair Hearing provided for under the Section 36 of the Constitution. Section 36 provide as follow:

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 it 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 be 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 interpreter 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 time it took place, constitute such an offence, and no penalty shall be 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 of competent 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 he has been pardoned for a criminal offence shall again be tried 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.

The Constitution is t h e supreme law of the nation and i t s p r o v i s i o n s has a binding force on all authorities and persons within the Federal Republic of Nigeria. Any law that is inconsistent with the provisions of the Constitution is void to the extent of the inconsistency.

Self-Assessment Exercise

Attempt these exercises to measure what you have learnt so far. This should not take you more than 6 minutes.

1. Discuss the body vested with power to make laws on matters relating to rules of Evidence under the 1999 Constitution

Take note that Sections 2 and 3 of the Evidence Act 2011 provides for the admissibility of any evidence made admissible under any other valid legislation in Nigeria other than the Evidence Act. The Act provides as follows:

(2) For the avoidance of doubt, all evidence given in accordance with section 1 shall, unless excluded in accordance with this or any other Act, or any other legislation validly in force in Nigeria, be admissible in judicial proceedings to which this Act applies: Provided that admissibility of such evidence shall be subject to all such conditions as may be specified in each case by or under this Act.

(3) Nothing in this Act shall prejudice the admissibility of any evidence that is made admissible by any other legislation validly in force in Nigeria.

This implies that the provisions permits the reception of evidence which; - is admissible under any other statutory enactment in force in Nigeria and - 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 while 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. There are a host of cases in which this issue has been laid to rest and these are as examined below:

In the case of R v Agaragariga Itule (1961) 1 ANLR 462 the court held that where the matter was not dealt with expressly by the Law of Evidence the common law will be applied.

In the case of R v Agwuna (1949) 12 WACA 456 at 458 it was held that there is no provision in the Act which allows evidence to be rejected save as provided in the Act itself.

3.4 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 the 1979, 1999 and 2011 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.

3.5 References/Further Readings/Web Resources

C.C. Nweze: Contentious issues & Responses in Contemporary Evidence Law in Nigeria. [Institute for Development Studies: University of Enugu] 2003.

C. Eche Adah: The Nigerian Law of Evidence [Malthouse Press Limited: Lagos] 2000.

Hon. Justice P.A. Onamade: Documentary Evidence- Cases and Materials [Philade Co. Ltd: Lagos] 2002.

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

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

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

The Evidence Act, 2011.

The Black's Law Dictionary, 5th Edition.

The Nigerian Constitution, 1960, 1963, 1979, 1999 and 2011

3.6 Possible Answers to Self-Assessment Exercises.

SAE

The National Assembly of the Federal Republic of Nigeria

1. Oral Evidence
2. Documentary Evidence
3. Real Evidence
4. Direct Evidence
5. Circumstances Evidence

MODULE 3 MAJOR TYPES OF EVIDENCE

UNIT 1 CLASSIFICATION OF LAW OF EVIDENCE

Unit structure

1.1 Introduction

Classification of evidence has been given by several legal writers according to their own perception of issues and this implies that there is no particular way to classify evidence. It may be classified into various types on different bases, thus, under this unit we shall examine all these important classifications and types of evidence.

1.2 Intended Learning Outcomes

By the end of this unit, you will be able to:

- Identify the major classification of the Law of Evidence.
- Understand how the different classes or types of Evidence are made applicable in any judicial proceeding.

1.3 Classification of Law of Evidence

1.3.1 General Classification of Evidence

Writers like Gross and Williams, Nwadialo, Nweze, Adah and others have given several classification and types of evidence and these are examined briefly in this unit.

According to Gross and Williams Evidence can be classified into: Direct and circumstantial evidence, Primary and Secondary evidence and Insufficient, Prima Facie and Conclusive. Nwadialo on his own part classified Evidence into: Direct and Circumstantial Evidence, Direct and hearsay Evidence, Oral and Documentary, Real Evidence and Primary and Secondary Evidence.

No one particular classification is better than the other. In a conflict situation, it is incumbent that one must, (whether consciously or not,) determine the nature of evidence, whether or not the piece of evidence belongs to any of the categories classified. From there, it is possible to proceed further to determine rules of law which should be applied to the case. The important thing therefore is that each type of evidence should be identified and understood.

From the various classifications mentioned above we have been able to make a list of the types of evidence we have and these include: Direct, Circumstantial, Primary, Secondary, Insufficient, Prima facie, Conclusive, Hearsay, Oral, Documentary, Real, Original, Indirect, Personal, Pre-appointed, Causal and Best Evidence. All these are briefly examined as follows:

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 and 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: This is 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 is provided for under Section 86 Evidence Act 2011: This is 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 is provided for under Section 87 Evidence Act 2011. These include Evidence of hearsay; Testimony of

Contents of a lost document; mediate evidence, substitutionary evidence.

5) Insufficient Evidence: This is the 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: This is also called "parol evidence", means evidence given orally – a verbal testimony of a witness.

10. Documentary Evidence: Documentary evidence is that evidence which is supplied by 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 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: 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 certainty of the facts in question or evidence which comes on its surface, no suggestion of better evidence behind. Thus 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.

Self-Assessment Exercise

Attempt these exercises to measure what you have learnt so far. This should not take you more than 6 minutes.

1. Enumerate some of the classifications of Evidence.

Take note that there are a lot more types of evidence which are not examined herein some of these are admissible and non-admissible evidence, expert evidence and e.t.c., the list is inexhaustible.

Visit to Locus in quo has also been classified as a type of evidence but the class of evidence to which it belongs is not certain. But this has been dealt with in the case of *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.

1.4 Summary

Evidence may be classified in various ways. We have examined the classification of evidence according to Nwadialo and other legal writers who have attempted to give us different classifications. 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.

1.5 References/Further Readings/Web Resources

C.C. Nweze: Contentious issues & Responses in Contemporary Evidence Law in Nigeria. [Institute for Development Studies: University of Enugu] 2003

G. Eche Adah: The Nigerian Law of Evidence [Malthouse Press Limited: Lagos] 2000

Hon. Justice P.A. Onamade: Documentary Evidence- Cases and Materials [Philade Co. Ltd: Lagos] 2002

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

Cross, Rupert & Anor (1971) An Outline of the Law of Evidence 3rd Ed.

Butterworths, London.

The Evidence Act, 2011.

The Black's Law Dictionary, 5th Edition

1.6 Possible Answers to Self-Assessment Exercises.

1. Oral Evidence
2. Documentary Evidence
    - Real Evidence
    - Direct Evidence
    - Circumstances Evidence

UNIT 2 DIRECT AND CIRCUMSTANCES EVIDENCE

Unit structure

2.1 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'.

2.2 Intended Learning Outcomes

By the end of this unit, you will be able to:

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

2.3 Direct and Circumstances Evidence

2.3.1 Direct Evidence and Circumstantial Evidence

According to Black's Law Dictionary, evidence is any species of proof, or probative matter, legally presented at the trial of an issue, by the act of the parties and through the medium of witnesses, records, documents, exhibits, concrete objects, e.t.c., for the purpose of inducing belief in the minds of the court or jury as to their contention.

Thayer on his own part regarded evidence as, 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. It is the process of presenting testimony,

documents, or tangible objects that tend to prove or dispose the existence of an alleged fact or by direct evidence and circumstantial evidence.

John Wigmore has rightly asserted that 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.

2.3.2 Direct Evidence

Direct evidence is a statement of personal knowledge or observations, which tends to prove a fact without inference or presumption. The word "direct" relates to the source of knowledge being disposed to. 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 such as hearing, sight, smell, touch or taste. That is to say it is the testimony as to the perception of a fact in issue. See Section 126, Evidence Act 2011. It provides as follows:

126. Subject to the provisions of Part Ill, oral evidence shall. in all cases whatever. be direct If it refers to –

a) a fact which could be seen, it must be the evidence of a witness who says he saw that fact:
b) to a fact which could be heard, it must be the evidence of a witness who says he heard that fact:
c) 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 that 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 the opinions 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 as unreasonable.

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 f act, the existence by which is required to be proved.

An example of direct evidence occurs in a situation where a testimony in a trial is given by a person who was personally present, witnessed and probably experienced some of the event at the incident and is personally given such testimony.

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. Where it is available, direct evidence is the best evidence.

Self-Assessment Exercise

Attempt these exercises to measure what you have learnt so far. This should not take you more than 6 minutes.

Discuss what you understand by direct Evidence

2.3.3 Circumstantial Evidence

Circumstantial evidence is an indirect evidence. This is the 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 of a number of items pointing to the same direction. This is the evidence of other facts from which the fact in dispute can be inferred, either directly or indirectly with more or less certainty. It is also described as presumptive or indirect evidence. Examples of Circumstantial Evidence are:

- finger-prints at the scene of crime or on the item used for a crime leading to the presumption that the person who made the prints

was either present at the scene or handled the said item or instrument used at the scene of the crime.

