THE LAW OF EVIDENCE

A Teaching Version — Prof Samba Online University of Nigeria

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IMPRINT

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How to use this book: read a chapter, work the example, answer the discussion questions in writing, then read the summary again before you move on. Law is learned by working, not by looking.

Chapter 1 — What Evidence Law Is

Evidence law governs what a court may hear and how facts are proved. This chapter teaches its purpose: relevance as the master idea, admissibility as the gate, and weight as the judgment.

Facts in issue and relevance

A trial proves facts in issue — the facts the substantive law makes material — and facts relevant to them. Evidence is admissible when it is relevant and not excluded by a rule; relevance is a matter of logic and experience, admissibility a matter of law. The distinction runs through the whole subject: many relevant things are excluded, for policy or fairness, and nothing irrelevant is admitted, however reliable.

The governing statutes — the Evidence Act in Nigeria — codify the common law's structure: relevance declared in sections, exclusions stated, and the manner of proof prescribed.

The kinds of evidence

Evidence is oral — witnesses speaking; documentary — writings produced; and real — things exhibited. It is direct — the witness saw the fact — or circumstantial — facts from which the fact in issue is inferred. Circumstantial evidence is not inferior evidence: a chain of circumstances may bind more surely than one eye's uncertain sight, provided each link is proved and the chain excludes innocent explanation where the standard requires it.

Evidence is also original or hearsay, primary or secondary — classifications that carry the rules taught in the chapters ahead.

Burden and standard in outline

The burden of proof rests on the party who asserts, in civil cases to the balance of probabilities, in criminal cases on the prosecution beyond reasonable doubt, with the accused's burden, where the law places it, at the civil standard. The evidential burden shifts as proof accumulates: each side must answer a case that, unanswered, would justify a finding against it.

Presumptions assist the burdens: some facts are presumed until rebutted — regularity of official acts, legitimacy, the continuance of a state of things — and some presumptions of law are irrebuttable, being rules of substance in presumption's dress.

Judicial notice and admissions

Some facts need no proof: facts judicially noticed — notorious facts and matters the statute directs the court to notice — and facts admitted by the parties, formally in pleadings or in the trial's course. Admissions by a party are evidence against him, for a man's own words against his interest carry their own credit.

Worked example

In a boundary dispute, a party tenders a ballad sung at festivals praising his grandfather's farm 'from the river to the hill'. The court separates the questions: is it relevant — it may bear on traditional history, which evidence law specially receives in customary title cases; is it admissible — through the mouths of witnesses who can speak to the tradition; and what weight — a song is a song, and the court weighs it with the whole story, neither enthroning nor scorning it.

Discussion questions

• Distinguish relevance, admissibility, and weight.

• Why is circumstantial evidence not inferior evidence?

• State the burdens and standards in civil and criminal cases.

Chapter summary

In this chapter you have studied the following ground. Evidence law governs what a court may hear and how facts are proved. On facts in issue and relevance: A trial proves facts in issue — the facts the substantive law makes material — and facts relevant to them. On the kinds of evidence: Evidence is oral — witnesses speaking; documentary — writings produced; and real — things exhibited. On burden and standard in outline: The burden of proof rests on the party who asserts, in civil cases to the balance of probabilities, in criminal cases on the prosecution beyond reasonable doubt, with the accused's burden, where the law places it, at the civil standard. On judicial notice and admissions: Some facts need no proof: facts judicially noticed — notorious facts and matters the statute directs the court to notice — and facts admitted by the parties, formally in pleadings or in the trial's course. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 2 — Relevance and Admissibility

This chapter teaches the relevance family: facts forming part of the same transaction, motive and preparation, conduct, admissions and confessions' neighbours, character, and opinion's exclusion.

Res gestae — the same transaction

Facts so connected with a fact in issue as to form part of the same transaction are relevant, though they occurred at different times and places within the transaction's unity: the words spoken during the act, the flight after it, the instrument found in the accused's hand. The doctrine receives the story whole rather than in slices.

Spontaneous statements made during the event's pressure — the victim's cry, the bystander's exclamation — are received as part of the transaction, their spontaneity standing in for the oath's guarantee.

Motive, preparation, and conduct

Facts showing motive, preparation, and previous or subsequent conduct are relevant where they bear on a fact in issue: the poison bought the week before, the threat uttered, the disguise discarded after. Similar-fact evidence — other misconduct — is received only where its probative force on an issue, such as system or identity, outweighs its prejudice; mere disposition — he did it before, so he did it now — is the forbidden reasoning the rule guards against.

Character evidence follows the same jealousy: the accused may open his good character, whereupon the prosecution may answer; the prosecution may not open bad character to prove guilt by disposition.

Admissions and confessions

An admission is a statement by a party, or his authorised agent, suggesting an inference against him, received because parties answer for their own words. A confession — an admission of guilt by an accused — stands under special guard: it must be voluntary, not obtained by inducement, threat, or promise from a person in authority, and modern practice adds safeguards of recording and caution.

A confession binds only its maker; a co-accused's confession is not evidence against another, though a court may take it into consideration in the limited way the statute permits where the maker is jointly tried and the confession implicates himself equally.

Opinion and experts

Opinion is generally inadmissible — witnesses speak to facts, the court draws inferences — except the expert's: on foreign law, science, art, handwriting, and like matters beyond ordinary knowledge, the qualified expert may opine, and the court weighs the opinion by its reasoning, not its robes. The lay witness's opinion on identity, speed, or sobriety is received as a shorthand of observed facts.

