

FOR THE LOVE OF CHRIST JESUS; THE BEGINNING AND THE END.

ESSENTIALS IN LAW OF EVIDENCE

Composed by Nwosu Isochukwu.

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isochukwunwosu@gmail.com

KINDLY NOTE:

1. All you need is to understand the principles, then back it up with one or two popular case(s) therefore this note presents the discussion on this subject area in a succinct and straight-to-the-point manner, identifying the essential authorities.
2. My language and referencing are informal and abbreviations were used in this work. E.g. HC means High Court, CoA means, Court of Appeal, CFRN means, Constitution of the Federal Republic of Nigeria, etc. I apologize.
3. If viewing the notes on your laptop, press Ctrl + F (Ctrl key and Key F at the same time) to find a specific word/phrase. If viewing from a mobile device, select the “search” option from your browser’s tool menu.
4. The next update of the note shall be released on April, 2020.
5. For advanced legal research on any area of law kindly visit vitesolutions.com.ng.

Thank you and hope you find the notes helpful.

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LAW OF EVIDENCE I

INTRODUCTION

Evidence generally discloses the truth of a matter-**Sebastin Tar (HON)**.

It is a *specie of proof or probative matter legally presented at the trial of any issue by the parties... to induce belief in the mind of the court... as to their contentions-* **Onya V Ogbuji**.

Phipson: testimony... *which may be legally received in order to prove or disprove some fact in issue*: Criticism: Limited. No electronic evidence,

Cross: testimony... *which the court would accept as evidence of fact in issue*. Criticism: Inadmissible evidence is also evidence

Noakes: ...*facts which are legally admissible and the legal means of proving such facts*. Criticisms: Illegally obtained evidence may also be received, evidence can *prove and disprove* a case... not only prove it.

Hirst sees it as *rules regulating the means by which facts may be proved*.

Aguda: ...*the means by which facts are proved but excluding inferences and arguments*.

Criticisms: inferences are part of evidence-**Edamine V The State**. See **Section 28 EA**. E.g. The court is entitled to infer the intention of a person from the nature of his action. E.g. where a person is found in possession of an item soon after the theft, the courts can infer that the person has something to do with the theft-**Section 36 EA**. This undermines Aguda's definition/argument. Evidence also includes disproving a fact.

In **Koko V Lawan** as any type of proof or probative matter legally presented at the trial of an issue.

According to **Phipson**, evidence may be seen in two way viz:

- As the testimony OR
- The content of that testimony.

Evidence aids a party in substantiating his claim.

In **Nwobodo V Nwobodo**, the court noted that it is bound by the evidence placed before it and courts are not allowed to rely on extraneous matters. It is for the parties to adduce evidence not for the court to fish out evidence... therefore there can be waiver where a party knows that a particular evidence can aid his contention but he decides not to rely on it.

“Evidence consists of laws, rules, principles, and procedures that regulates the means or methods of proving facts or adducing evidence before a court of law or tribunal”.

CLASSIFICATION OF EVIDENCE.

Oral Evidence: The assertion of a human being...see **Section 125 EA**. Evidence given by a witness in the witness box or after being sworn-**Sebastine Tar** In Nigeria, this may also include body language by an incapacitated person. **Section 125, 126**.

Documentary Evidence: tendered through the use of documents. **Section 258(1)** defines it in very wide terms... it can be concluded that a document is anything that can convey information.

Direct Evidence: Evidence from source... usually linked with oral evidence-See **Section 6**. The evidence of a witness who saw/watched as the act in question was performed... also called positive evidence.

Indirect Evidence: gives rise to the logical inference that a fact exists or the happening occurred-**Igabelle V State**.

Circumstantial: evidence construed from the facts and circumstances of a case. E.g. the last seen; **Peter Igho V State (bicycle) Atah V State (Abortion) Arichie V The State (Cab), Olusola Adepetu V The State**.

Real Evidence: tendering material objects like machete, guns, etc. E.g. weapons of the offence and other materials of forensic value. This is one of the best modes.

Primary Evidence: original copies of document. The highest kind and most probable to the court.

Secondary Evidence: defined by lord **Esher in Lucas V Williams** as that given in the absence of better (primary) evidence. Using unoriginal/photocopies of a document.

Material Evidence: can decisively influence the establishment of the fact in issue. Make or mar the case. A *vital witness* is one whose evidence may determine a case one way or the other due to certain significant facts which are within his knowledge-**Dogo V State**.

Original and Testimonial Evidence: proof of facts by witnesses to the event or happening.

Unoriginal/Hearsay Evidence: also called second-hand evidence. Defined in **Ojo V Gharoro** as that of someone that was told. **Section 37 EA** sees it as that made by a person other than the witness... or contained in a record. It then goes further to provide that such evidence is inadmissible. Here, the statement of a third party is repeated-**Omo V The State** (2005) 8 NWLR pt 927 p. 236 at 275.

Credible Evidence: evidence that is worthy of belief... Natural, reasonable and probable in view of the entire facts and circumstance of the case.

OTHER RELEVANT PRELIMINARIES.

FACT AND FACT IN ISSUE.

A FACT: **Section 258(1) EA** provides that it may mean:

- *Any thing, state of things or relation of things capable of being perceived by the senses.*
- *Any mental condition of which any person is conscious.*

In other words, a fact is anything that the human mind can comprehend. Defined in **AG Abia V AG Federation**, as the fountainhead of the law.