- possession of a murder weapons or of stolen, goods

A legal writer Pellock rightly expressed 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. One 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 stated that in order to support or sustain a conviction, circumstantial evidence must include the following:

a. be cogent and compelling
b. point irresistibly to the accused and to no other else as one culprit
c. be incompatible with the innocence of the accused
d. be incapable of explanation on the basis of other reasonable hypothesis than one of guilt.

An example of circumstantial evidence in a civil matter can occur in an allegation of adultery it may be difficult to obtain a direct evidence, but there is a possibility of getting circumstantial evidence which may include:

- Proof of existence 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
- Infection with a venereal disease
- Confirmation by Blood test

But it is worthy of note that Circumstantial evidence may be subject to certain limitations which might not make it reliable. Such limitation includes:

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.

2.4 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 from a chain of reactions or other facts present around an incident.

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

2.4 References/Further Readings/Web Resources

Aguda, Law of Evidence

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

C.C. Nweze: Contentious issues & Responses in Contemporary Evidence Law In Nigeria. [Institute for Development Studies: University of Enugu] 2003

G. Eche Adah: The Nigerian Law of Evidence [Maltlhouse Press Limited: Lagos] 2000 5. Hon. Justice P.A. Onamade: Documentary Evidence- Cases and Materials [Philade Co. Ltd: Lagos] 2002 Nwadialo, F (1999) Modern Nigerian Law of Evidence. 2ndEd.University of Lagos Press.

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

The Evidence Act, 2011.

The Black's Law Dictionary, 5th Edition

2.6 Possible Answers to Self-Assessment Exercises.

SAE

Direct Evidence is evidence obtained as a result of personal knowledge.

UNIT 3 PRIMARY AND SECONDARY EVIDENCE

Unit structure

3.1 Introduction

In the last Unit, we learnt about direct and circumstantial evidence, and the associated limitations. In this Unit, more classes of evidence like primary and secondary evidence will be examined. A student of law must be able to make distinction between each of these classes of evidence.

3.2 Intended Learning Outcomes

This unit is set out to examine in full what constitutes Primary Evidence and Secondary Evidence as applicable in a judicial proceeding

3.3 Primary and Secondary Evidence

3.3.1 Primary Evidence

The meaning of the concept ‘’Primary Evidence’’ has been set in in Section 86 of the Evidence Act 2011. It provides as follows:

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, each 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, photography, computer or other electronic or mechanical process, each shall be primary evidence of the contents of the rest; but

where they are all copies of a common original, they shall not be primary evidence of the contents of the original.

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:

I. 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.
II. 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
III. 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.

Take note that 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, the testimony concerning the condition of a thing unless the thing itself can be produced and Circumstantial evidence if a direct evidence is available.

3.3.2 Best Evidence Rule

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

Example of this is in a situation where Dike swears a s to what he saw. This is original and direct. It is better than indirect or circumstantial, like Fatima who gave a narration of what Dike told her that she (Dike) saw.

Best Evidence is the Production of original document e.g. The Will is primary which is 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, than 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 on 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, then "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.

According to 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.

Best evidence has also been described in the case of *Also R v Stephenson* (1971) 1 WLR 1, it was stated in this case that; 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.

For example in such transaction that involves written documents like 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 nonproduction is excused. However, such instances are not to be misconstrued as anything in the nature of the Best 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

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

Self-Assessment Exercise 5

Attempt these exercises to measure what you have learnt so far. This should not take you more than 6 minutes.

1. What is primary Evidence?

3.3.3 Secondary Evidence

Secondary Evidence has been described in Section 87 of the Evidence Act 2011. It provides as follows:

87. Secondary evidence includes-

a. certified copies given under the provisions hereafter contained in this Act:
b. copies made from the original by mechanical or electronic 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; and
e. oral accounts of the contents of a document given by some person who has himself seen it.

Secondary evidence is evidence other than 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 secondary evidence as a residue rather than as a class of evidence.

Furthermore, secondary evidence suggests the existence of 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.

3.4 Summary

This unit has informed and enlightened us that the best form of evidence in a judicial proceeding is Primary evidence but where such is not available the court may allow the tendering of secondary evidence as a proof of fact in a judicial proceeding.

3.5 References/Further Readings/Web Resources

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.

3.6 Possible Answers to Self-Assessment Exercises

Primary evidence includes means the document itself produced for the inspection of the court.

UNIT 4 DOCUMENTARY EVIDENCE

Unit structure

4.1 Introduction

Documentary evidence simply put means giving evidence by way of documents. It involves the tendering of documents in a judicial proceeding in order to use same to establish the fact of a matter. Documentary evidence is one of the important ways of proving the facts of a case in the court. It 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.

4.2 Intended Learning Outcome

By the end of this unit, you will be able to:

- discuss the concept of documentary evidence vis-à-vis the ways in which it can be made applicable in legal practise.

4.3 Documentary Evidence Content

4.3.1 Meaning of document

Document According to Black's Law Dictionary 8th Edition is defined to mean something tangible on which words, symbols, or marks are record and examples are the deeds, agreements, title papers, letters, receipts and other written instruments used to prove a fact.

In a technical sense, 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.

The definition of the word ‘’Document’’ was subjected to judicial interpretation in the case of **The King v. Daye (1908) 2K.B. 333** where document is defined as “any writing’’ or printing capable of being made evidence, no matter on what material it may be inscribed. Also in the case of **Hill v. R. 1945 1 K.B. 329**, Humphreys, J. describing what a document is has this to say; ‘’I find that a document must be something which teaches you and from which you can learn something, i.e. it must be something which affords information’’.

The statutory definition of a document is in Section 258 of the Evidence Act 2011. It provides as follows: "document" includes-

(a) Books, maps, plans, graphs. 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;
(b) any disc., tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced from it, and
(c) any film, negative, tape or other device in which one or more visual Images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced from it; and
(d) any device by means of which information is recorded., stored or retrievable including computer output:

Document would probably also 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’s 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?

4.3.2 Types of Documents

There are two main types of Documents and these include; Public documents and Private Document.

a. **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. Section 102 of the Evidence Act 2011 gave a comprehensive list of the constitution of Public Document as follows: The following documents are public documents

(a) documents forming the official acts or records of the official acts of----

(i) the sovereign authority,
(ii) official bodies and tribunals, or
(iii) public officers, legislative, judicial and executive, whether of Nigeria or elsewhere: and

(b) public records kept in Nigeria of private documents.

Examples of Public Documents are as follows: a. Statute:
The Courts in Nigeria take judicial notice of statutes of the federation and the Laws of the States. See Section 122 Evidence Act 2011. It is proven also by production of a copy printed the Federal Government Printing Press. A Bye-Law is proven by a copy of the bye-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. Birth Certificate, Death Certificate, Marriage Certificate 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 illustrations only and do not exhaust the list of public documents. 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.

Self-Assessment Exercise

Attempt these exercises to measure what you have learnt so far. This should not take you more than 6 minutes.

1. What is a Document?

4.3.3 Proof of Contents of Documents

The contents of documents may be proved either by: Primary evidence or by Secondary Evidence .

I. Primary Evidence: This is contained in Section 86 of the Evidence Act 2011 The primary evidence means the document itself produced for the inspection of the court. The original and physical embodiments of information or ideas such as a letter, contract, receipt, account book, blue-print, X-ray plate etc are all primary evidence. 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 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.

II. Secondary Evidence: This is found in Section 87 of the Evidence Act 2011 Generally, documents must be proved by the primary evidence (section 86). However, secondary evidence may be permitted in the following circumstances (section 87):

(a). When the original is in the 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 91 Evidence Act 2011). 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 permits 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 the following:

a. 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).

b. 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).

c. When the original is of such a nature as not to be easily movable.

d. When the original is a public document within the meaning of Section 101 of the Evidence Act, 2011. Here also, any secondary evidence of the contents of the document is admissible.

e. 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)

f. 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.

g. 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 he 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.

For purpose of clarity, 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

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

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

Proof of Document (Proof of Execution of Documents is provided for under Section 93 -101.
The Contents of a document may be proved by any of the following persons:

- 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, the following is required 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.

b. **Private document**: This is provided for under Section 103 Evidence

Act 2011. The Act provides that all documents other than public documents are private documents, and these 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 object, 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 tender 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 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 depose 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 145-168 of the Evidence Act 2011)

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.

4.3.3 Essence of tendering Documents

It has been asserted by Hon. Justice P.A. Onamade in his work; Documentary Evidence- Cases and Materials that in advocacy, a document is not tendered just for the fun of it except there is a purpose for it to be tendered. His assertion has been supported by Oputa JSC in the case of **Salawu Ajide v. Kadiri Kelani (1985) 3 NWLR part 12, 248 at 270 (or [1985] 11SC 124 at 171)** held as follows:

…every document tendered by a party to a case must be tendered with some end in view. The document may be tendered to advance and further strengthen the case of the party who tendered it or adversely to weaken or destroy the case of his adversary.

It has been asserted that it is a settled law that documentary evidence is a veritable aid for assessing oral testimony. See the case of **Fashanu v. Adekoya (1974) 6 SC. 83**.

4.4 SUMMARY

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

4.5 References/Further Readings/Web Resources

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

C.C. Nweze: Contentious issues & Responses in Contemporary Evidence Law in Nigeria. [Institute for Development Studies: University of Enugu] 2003.

G. Eche Adah: The Nigerian Law of Evidence [Maltlhouse Press Limited: Lagos] 2000.

Hon. Justice P.A. Onamade: Documentary Evidence- Cases and Materials [Philade Co. Ltd: Lagos] 2002.

The Evidence Act, 2011.

The Black's Law Dictionary, 5th Edition.

4.6 Possible Answers to Self-Assessment Exercises

SAE

A document includes books, maps, plans, graphs. drawings, photographs, any matter expressed or described upon any substance by means of letters.

MODULE 4 PROOF OF FACTS

UNIT 1 RELEVANT FACTS

Unit Structure

1.1 Introduction

The concept of "Relevant Facts" under the Law of Evidence is considered in this unit. It is worthy of note that this concept cannot and will not be properly understood except we also examine some associated concept with Relevant Facts. Such concepts to be considered include: 'facts', 'fact in issue' and 'facts relevant to facts in issue'. We shall also examine when irrelevant fact becomes relevant and irrelevant. We shall also consider the distinctions between these concepts and their different rules of operation and method by which they are proved or disproved.

1.2 Intended Learning Outcomes

The aim of this unit is to make a student of law to be able to fully understand the meaning, the operations, distinctions and applicability of: Fact, Fact in issue, Fact relevant to fact in issue and Fact relevant to fact relevant to fact in issue.

It is also focused on making the students to be able to comprehend and be able to identify Relevant Facts and classes or types irrelevant fact.

1.3 Relevant Facts

1.3.1 Fact

The Black's Law dictionary, 5th Edition, explained the meaning of ''Fact in evidence'' separately from ''Fact'' ordinarily. It states that Fact in relation to evidence means; a circumstance, event or occurrence as it actually takes or took place; a physical object or appearance, as it usually exists or existed. It is also described as an actual and absolute reality, as distinguished from mere supposition or opinion. It is also defined as a truth, as distinguished from fiction or error. It further states that ''Facts'' means reality of events or things the actual occurrence or existence of which is to be determined by evidence.

Fact simply means, ''just the way it is stated'', nothing added and nothing subtracted. Thus, the presentation of fact involves the declaration or description either ordinarily or on oath of an event. Fact simply means statement in details and this put a question into our heart and this is: Can a fact be the truth?

Fact ordinarily should mean the truth as presented by the Black's Law Dictionary, but practice has proved that not all facts presented before the courts are true. In the practicality of Law practise fact simply put may not be the truth of a situation or an event. A fact is rather the details of that event as presented. Don't ever forget that every party to a suit will only try to present the supposed fact in a way and version to which it fits their claims and defence and such presentation might actually be far from the truth as it happened

The Statutory definition of ''Fact'' has been given by the Evidence Act 2011 itself. It states that 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

A fact according to Wigmore is any act or condition or thing, assumed (for the moment) as happening or existing. A fact may be the result of one or more fact. It may consist of a series of facts in which case, Fact may either be a part of the transaction (Constituent fact) or Accompany or explain it (Accompany fact). Suffice to say that 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.

It has been asserted that facts is different from law, and also differs from opinion. Facts are presented by witnesses while the law is known and applied by the court to facts as presented. On the other hand, opinions are formed by different persons from facts stated or presented. It is worthy of note that opinions are rather subjective and not objective because it is subject to individual perceptions of things which are formed from the facts available.

It is therefore the function and duty of a court of law to derive and form its own opinion of situation from facts presented before it and such opinion must not incorporate extraneous issues. This therefore means that a lot of responsibility is placed on the court because it is always a very difficult task for one to draw what is expected to be the fact from a matter painted from different perspectives.

From this juncture I will like to present ''Fact'' in two divisions which are fact in reality context and fact in practise context.

An example of facts as reality or truth includes the following.

a. "All men and Women are mortal"
b. ''All humans have head''

EXAMPLES OF FACT SCENARIO IN PRACTISE

At this juncture, it will be needful to actually examine events that can be examined as a fact of a given case.

1. Ade and Adaobi presented a scene of an accident. Ade in his testimony before the court stated that he was standing under a mango tree at No. 2 Awolowo Way, Ikeja when he saw a car speeding toward him and rammed into the old man standing in front of him and the man died immediately. In her own testimony in the same matter, Adaobi stated that she was displaying her computer wares at No. 3 Awolowo Way, Ikeja, adjacent No. 2, when she had a noise and when she looked she saw a black jeep in front of No. 2, Awolowo, ikeja and the old man that died was under the jeep and passer byes were trying to remove the man from underneath the car.

In this scenario, certain facts can be deduced and these include:

a. The fact that there was an accident
b. The Fact that the accident involved a car and an old man
c. The fact that the accident happened at N0. 2, Awolowo Way Ikeja

d. The fact that the accident claim the life of an old man and not others

2. Rev. Jackie and Rev. Danny entered into a business partnership of an interstate transport business. Jackie said he gave Danny 8 Million Naira to Purchase 4 sound Buses and to be registered in his name. And that Danny purchased 4 rickety and not roadworthy buses and try to repair them and started using them and in four months were all packed up. Danny on his own stated that he was to buy four buses without specification at the rate of 8 Million Naira and he drove the four buses with different drivers from Republic of Benin to Nigeria but first packed them in Abeokuta for two days. And after registration he started using them but the buses were still able to do skeletal operations for five months.

In this scenario, certain facts can be deduced and these include:

a. The Fact that there was a business agreement between the two parties
b. The fact that four buses were to be purchased
c. The fact that those buses were to be immediately used for transport business.
d. The fact that the sum of 8 Million Naira was involved
e. The fact that the busses are no longer in operation

Thus, from the above painted scenario some of the facts of the situations have been identified. You could even generate more facts, but it should be noted that some of these events as presented may not actually be the truth for several reasons. May be the witness did not see well or hear well and some of the information or happenings may not be within his or her reach. So the facts are presented to the limitation of their sight or understanding or rather in a way that will be favourable to them

The Court will therefore be encumbered with determining the facts before it will have to form its opinion of the situation of things from fact presented and deduced.

Self-Assessment Exercise

Attempt these exercises to measure what you have learnt so far. This should not take you more than 6 minutes.

What is a fact?

1.3.2 Fact in Issue

Section 258 of the Evidence Act, 2011 defines ‘’Fact in Issue’’. It states that "fact 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. Blacks’ Law Dictionary, 5th edition defines ‘’Fact in Issue’’ as those matters of fact on which the plaintiff proceeds by his action, and which the Defendant controverts in his defense. Thus, controversial matters which all the parties to a suit contest can be said to be the fact in issue. Facts in dispute and to be determined are the facts in issue.

This is the fact that the plaintiff, (or claimant) or prosecutor alleges which the defendant or accused person controverts. In other words ‘facts 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.

Judicial interpretation has been given to this concept in the case of **Olufosoye v. Oluremi (1989) 1 NWLR (pt 95) pg 26**. Here the Supreme Court held that an admitted fact is not in issue. Thus, it is only when facts are in dispute that they are said to be in issue. 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 pleaded 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 cases; 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:

i. Negligence ii Duty of care iii 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.

In an **action for slander,** the fact in issue would be whether or not the defendant spoke the words complained of. While in an action for **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.

1.3.3 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 tends 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", or "relevancy". You need to understand that:

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

According to Sir James Fitzjames 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 in his explanation claims that; evidence is relevant if it is logically probative or disprobative of some matter, which requires proof. Allen and Guest on their own part 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''

.

The Evidence Act 2011 describes facts which are relevant as follows:

1. **Facts Connected to Fact in Issue**:- Section 4 of the Evidence Act 2011 provides *Facts which, though not in issue, are so connected with a fact in issue as to form part or the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.*
2. **Facts which occasion, cause or effect Fact in Issue**:- Section 5 of the Evidence Act 2011 provides *Facts which are the occasion, 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.*
3. **Facts which shows motive, preparation and conduct of Fact in Issue**:- Section 6 of the Evidence Act 2011 provides

(I) Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

(2) The conduct, whether previous or subsequent to any proceeding

4. **Facts necessary to explain or introduce Relevant Fact** :- Section 7 of the Evidence Act 2011 provides *Facts*

(a) necessary to explain or introduce a fact in issue or relevant fact;

(b) which support or rebut an inference suggested by a fact in issue or relevant fact;

(c) which establish the identity of anything 01" person whose identity is relevant:

(d) which fix the time or place at which any fact in issue or relevant fact happened: or

(e) which show the relation of parties by whom any such fact was transacted. Arc relevant in so far as they are necessary for that purpose.