A FACT IN ISSUE: defined in **Section 258** as: *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.*

Those facts that would enable the court to give judgement in favour or against either of the parties. It was seen in **Osolu V Osolu**, as a material point affirmed by one party and denied by the other. In essence, it is the question of dispute between the parties whether of fact or of law which the court must determine. In lay terms; the bone of contention.

QUESTION OF FACT may mean any of the following.

- A question that is not determined by the law.
- A question that does not relate to what the law is.
- A question to be answered by the jury not the judge.

QUESTION OF LAW: may mean

- A question which the court has to answer in accordance with the/a rule of law.
- A question as to what exactly is the law on a given issue or subject.
- A question answered by the judge instead of the jury.

A fact is **proved** when the court believes that it exists-**Section 121 (a) EA**.

A fact is **disproved** when the court believes that it does not exist or considers that a reasonable man would not believe in its existence-**Section 121(b) EA**.

A fact is not proved when it is neither proved nor disproved-**Section 121(c)**.

PROOF is the process by which the existence of a fact in issue is established to the satisfaction of the court-**Onya V Ogbuji**.

OPINION is a person's personal judgment or judgment of a professional in a field.

ELECTRONIC RECORD was defined in **Dharambir V Central Bureau of Investigation** as computer printouts including hard disc and other electronic devices used for storing information.

A ‘Witness’ is a person who sees or knows evidence... one who gives evidence before a court...

CONTRADICTION OF EVIDENCE

In *Olatubosun V State* it was regarded as saying the opposite i.e. contra + dictum. When witnesses give inconsistent accounts of the same event. The court also noted that to raise doubt, the contradiction must be substantial and material because no two persons can give exactly the same account and in fact, minor variations in testimony seems to be badges of truth. This is true as in *Wachukwu V Onwunwanne*, the court noted that a discrepancy is not the same as a contradiction, the former being usual. For an evidence to be contradictory, the evidence must also be material to the case and the testimonies must actually contradict.

Uncontroverted or Uncontradicted Evidence: evidence that is neither attacked nor successfully discredited. Especially where the opposite party has the opportunity to do so-*Owners of MV Gongola Hope V Smurfit Cases Ltd*. There should be cross-examination because unchallenged evidence is deemed admitted and should be accepted by the court-*Okoro V State*

Assessor: A mere adviser to the court. Who evaluates and make recommendations to the court?

ILLEGALLY OBTAINED EVIDENCE

The consideration here is balancing the need to maintain purity in the administration of justice against preventing the escape of a guilty person on procedural grounds. The law is that evidence should be obtained in accordance with legal and due process. E.g. To search premises; a search warrant must be obtained, the searcher must be searched before searching and such search should be conducted in the presence of at least two impartial witnesses-CPA.

The question is this; where relevant and substantial evidence is obtained in contravention of the law, should the courts admit it? Say for example a search is executed without a search warrant and vital evidence is discovered, should the court accept the evidence? Bearing in mind that the search contravened the accused’s right to privacy as guaranteed under **Section 37 of the 1999 Constitution**.

Before the 2011 EA, the Common law position (which gave the court discretion to admit illegally obtained evidence provided the evidence is **relevant** to the case) prevailed-*Musa Sadau V The State*. In Musa’s case, fake printing machines and documents discovered during an illegal search was accepted by the court. In *Abubakar V Chuks*, the court held that the source of the evidence is immaterial once the evidence is material. *Fawehinmi V NBA* No. 2 (1984) 2 NWLR pt 105 p 558 at 622, *R V Leatham*, where

the court showed its readiness to accept relevant evidence even where it is stolen or illegally obtained.

The tide has been modified by **Section 14 and 15 of the EA 2011** now provides certain guidelines for the courts in receiving an evidence that was improperly/illegally obtained.

Section 14 provides that the mere fact that evidence was obtained illegally does not mean that it is inadmissible (*Haruna V AG Federation*) unless the court is of the opinion that it should be rejected. And in reaching its conclusion, it should be guided by the provisions of **Section 15**.

Section 15 provides that the court should consider:

- A. The probative value of the evidence.
- B. Importance of the evidence to the proceeding: they should also look at the implication of accepting or rejecting the evidence.
- C. Nature of the relevant offence, cause of action or defence and nature of the subject matter of the proceeding.
- D. The gravity of the impropriety or contravention
- E. Whether the impropriety or contravention was deliberate or reckless.
- F. whether any other proceeding (whether or not in a court) has been or is likely to be taken in relation to the impropriety or contravention¹.
- G. The difficulty if any of obtaining the evidence without impropriety or contravention of the law.

In essence, these improvement in law seeks to do justice instead of relying on technical rules of strict interpretation especially where it would operate unfairly against the accused-*Kuruma V The Queen*.

In *R V Khan*, the defendant's right to privacy was invaded by the use of bugging devices to obtain relevant evidence. The court accepted this.

R V Fowden, the court noted that it can accept illegally obtained evidence especially where it is not unfairly prejudicial to the defendant.

EVALUATION OF EVIDENCE.

Evidence has to be properly evaluated. The courts would consider

- Whether the evidence is relevant.
- Whether it is admissible
- Whether it is credible
- Whether it is more probable than that given by the other party.

¹ This simply looks at Whether the impropriety is or is likely to be challenged