5. **Act of conspiracy**:- Section 8 of the Evidence Act 2011 provides
(1) Where there is 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 by any one of such persons in execution or furtherance of their common intention, after the time when such intention was first entertained by one of them, is a relevant fact as against each of the persons believed to be so conspiring, for the purpose of proving the existence of the conspiracy as well as [or the purpose of showing that any such person was a party to it.
6. **Facts not otherwise relevant**. Section 9 Evidence Act 2011 provides as follows:

Facts not otherwise relevant are relevant if –

(a) they are inconsistent with any fact in issue or relevant fact; and
(b) by themselves or in connection with other facts they make the existence or nonexistence of any fact in issue or relevant fact probable or improbable.

7. **Facts relevant in proceedings for damages**. Section 10 Evidence Act, 2011 provides as follows:

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.

8. **Facts showing existence of state of mind, body and feeling**.

Section 11 Evidence Act 2011 provides as follows:

(1) Facts showing the existence of.-
(a) any state of mind such as intention, knowledge, good faith, negligence, rashness, ill-will or goodwill towards any particular person: or 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.

9. Facts bothering on question of accidental or intentional acts. Section 12 Evidence Act, 2011 provides as follows:

When there is a question whether an act was accidental or intentional, or done with a particular knowledge or intention or to rebut any defence that may otherwise be open to the defendant, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

10. Existence of Course or Business. Section 13 Evidence Act 2011 provides as follows:- *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.*

3.3.1 Motive and Preparation (Section 6 Evidence Act 2011)

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 preannounced 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 had earlier committed a crime which Sophia has threatened to reveal.
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.

3.3.2 Facts necessary to explain or introduce relevant facts (Sec. 7 Evidence Act 2011) This section permits the reception of the following facts:

- Facts that are introductory
- Fact that establish identity of a party or person whose identity is necessary o Fact that support an inference o Facts in rebuttal of an inference
- Fact which fixes the time or place at which the fact in issue or relevant fact happened
- Fact which shows the relation of parties by whom such fact was transacted.

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 wore the same dress, carried the same gun as that of the alleged esculent
– to show identity.
- The fact fixing the timeand place at which the relevant fact occur.

CASE PRACTICE.

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 7, Evidence Act 2011.

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

Section 7 Evidence Act 2011 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.

3.3.3 Things said, done, or written by a conspirator (Section 8, Evidence Act 2011) 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 by any one 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 of the conspirators' execution or furtherance of a common intention.

3.3.4 A fact, which is not otherwise relevant may be relevant:- Section 9, Evidence Act, 2011. 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 nonexistence of any fact in issue or relevant fact probable or improbable

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.

3.3.5 Other circumstances when a fact, not otherwise relevant becomes relevant (Section 10 Evidence Act 2011). 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, such evidence will become relevant.

3.3.6 Fact showing existence of state of mind (section 11 Evidence Act 2011).

Evidence showing the existence of a state 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.

What is "state of mind"?

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

Illustration I

Boniface attempts to break into a house; sees policemen on patrol; he withdraws. A week later, he returns, breaks in, arrested and charged. Can the prosecution 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 illwill 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 give 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: a. Pharmacist: Evidence that Judas, bought poison from him,

b. Witness: Production in court of Receipt issued by Kato (deceased) acknowledges the receipt of a fee for instructing Judas on use of Poison (exception to Hearsay).Dogo's letter, showing motive.
c. Police evidence that Poison was found on him

1.3.4 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 167 Evidence Act, 2011).

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 ab 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. 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

Kindly try and consult any standard text book for illustration of each of the above.

Activity-Look at this case: 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. Judas denies the charge in its entirety.

QUESTIONS

1. Identify the Facts in issue (2)
2. Identify the Facts relevant to Fact in issue

1.3.5 Irrelevant Evidence

Generally irrelevant evidences 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 78-82 Evidence Act, 2011)
- Opinion evidence (section 67 Evidence Act 2011)

A party's conduct in other transaction or on other occasion. In exceptional cases, however, such irrelevant evidence may be admitted. The reasons why irrelevant evidences are excluded are:

- To discourage protracted litigation
- Public Policy

1.4 Summary

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.

1.5 References/Further Readings/Web Resources

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

C.C. Nweze: Contentious issues & Responses in Contemporary Evidence Law In Nigeria. [Institute for Development Studies: University of Enugu] 2003.

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The Black's Law Dictionary, 5th Edition.

1.6 Possible Answers to Self-Assessment Exercises

UNIT 2 RES GESTAE CONTENT

Unit Structure

2.1 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.

2.2 Intended Learning Outcomes

This unit is to project the full understanding of the principle of "res gestae" or "res gestae" both under the common law and the present law of evidence. This will also teach the application of the principle in the actual legal practice by judicial authorities.

2.3 Res Gestae

2.3.1 Meaning of ''Res Gestae''

This word, Res Gesta (singular) or res geatae (plural) is Latin expression meaning "thing done" or ''event which occurred''. According to the Blacks' Law Dictionary, **5th edition**, the Res Gestae rule is that where a remark is made spontaneously and concurrently with an affray, collision or the like, it carries with it inherently a degree of credibility and will be admissible because of its spontaneous nature.

Where a transaction or an event is in issue, all those facts which comprise the transaction that accompany and explain it are known as res gestae and they are generally acceptable.

The term therefore refers to:

– Relevant fact or events in issue
- Events contemporaneous with the events at issue.
- Facts which accompany and explain facts in issue

The essence of this principle of law has been well explained in the case of Holmes v Newman (1931) 2 Ch. 112. Here Lord Tomlin described res gestae as ‘’a phrase adopted to provide a respectable cloak for a variety of cause to which no formula of precision can be applied’’.

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.

In a criminal proceeding, all acts done by the accused or by any person in his presence or acting under his directions and all statements, oral or written , made by him or by a person in his presence at the time of the transaction or before or after it, will be relevant if they can be shown to be connected with the specific transaction with which the accused is charged. .

The Evidence Act did not use the term ‘res gesta or res gestae’. But see section 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.

2.3.2 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.

See the case of **Sule Salawu v. State (1971) 1 NMLR 249**. In this case, several people heard at one night the voice of the deceased crying ‘’Sule is killing me’’. The witness rushed into the room and found the deceased in the pool of her own blood. The court [WACA] held that the …….. as expressed by the deceased is admissible as res gestae.

Before ''res gestae'' can be admitted there are certain criteria it must meet and these a r e set out as follows:

1. Statement must be substantially contemporaneous with the facts in issue. This is to exclude the possibility of its having being concocted to the maker's advantage.
2. Statement must explain the facts in issue or be directly connected with it and it must not be prior or subsequent disconnected fact.
3. The declaration and the act must be made by the same person. In other words, where declaration was made by one person and the accompany act performed by another, such declaration would generally not be admissible.

These three criteria are very important and material in establishing the principle of ''Res Gestae'' under the law of evidence and these shall be examined fully as follows:

It must be Contemporaneous: This principle was enunciated in the expression of Lord Normad in the case of **Teper v R. [1952] A C 480 at 487**. Here the learned Judge declared as follows:

"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."

The implication of this expression as above stated from the Judicial Committee of the Privy Council is to the extent that before the words on an event or transaction can be held admissible in a trial, it must be closely kneaded with the event particularly as regards the timing, the place and the circumstance of such transaction on trial.

An example of contemporaneous evidence is the one in the case of **R v. Bedinfield (1879) 14 Cox C.C. 341**. In this case the accused was charged with the murder of a woman. The woman rushed out of a house with a cut throat where she and the accused had been together and exclaimed: ''Oh, aunt, see what Harry has done to me!". This statement was held inadmissible as it was something stated by her after the event was over. Had the statement been uttered by her as at the time of the event, it would have been held admissible.

A similar occurrence like that of the above case is that of the case of **R v. Bang Weyeku (1943) 9 WACA 195**. In this case the accused was charged with murder and the only important evidence against him was the statement of the deceased shortly after he had been stabbed. He said

''Bang has shot me'' and this statement was made in the absence of the accused. It was held that this statement was inadmissible.

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. See ***R v Christie*, (1914) A C 545.**
For a fact to be contemporaneous, the following must occur:

- Inexplicably intertwined with the fact in issue as 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.

Contemporaneous event in Civil Matters
In criminal cases, the requirement of contemporaneity is strict. The statements made must be practicably contemporaneous with the act in question but a bit relaxed in Civil matter. Because transactions in civil matters are long drawn, the requirement of contemporaneity is less strict than in criminal matters. An example of this is the case of **Homes v Newman [1931] 2 Ch.112 at 120**. It is a case where 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.

Take note that 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, which are not 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.

Accompanying statement and declarations must explain and relate to the fact in issue which they accompany and such that they are 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 Tramway Co. Ltd (1873) 21 WR 199 27 L.T. 492***. *In t hi s c as e t he* 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 line five or six times today – he is a new 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.

See also the case of 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 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 as *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.

It must explain fact in Issue: 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?

It has been established that the locus classicus on this principle is the case of ***Agassiz v London Tramway Co. Ltd (1873) 21 WLR 199 .*** Here the Plaintiff sued the Defendant company for negligence arising out of a collision by the Defendant's tram in which the plaintiff was injured. After the collision, a passenger said of the driver, ''this fellow's conduct ought to be reported'' and the conductor replied that, ''he had already been reported for he has been off the line five or six times today, he is a new driver.'' It was held that this statement was inadmissible as the collision was over and it referred not to the fact in issue but the past acts of the driver.

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

3.2.3 It must have been made by the actor: These are talks of 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. The authority of this principle has been derived from the case of **Howe v Malkin (1878) 40 L T. 196**. In this case a statement made by a person concerning the boundaries of property contemporaneously with the performance of some act on the land by some other persons was held inadmissible because the declaration was by one person and the accompany act was performed by another person.

But it is worthy of note that this cannot be taken as a general position of law because in criminal cases declarations by victims and by assailants are often received in evidence under this heading.

The 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).

Self-Assessment Exercise

Attempt these exercises to measure what you have learnt so far. This should not take you more than 6 minutes.

1. What are the conditions for the admitting res gestae in Evidence?

2.3.3 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) made contemporaneously and tend 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.

Section 4 Evidence Act, 2011 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 contemporaneity. The other phrase "or at different times and places" permits the admission of facts which may not be substantially contemporaneous as *res gestae*.

2.4 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.

2.4 References/Further Readings/Web Resources

Aguda: Law of Evidence 3rd Edition [Spectrum Law Publishing: Ibadan]1989.

C.C. Nweze: Contentious issues & Responses in Contemporary Evidence Law in Nigeria. [Institute for Development Studies: University of Enugu] 2003.

G. Eche Adah: The Nigerian Law of Evidence [Maltlhouse Press Limited: Lagos] 2000.

Hon. Justice P.A. Onamade: Documentary Evidence- Cases and Materials.

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The Evidence Act 1990.

The Evidence Act, 2011.

The Black's Law Dictionary, 5th Edition.

2.1 Possible Answers to Self-Assessment Exercises

The conditions are contemporaneity, statement must explain the facts in issue and the declaration and the act must be made by the same person.

UNIT 3 COMPLAINT

Unit structure

3.1 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.

3.2 Intended Learning Outcomes

By the end of this unit, you will be able to:

- discuss the term "complaint".
- examine and illustrate the criteria for admissibility of evidence of complaint.

3.3 Complaint

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 females between 13 and 16 among others. But it is not in all such cases that evidence of complaint is admissible. The court exercises considerable discretion. It is important therefore to examine how the court has exercised this judicial discretion in practice.

3.3.1 Complaint

Ramatu was seen running out of a house, crying. She ran to her mother, Jumai screaming: "See what Jelili did to me" and showed her mother smells of semen all over 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; who is called at the prosecution of 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 this not a hearsay evidence?

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 demonstrate 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 Harrris 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 in fact made, it ceases to be hearsay. It is then an original and a direct evidence and as such is admissible.

Self-Assessment Exercise

Attempt these exercises to measure what you have learnt so far. This should not take you more than 6 minutes.

1. What are is a complaint?

3.3.2 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 prosecutrix 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 prosecutrix shortly after the alleged occurrence and the particular of such complaints may so far as they relate to the charge against the prisoner be given in evidence by the prosecution. According to the court such evidence of complaints is 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.

3.3.3 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. W h eth e r 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 has 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 is not admissible merely as negativing consent but as being consistent with sworn evidence of the complainant.

3.3.4 Scope of Application of the Rule of Complaint

In *R.v Camelleri* (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 go into the witness box or give evidence
- The consent of the victim is not in issue.
- Complaint and Corroboration

In all sexual matters, the court 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. 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 prosecutrix made not on her own initiative, but in answer to questions is generally inadmissible, the mere fact that the statement is made in answer to question, is not in itself sufficient to make it admissible 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
- The complainant (Prosecutrix)
- Other circumstances

3.4 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.

3.5 References/Further Readings/Web Resources

C.C. Nweze: Contentious issues & Responses in Contemporary Evidence Law in Nigeria. [Institute for Development Studies: University of Enugu] 2003.

G. Eche Adah: The Nigerian Law of Evidence [Malthouse Press Limited: Lagos] 2000.

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

3.6 Possible Answers to Self-Assessment Exercises

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

MODULE 5

UNIT 1 PRESUMPTIONS

Unit structure

1.1 Introduction

The gist of Law of Evidence is relevance, weight and admissibility or the proof and establishment of facts or disproof. A fact is not proved if it is neither proved nor disproved. A fact is 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 not exist. To this end, a person, who desires a court to give judgment as to any legal rights or liability dependent in the existence of facts, which he asserts, must prove that the facts exist (section 131 Evidence Act, *2011, Elemor v. Gorriolende* (1968). Thus it lies not on the party who denies but on him who asserts (affirmatively or negatively) to prove the facts alleged. The law also provides exceptions to this rule that he who asserts must prove and would require no evidence of certain facts. Rather, the law permits an inference or deduction, having regard to the rules of law and practice of courts. Such inferences or deductions are presumption – a kind of invocation of the rule of law, which compels a judge to reach a particular conclusion in the absence of evidence to the contrary. In essence, a presumption is a substitute for evidence, or one way of establishing a matter other than by evidence. In this unit, you shall learn how law has defined 'presumption', its forms, applications and effects.

1.2 Intended Learning Outcomes

By the end of this unit, you will be able to:

- explain what is meant by "Presumption"
- explain the classes and forms of Presumption
- distinguish between Presumption of Law and of Facts

- gain awareness of requisite conditions for the application of Presumptions
- present arguments in favour or against "Presumption".

1.3 Presumptions

1.3.1 Definition

The Evidence Act, 2011 does not define the term "Presumption". The Act merely states:

Section 145

(i) 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.
(ii) Whenever it is directed by the Act that the Court shall presume a fact, it shall regard such fact as proved unless and until it is disproved.
(iii) 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.

1.3.1.1 Admission and Presumptions

Presumptions, like admissions, are inferences as to any facts in issue or relevant facts, and require no prove or evidence to the contrary. But the court, in its discretion, may require facts (though admitted) to be proved otherwise than by admission. Once the requisites are fulfilled, the court must draw the necessary presumptions. See sections 20-27, Evidence Act, 2011.

1.3.1.2 `Judicial Notice and Presumptions

What is Judicially Noticed is presumed and like presumptions are exceptions to the rule that who asserts must prove. If the court is called upon to take judicial notice of any fact in contradistinction from presumptions, it may refuse to do so in certain circumstances.

Presumption then may be defined as:

(a) Assumption that a fact exists, based on the known or proven existence of some other fact or group of facts.

(b) An inference as to the existence of one fact from the existence of some other fact founded upon a previous experience of their connection.

A presumption implies that some facts are to be taken and deemed to be so taken without proof unless the court insists on proof. Most presumptions are rules of evidence which call for certain result in a given case unless the adversely affected party rebuts it with other evidence. In some cases, a presumption merely shifts the burden of producing evidence or persuasion to the opposite party, who can then attempt to overcome the presumption.

1.3.2 Classes

Legal writers and jurists have classified Presumption in different ways:

1. Traditionally, the classes of presumptions are:

(a) Presumption of Law
(b) Presumption of Facts

2. According to some Legal Literature, presumption may be classified into:
- rebuttable Presumptions
- irrebutable Presumptions
- presumption of law
- presumption of fact

3. Glanville William, classified presumption into
- Persuasive presumption
- evidential presumption

4. Denning suggested a classification into:
- Conclusive presumption
- Compelling presumption
- Provisional presumption

Self-Assessment Exercise 9

Attempt these exercises to measure what you have learnt so far. This should not take you more than 6 minutes.

What are the traditional classification of presumption?

1.3.3 Types of Presumptions

A number of presumptions which apply in both Criminal and Civil proceedings can be founded scattered in the Evidence Act, and other statutes. Let us look at some of them.

3.4.1 Irrebuttable Presumptions (***Presumptio Juris et de jure***)

This type of presumption is conclusive and incontrovertible and does not admit of evidence in disproof.

Examples are:

- That a child under the age of seven years is *in doli incapax*, cannot have a guilty mind and therefore incapable of committing a criminal offence. He lacks criminal responsibility (Criminal Code, section 30 and Penal Code, section 50).
- That a boy who is under the age of twelve years is incapable of committing rape or other offences involving carnal knowledge as a principal offender. Criminal Code section 30.
- That if a marriage is celebrated with license or banns published, the parties is presumed to have been resident for the requisite period.
- That all men and women know the law
- Where an agent receives a bribe, it is presumed that

(a) The agent was influenced by the payment to the detriment of his principal, and;

(b) The principal has suffered damage at least to the amount of the bribe. Lord Denning thought that it is a misuse of language to describe these types of prescriptions as conclusive. He described them as:

1. Procedural equivalents of substantive rules, which may have independent validity.
2. Merely meaning that "on the proof of certain facts, the court must draw a particular inference, whether true or not and it cannot be rebutted: (61 LQR *381: Industrial and General Mortgage Co Ltd V Lewis (1949).*

3.4.2 Rebuttable Presumption (***Presumptio Juris***)

This type of presumption must be drawn once the requisite premises are established. Examples are:

- That a child who is seven but under twelve years has no *mens rea see the Constitution 1999*
- That a person who has not been heard of for seven years by someone who might be expected to hear of him is presumed dead. There is no presumption as to the time of death. Section 164.
- Every person charged with a criminal offence, whether in criminal or civil proceedings, shall be presumed to be innocent until he/she is proved guilty. The Constitution, 1999.
- Every person is presumed to be of sound mind and to have been of sound mind at any time which comes in question until the contrary is proved. Criminal code S. 27.
- That a spouse is dead, if upon a petition by the other spouse, that spouse has been continuously absent from the petitioner for a period of seven years or more and within that time, the petitioner has had no reason to believe his or her spouse to be alive.
- That for all purposes affecting the title to property, where persons who are successively entitled to inherit property die in circumstances in which it is impossible to determine, who died first, they are presumed to have died in order of seniority. The junior is presumed to have survived the older unless it is proved that the elder survived the junior.
- That he is a legitimate son of a man, if he is born during the continuance of a valid marriage between his mother and the man within 280 days after its dissolution, the mother remaining unmarried. Section 165.
- That everyone intends the natural consequences of his or her own acts or omissions.
- That a bill of exchange was accepted for value and that the holder is a holder in due course.
- See Section153 as to presumption as to message forwarded by a telegram

Glanville Williams has identified two classes of rebuttable presumptions:

(a) Persuasive presumptions:

These presumptions confer a legal burden on the party trying to avoid the presumption.

(b) Evidential Presumption:

This class of rebuttable presumption obliges a party to adduce a *prima facie* evidence. Lord Denning is of the opinion that presumptions are either "Compelling" or "Provisional"

3.4.3 Compelling Presumptions

These presumptions arise where a party proves facts from which the Court MUST in law draw an inference in his favour, unless the other side proves the contrary or proves other facts, which the law recognizes as sufficient to rebut the presumptions (61, LQR 380). It requires a strict proof to defeat a compelling presumption.

3.4.4 Provisional Presumptions

These are exceptions to Compelling Presumptions, Examples are:

- Presumption of innocence
- Presumption of sanity
- Presumption of death after seven years

Provisional presumptions are merely guides to the Court in deciding whether to infer the fact in issue or not. Relevant facts or circumstances are often said to raise a presumption or make a *prima facie* case and so they do in the sense that from these the fact in issue may be inferred but not in the sense that it must be inferred unless the contrary is proved. A suspicion suffices to counterbalance a provisional presumption.

3.6 Further Presumptions

3.6.1 Judicial Presumption of certain facts

The Evidence Act, Section 167 provides that: " Court may presume the existence of any fact which it deems likely to have happened, regard shall be had to the common course of natural events, human conduct and public and private business, in their relationship to the facts of the particular case, and in particular the court may presume that:

(a) 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 his possession:
(b) a thing or state of things, which has been shown to be in existence within a period shorter than within which such things or state of things usually ceases to exist, is still in existence;

(c) the common course of business has been followed in particular cases;
(d) evidence which could be, and is not produced would, if produced, be unfavorable to the person who withholds it; and;
(e) when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

Section 167 (a) is often referred to as evidence of Scienter.
Section 167 (b) is evidence of continuance. That is to say things, circumstances or positions, once proved to have existed at a certain date, continue to exist in such a state or condition for a reasonable time.

3.6.2 Presumption of Continuance

This presumption of continuance applies to partnership, sanity, marriages and life.

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 state of things usually cease to exist, is still in existence. Section 167 (b)

The evidence which could be and is not produced would, if produced be unfavorable to the person, who withholds it. Section 167 (d)

When a document creating an obligation is in the hands of the obligation, the obligation has been discharged. Evidence Act, Section 167 (e).

3.6.3. All things are presumed against a wrong doer. The maxim is: *Omnia praesumuntur contra spoliatoren.* Example:

An employer, who fails to follow the usual safety precautions in his or her trade, is presumed to be negligent.

If a person wrongfully takes a thing and detains it or converts it, it is presumed to have been the best of its kind.
If Bola, to whom a legacy has been left by Will, destroys a subsequent Will, it is presumed that the later Will had revoked the legacy.

A ship that is lost within a short time of sailing is presumed to be unseaworthy.
If a deed or Will is produced from a proper custody and is 20 years old. It is presumed to have been properly executed. (See Sections 145-168. Evidence Act, 2011.

3.6.4. Presumption of Negligence under the doctrine of (*Res ipsa loquitur:* the thing speaks for itself);

Where a thing is under the management of the defendant or his servants and an accident occurs, which is such that in the ordinary course of events, it would not have happened if those who had the management used proper care, it affords reasonable evidence, in the absence of explanation by the defendant, that the accident arose from want of care.

In other words, if Ado suffers damage in consequence of one or more things, which were under the exclusive control of the defendant, or his servant, the presumption of negligence may be inferred.

3.6.5 Equitable presumption or presumption in Equity.

- Where there is a fiduciary relationship, undue influence is to be presumed against the party in the fiduciary position in matters of contract and conveyance of property
- That if Kalu purchases property, but has it conveyed into Jenifer's name, Jenifer is a trustee for Kalu.

3.6.6: Presumption of Regularity:

The presumptions which gives validity to acts are favoured. Examples:

(i) 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.

(ii) when it is shown that a person acted in a public capacity, it is presumed that he had been duly appointed and was entitled so to act.

(iii) when a person in possession of any property is shown to be entitled to the beneficial ownership of it, there is a presumption that every instrument has been executed which was the legal duty of his trustees to execute in order to protect his title.

(iv) when a minute is purported 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 as 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 at the meeting have been duly had and that all appointments of directors, managers and liquidation are valid.

The presumption of regularity is also described as omnia praesumuntur rite esse acta (all things are presumed to have been done rightly).

3.6.7 Further illustrations:

Suppose it is sought to prove that a person has been appointed to the office of the Study Centre Director, it suffices to prove that Professor YZ has acted in that capacity.

The presumption applies only to appointments to public offices. In respect of private office appointments, there must be a strict proof of which may demand the production of the instrument of appointment coupled with the production of an official to verify it.

A marriage which has been celebrated in a place of worship is deemed to have been celebrated in a place duly authorized for that purpose.

A deed or Will is presumed to be properly examined if it is produced from proper custody and it is 20 years old. See *Ogbonifo v. Aiwerevba (1988)*. The Court may also presume the genuineness of the recital of such a document where a deed contains an alteration, the alteration is presumed to have been made before execution. If the alteration is in a Will, the alteration is deemed to have occurred after signature. Conversely statements of testator as to alteration must be made before, but not after execution to be admissible.

A document required by statute to be served by post is presumed to be duly received upon proof that:

- The envelope was properly addressed
- The envelope bore adequate stamping
- The document was duly posted
- The document was not returned

In *Albion Court Ltd. v. Rao Investment & Duo Ltd. & ors (1992)*, the CA. (Lagos Division) held that the Court of law must presume the regularity of a judgment or ruling until it is set aside on appeal.

Statements by judges, magistrates or judicial officers are to be accepted as a correct account of what took place in court *Queen v. Thomas Ijoma (1960)*

3.6.8 Omnia praesumuntur Contra Spoliatoren (all things are presumed against a wrongdoer)

A chimney-sweep's boy found a ring with a Jewel; He handed it to a goldsmith's assistant to value. The latter refused to return the jewel on demand and was held liable for tort of conversion. He could not produce

the jewel and was made to pay the value of the best stone of the same kind. See *Armory v. Delamirie (1722).*

Thus a person, who wrongfully takes a thing and detains or converts it, is presumed to have taken the best of the kind.

D, by will, leaves a legacy for P who is found to have destroyed a subsequent Will, it is presumed that the latter had revoked the legacy.

3.8 Presumptions as to genuineness

The Evidence Act empowers the court to presume the genuineness of:

- Official Gazette of Nigeria, any state, or of any country other than Nigeria Evidence Act, 2011, Section 148.
- Newspapers, Journal or copy of resolutions of the National Assembly printed by the Government Printer. *(National Electoral Commission & 3ors v. Sunday Ogonda Woidi (1989).*
- the Rental of a document, properly executed and purporting to be 20 years old: *Johnson v. Lawanson (1971)*
- A copy of every document purporting to be a certificate duly certified by any authorized officer Section 146, Evidence Act 2011.
- Document produced as record of evidence in a judicial proceeding or before any officer authorized to take such evidence, surrender or confession and purporting to be duly signed by a judge. Magistrate or any such officer. Evidence Act Section 147.

- Seal, stamp, or signature authenticating any document admissible in other countries without proof of seal or signature. Evidence Act 2011, Section 149.

3.9 You may have to read up other presumptions, namely;

Presumptions as to powers of attorney Evidence Act 2011, Section 150
Presumptions as to Public maps and charts, Section 151
Presumptions as to Books Section 152
Presumptions as to handwriting etc in documents 20 years old, Section 155
Presumptions as to proper custody, Section 156
Presumptions as to date of documents, Section 157
Presumptions as to stamp of a document, Section 158
Presumptions as to Sealing and delivery, Section 159
Presumptions as to alternative Section 160
Presumptions as to age of parties to a conveyance or instrument Section 161

Presumptions as to statements in document 20 years old, Section 162
Presumptions as to deeds of corporation, Section 163
Presumptions of death from seven years absence and other facts- Section 164 Presumptions as to legitimacy and marriage sections 165 and 166

3.10 Few more critical presumptions need to be emphasized.

1. Presumptions as to telegraphic and electronic messages:
Section 153 provides:

> (1) The Court may presume that a message forwarded from a telegraphic 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.
>
> (2) The Court may presume that an electronic message forwarded by the originator through an electronic mail server to the addressee to whom the message purports to be addressed corresponds with the message as fed into his computer for transmission; but the Court shall not make any presumptions as to the person to whom such messages was went.

3.10.2 Presumptions as to execution of documents not produced. Section 154 adds;

"The Court shall presume that any document called for and not produced after notice to produce given under section 91, was attested, and executed in the manner required by law'.

3.10.3 Presumption as to existence of certain facts Section 167:

The Court may presume the existence of any facts which is deems likely to have happened, regard shall be added to the common course of natural events, human conduct, and public and private business, in their relationship to the facts of the particular case, and in particular the court may presume that:

(a) 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 his possession.
(b) a thing or state of things which has been shown to be in existence within a remarkable shorter than that within which such things or states of things usually cease to exist, is still in existence.

(c) the common course of business has been followed in particular cases.
(d) evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it. And
(e) when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

1.4 Summary

In the law of Evidence, he who asserts must prove. But the Evidence Act provides a number of exceptions to this principle; permitting inference or deductions and empowering the court to reach particular conclusions in the absence of evidence to the contrary.

An example of such exceptions is a "presumption". In this unit, you have defined the term Presumptions, and learnt about its classes and forms, and distinguished the presumption of law from presumption of facts. As you have seen, Lord Denning proffered a reclassification into compelling and provisional presumptions. You have learned examples or illustrations of presumptions that are conclusive *(praesumptiones juris et de jure)*, rebuttable *(praesumptiones juris) and* of facts *(praesumptiones hominis)*. Where the presumptions conflict, they neutralize each other. Examples are presumptions that:

- A child born within a reasonable time of the dissolution of his mother's marriage by the death of her husband is the legitimate child of such a union.
- A child born during the subsistence of a marriage is the legitimate child of the parties.

Look at the above presumptions critically and attempt to visualize the conflict. Attempt also to give more illustrations of the conflict.

1.5 References/Further Readings/Web Resources

Aguda T, (2007). The Law of Evidence, Spectrum Law Series, Ibadan.

Afe, B (2001). Law and Practice of Evidence in Nigeria, Intec Printers, Ibadan .

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

FGN: Evidence Act, 2011.

1.6 Possible Answers to Self-Assessment Exercises

SAE

Presumption of law

Presumption of fact

UNIT 2 JUDICIAL NOTICE

Unit structure

2.1 Introduction

Judicial notice requires that the court should act upon its own knowledge or upon a notorious fact. It is an acceptance of the truth of a fact by the court without proof. For this reason judicial notice is being regarded as another expression for a conclusive facts or *prima facie* fact. This however has been contested, as you will see in this unit.

2.2 Intended Learning Outcomes

By the end of this unit, you will be able to:

- define or explain the term judicial notice
- identify what the court would judicially notice
- identify what the court has declined to take judicial notice of
- critique the principles of judicial notice.

2.3 Judicial Notice

2.3.1 Definition of Term

Judicial notice is an acceptance by court of the truth of a fact without proof on the ground that it is within the court's own knowledge or not being out of professional knowledge of the judge himself.
The power of the court to take judicial notice may be obligatory, discretional, conclusive or prima facie.

Judicial notice is obligatory where:

(a) Statute directs that a particular matter be judicially noticed. An example is the signature of judges of superior courts on official documents.
(b) The matters are what have been judicially noticed by well-established practice or judicial precedent.

Judicial notice is discretionary on matters, when the judge may notice, usually on the invitation of a counsel.

It is absolute or conclusive when no evidence in rebuttal is admissible. Conversely it is *prima facie*, where it is rebuttable.

Self-Assessment Exercise

Attempt these exercises to measure what you have learnt so far. This should not take you more than 6 minutes.

What is Judicial Notice?

2.3.2 What the court takes judicial notice of

The facts which are judicially noticed need not be proved. The Evidence Act expressly provides that "no fact of which the court must take judicial notice need be proved" (section 122, Evidence Act 2011).

The facts of which the court must take judicial notice are enumerated in section 122 of the Evidence Act. (Refer to the Act). These may be subsumed as follows:

(1) Matters of Public law and government:

Existence and content of all public Acts of the National Assembly and Laws of the State Assemblies, unless the contrary is expressly provided.

- Proclamations, orders in council and regulations issued by Government departments and printed by the government printing press;
- Maritime Law of Nations
- Public matters affecting the government of Nigeria e.g. Succession and demise of the President; Date and place of sittings of the National Assembly; existence and titles of recognized foreign sovereign, the Principal Officers of state and the heads of departments, past or present.
- Wars in which the country is or has been involved.

1. The existence, extent and geographical position of Nigeria areas of Jurisdiction and of the territorial and administrative division of Nigeria into states, local governments, towns etc. but not whether a particular town is within a named local government or state.

2. The law and custom of the National or States Houses of Assembly and courts; the existence and extent of the privilege of the each of the Houses of Assembly and the order and course of their proceedings.

3. Well known (notorious) Facts. The ordinary events of nature or business (e.g. tides, movement of planets); period of gestation, Public currency and coins.

4. Meaning of common words and phrases, standard of weights and measure .Does anyone need to be told that Lagos streets are crowded and dangerous, those Cats are domestic animals or that boys are naturally reckless and that the tiger is dangerous? Of course not. They are within the purview of common knowledge and are judicially noticed.

5. Some documents are judicially noticed if they purport to be printed by the Federal Government Printing Press. Examples are:
Private Act of the National or State Assembly, official gazette of the federation and of the states. o Proclamations; and order in council.

6. Other matters that may be judicially noticed include:
   - o Official seals and signatures of superior Courts to judicial or official documents,
   - o The signatures of ambassadors and consults to affidavit sworn before them. o The seals of the Federal Republic of Nigeria, Medical register, Law List, the Army List, the Clerical List.
   - o The seal of the patent office and of the Nigeria notary public.

2.3.3 Illustration through cases

Look at some cases illustrating facts which judges have judicially noticed: *Bakare v Ishola (1959).*

During an altercation which preceded a fight, the defendant called the Plaintiff "*Ole, Elewon,* you are a thief, ex-convict; you have just come out of prison". Held. It is a matter of common knowledge of which this court takes judicial notice that people commonly abuse each other as a

prelude to a fight and call each other *ole! Elewon* (thief, ex-convict) which abuse no one takes seriously as they are words of anger, and are nothing but vulgar abuse".

France Izedonwen V IGP

The accused, a police Officer was being accused of accepting a reward beyond his proper pay and emolument. (Section 99 Criminal Code). The court held that a judicial notice could be taken of the fact that the accused, a police officer, would receive proper pay and emolument under the Police Act.

Rotimi Williams v. West African Pilot (1961)

In an action for libel, contained in a newspaper, the court would take judicial notice that the newspaper is a national daily and that it exercises immense influence on its readers.

2.3.3.1 Examples of notorious facts of which court may take judicial notice:

It is a notorious fact which the judge may judicially notice that:

- A postcard is an unclosed document, which can be read by anyone in the course of post.
- Two weeks is too small a period for human gestation,
- Goats, dogs, cats, camels are domestic animals,
- Young boys are naturally playful, A particular day was Sunday.
- Lagos – Ore or Abuja – Kaduna roads are Federal highways (Federal Highways) Declaration Order, No LN 101 of 1971).

A custom may be adopted if it can be judicially noticed. It is judicially noticed if it has been acted upon by a court of superior or coordinate jurisdiction in the same area to an extent, which justifies the court in assuming that the person or class of persons concerned in that area, look upon the same as binding. See Sections 16 and 20 of the Evidence Act.

2.3.4 Facts of Which the Judge May Not Judicially Notice

The judge may take judicial notice of a custom if it is of such notoriety and has been so frequently followed by the court. But it may refuse to take judicial notice of a solitary instance of the application of a custom.

Other examples where the judge has refused to take judicial notice are:

1) Internal arrangements of a government department or of government departments or of government corporations *(Mutete v NRC 1961)*
2) The fact that the general Hospital is a public place *(Cyril Arch V Cop (1959).*
3) When certain elements go to constitute an offence, they must be strictly proved and the court cannot take judicial notice of such facts or act on its own private knowledge.

Aguda has pointed out that Sec. 73 (1) of the Evidence Act 2004(now section 122, Evidence Act 2011) is not a full catalogue of what the judge can judicially notice. He has argued that section 73(2) (now section 122) allows the judge to take judicial notice of other facts which are not expressly listed.

2.4 Summary

In this unit, you learnt about judicial notice. It is the acceptance of the truth of a fact without proof because it is within the court's own knowledge. You learnt what the court will take judicial notice of, for example, the courts in Nigeria take judicial notice of the Acts of the Federation, the Laws of the different states, the general or local customs and judicial precedent. This is not exhaustive. Parliamentary procedures and matters of common knowledge e.g. meaning of words, the facts that rain falls or that cats are domestic animals are other examples of facts which courts may judicially notice. You also learnt of the provision of section 122 and you were invited to consider whether or not the section is all inclusive and exhaustive.

2.5 References/Further Readings/Web Resources

Evidence Act, 2011.

Babalola Afe (2001): A Law & Practice of Evidence in Nigeria, Intec Printers Ltd. Ibadan Nwadialo, Fidelis (1999) Modern Nigerian Law of Evidence, University of Lagos Press.

2.6 Possible Answers to Self-Assessment Exercises

Judicial notice is an acceptance by court of the truth of a fact without proof on the ground that it is within the court's own knowledge

UNIT 3 ADMISSION

Unit structure

3.1 Introduction

Admissions belong to the category of facts, which do not need proof. They are also exceptions to hearsay rule. Admission and confession are both acknowledgement of facts in issue but they are not synonymous with each other. They are different. This unit is concerned with admissions. You shall learn about confession in the next unit. Meanwhile you should read Evidence Act, Section 20-27 about admission, and section 28 – 32 about a confession.

3.2 Intended Learning Outcomes

By the end of this unit, you will be able to:

- Define admission.
- Identify when admissions may be admissible in evidence.
- Gain an awareness of judicial attitude towards admissions.
- Critique the rule of evidence concerning admission.

ADMISSION

What is admission?

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 persons and in any of the circumstances defined in the Evidence Act.

- **Forms of Admission**

Admissions may take any of the following forms:

1. Formal admission
2. Informal Admission
3. Admission made in a representative capacity
4. Admission made "without prejudice"

3.3.2.1 Formal Admission

This is an acknowledgement of facts in issue made by a party in a civil proceeding. They may be contained in a party's pleading. Any party may, by leave of the court, call upon any other party by notice filed in court and duly served under an order of the court to admit any document or fact. A party may, on his or her own, file notice that he or she admits the truth of the whole or any part of the case stated or referred to in the writ of summons, statement of claim or of defence or other statement of any other party. It is also open for a party or his or her counsel to admit facts at the trial. Any fact admitted in this way may be taken as established.

Formal admission may be made as follows:

- by the pleadings
- by answers to a notice to admit facts
- by counsel or solicitor in the course of an action
- in answer to interrogatories
- by agreement made before or at the trial by the parties or their agents.

3.3.2.2 Informal Admission

Read Section 20. Evidence Act

An informal admission is a written admission made before or at the proceedings, and admissible at subsequent criminal proceedings relating to the same matter. Informal admissions are admissible against the party in all cases where relevant. They may also be impeached on the ground that they are untrue or were made in error, ignorance or levity.

As an exception to hearsay rule, an informal admission is relevant and admissible provided it satisfies the specified conditions precedent. It is for the court to decide the question having considered the circumstance, under which it was made and what due weight is fairly to be attached to it.

You may ask if an admission by Mrs. X can bind M. The answer may turn out to be whether or not there has been a relationship of the type enumerated in section 122 of the Evidence Act. Under English Law an admission by a drunken person may be admissible even though he was given the alcohol in the hope that he would make the admission. It is most likely that a Nigeria court will follow this and admit in evidence an admission made by a drunken man.

It appears then that an admission may be voluntary or involuntary. Much depends on the weight, the particular judge or situation attached to it. The court may in its discretion require the facts admitted to be proved otherwise than by such admission.

A statement made to oneself in soliloquy, if over heard by a stranger, may amount to an admission against the maker. Admission is a question of law not logic.

3.3.2.3 Admissions made in a representative capacity

When a party sues personally, an admission made by him in a representative capacity is evidence against him or her, but not vice-versa.

3.3.2.4 Admission made without prejudice- section 26

Admissions made "without prejudice" cannot be given in evidence. This exclusionary rule extends to:

- an answer to a letter where the original letter is marked "without prejudice" but the letter is not so marked.
- A letter followed by a later one in explanation when originally the letter is marked "without prejudice"

The rule is ousted in the following cases
- where both parties consent
- in criminal cases e.g. defamatory letter
- in proof of act of bankruptcy
- in proof of the terms of a compromise, which has been effected.

3.3.3 Who may Make Admission- section 21

Admission may be made by any of the following:

- A party to a proceeding
- An agent or agents of the party
- A party suing in a representative capacity
- A party having proprietary or pecuniary interest

- A predecessor in title or person from whom an interest is derived
- A person whose position must be proved as against a party to the suit
- A party expressly referred to as a party to the suit or mentioned in a Will, who has a particular knowledge of the issue.

Self-Assessment Exercise

Attempt these exercises to measure what you have learnt so far. This should not take you more than 6 minutes.

What is Admission?

3.3.4 Admission, which the court may admit

An Admission constitutes a waiver of the ordinary requisites of proof as a party who makes an admission against him or herself is presumed to be admitting the truth. Examples of the admissions, which the court may admit are the following:

a. a party's statements against him or herself if such statements are legally relevant. (A person's admissions are not admissible for him or her).
b. An admission by one person may be admissible in evidence against another e.g.admission made by one's privies. Other examples are:
i. Statements made by a trustee or agent within his or her authority, against the *cestui que trust* or principal.
ii. Partners are bound by each other's admissions concerning the partnership business
i. A wife may make an admission against her husband, if she is his agent, agency being implied in the case of purchase of necessaries.
ii. A Solicitor or counsel's admission may bind their clients unless forbidden to so by the client.
iii. Admission by a real party in a litigation is admissible against a nominal party conducting the case. So also are:
- Statement of interest in an insurance policy against those in whose name the policy is effected.
- Statement by a ship owner against the master when the latter sues to recover freight.

- A statement made by a nominal party may also be binding on the real party.

iv. Parties who have a joint interest (other than in tort) bind each other. Examples are:
- Admissions of joint tenants partners and co-contractors, provided – the interest is joint (not common) and the admission is made during the existence of joint interest.
- An acknowledgement of a statute-barred debt made by one debtor does not revive the debt against the other; nor admission of co- defendants against each other.

v. Predecessors in title's admission against successors, where the title to property is in question

vi a statement made in the presence of a party (or his or her agent) whether by words or conduct, he or she can be deemed to have admitted its truth. vii A document in a party's possession, which he or she has adopted or acted upon.

Let us take further illustrations

Akinbiyi V. Anike (1959) P sues to recover a sum of money alleged to have been paid by him on behalf of D.D. counter – claimed for the return of some of her goods wrongly detained by P. In support, she sought to tender in evidence a list of her goods and value. P did not object nor also cross examined D as to the accuracy. Held failure to cross-examine as to the accuracy of the list was an admission that it was correct.

Oloko V Oloko (1961)

R cross petitioned for dissolution of marriage with P. on grounds of adultery, R made allegation of adultery by P. to a police officer in her presence and to her hearing but P did not deny. Held failure to deny is insufficient proof of an admission of adultery.

Basele V Stern (1877)

P. sued D for breach of promise of marriage and called her sister who deposed to the fact that she heard P say to D. "You know, you always promised to marry me, and now you don't want to keep your words" D did not answer beyond giving her money to induce her to go away. Held silence amounted to an admission of promise to marry.

Wieldemann v Walpole *(1981).* It was held that D's failure to reply to letter from P. in which P stated that D had promised to marry her did not amount to a promise to marry. The court drew a distinction between a business letter and other correspondence. A failure to reply to a business

letter may tantamount to an admission in several matters, it may be better on many occasions not to send replies.

One may add that an accused person is not obliged to say anything and silence cannot be an admission of the offence charged or fact in issue.

The court will look at the facts of each case in order to determine whether a failure to reply to a letter would amount to an admission. "*Mariaty V London Chatham and Dover Railway (1870)* it was held that the subordination of a witness to perjure in support of a claim for damages for injury in a railway accident was an admission that P's claims were false. In collusion cases, admission of fault by one of the drivers is an admission only against its maker, not the owner of the vehicle. You would observe from these cases that conduct (eg.
Silence) has been held to be admissions in some cases and non-admission in others.
Admission by conduct does not appear to be expressly mentioned in section 122 of the Evidence Act, but courts lean in favour of active conduct.

3.4 Summary

Admission may take the form of a statement, (oral or documentary), or conduct. It may be formal or informal, made in a representative capacity or without prejudice. The kind of admissions which the court may admit and illustrated in the Evidence Act.

3.5 References/Further Readings/Web Resources

Aguda T, (2007). The Law of Evidence, Spectrum Law Series, Ibadan.

Afe, B (2001). Law and Practice of Evidence in Nigeria, Intec Printers, Ibadan

FGN: Evidence Act, 2011.

3.6 Possible Answers to Self-Assessment Exercises

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 persons and in any of the circumstances defined in the Evidence Act.