Worked example

An accused charged with poisoning is shown to have bought the same poison days earlier, telling the seller it was 'for rats', though he keeps no grain store. Motive is not in issue; preparation is. The purchase and the false explanation are relevant as preparation and conduct, and the jury of fact may use them — not as proof he is 'the poisoning kind', but as steps in this transaction's story.

Discussion questions

• What unifies the res gestae doctrine?

• Why is disposition reasoning forbidden, and when is similar fact received?

• What makes a confession admissible?

Chapter summary

In this chapter you have studied the following ground. This chapter teaches the relevance family: facts forming part of the same transaction, motive and preparation, conduct, admissions and confessions' neighbours, character, and opinion's exclusion. On res gestae — the same transaction: Facts so connected with a fact in issue as to form part of the same transaction are relevant, though they occurred at different times and places within the transaction's unity: the words spoken during the act, the flight after it, the instrument found in the accused's hand. On motive, preparation, and conduct: Facts showing motive, preparation, and previous or subsequent conduct are relevant where they bear on a fact in issue: the poison bought the week before, the threat uttered, the disguise discarded after. On admissions and confessions: An admission is a statement by a party, or his authorised agent, suggesting an inference against him, received because parties answer for their own words. On opinion and experts: Opinion is generally inadmissible — witnesses speak to facts, the court draws inferences — except the expert's: on foreign law, science, art, handwriting, and like matters beyond ordinary knowledge, the qualified expert may opine, and the court weighs the opinion by its reasoning, not its robes. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 3 — Hearsay

Hearsay — an out-of-court statement tendered to prove the truth of what it asserts — is the evidence law's most famous exclusion. This chapter teaches the rule, its reasons, and its exceptions.

The rule and its reasons

The original witness must speak in court, on oath, subject to cross-examination: that is the trial's engine of truth. A report of what another said carries none of these guarantees — the original speaker may have misperceived, misremembered, missaid, or lied, and cross-examination cannot reach him through the reporter. Hence the rule: hearsay is inadmissible, unless an exception receives it.

The definition turns on purpose: a statement tendered to prove it was made — as in defamation, or a threat, or a contract's words — is not hearsay at all, for its truth is not the point. Half the hearsay errors in examinations are purpose errors.

The exceptions in outline

Dying declarations in homicide cases, where the declarant's settled expectation of death stands in oath's place; statements in the course of duty by persons now dead or unavailable; declarations against interest; statements forming part of the res gestae; public documents and entries; and the statutory receptions for business records and computer-generated evidence in the modern Acts. Each exception carries its conditions, and the conditions are the examination.

Former testimony — given in an earlier proceeding between the same parties, with opportunity to cross-examine, the witness now unavailable — is received because the guarantees were once supplied.

Documents and hearsay

A document's contents, tendered for their truth, are hearsay unless an exception applies — the letter asserting a debt is hearsay of the debt, though the letter's existence may prove notice. Business and bankers' records stand under statutory exceptions with certification requirements.

The modern law of electronic evidence adds its own section of conditions — the device's regularity, the information's supply in the ordinary course — and a certificate to prove them.

Confessions and admissions distinguished

Admissions by parties are received as a great exception grounded in the party principle; confessions stand under their own voluntariness regime. The student must keep the three doctrines — admissions, confessions, hearsay — in their separate boxes, though a single statement may knock on all three doors.

Worked example

A witness testifies: 'The market woman told me the accused was at the scene.' Tendered to prove the accused was at the scene, it is pure hearsay — the market woman perceived, and she is not here to be tested. If the prosecution cannot call her, the statement stays out, however confident the witness's memory of hearing it.

Discussion questions

• Why does the trial distrust hearsay? Name the three missing guarantees.

• When is a statement not hearsay though repeated in court?

• Name four exceptions and the condition of one of them.

Chapter summary

In this chapter you have studied the following ground. Hearsay — an out-of-court statement tendered to prove the truth of what it asserts — is the evidence law's most famous exclusion. On the rule and its reasons: The original witness must speak in court, on oath, subject to cross-examination: that is the trial's engine of truth. On the exceptions in outline: Dying declarations in homicide cases, where the declarant's settled expectation of death stands in oath's place; statements in the course of duty by persons now dead or unavailable; declarations against interest; statements forming part of the res gestae; public documents and entries; and the statutory receptions for business records and computer-generated evidence in the modern Acts. On documents and hearsay: A document's contents, tendered for their truth, are hearsay unless an exception applies — the letter asserting a debt is hearsay of the debt, though the letter's existence may prove notice. On confessions and admissions distinguished: Admissions by parties are received as a great exception grounded in the party principle; confessions stand under their own voluntariness regime. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 4 — Witnesses

Who may testify, who must, and how testimony is taken: this chapter teaches competence, compellability, privilege, and the examination of witnesses.

Competence and compellability

All persons are competent unless the court considers them prevented by tender years, disease, or like cause from understanding questions and giving rational answers; and competent witnesses are generally compellable — the subpoena's command stands behind the witness box. The child witness is received where the court is satisfied of sufficient understanding, with the oath administered where the child understands its nature, and unsworn evidence received under the statute's safeguards.

Spouses stand under special rules — competent for the defence, compellable in defined cases — the details of which the governing Act states and the student should read there.

Privilege

Privilege withholds evidence the law values more in confidence than in court: legal professional privilege — communications between client and lawyer for advice or litigation — is the strongest, belonging to the client, surviving the retainer, lost only by waiver or crime's furtherance. State privilege protects public interests — security, cabinet deliberations — balanced by the court where the statute allows.

The accused's privilege against self-incrimination lets him decline the witness box, with the court's comment and the modern statutes regulating the inferences silence may bear.

Examination of witnesses

Examination-in-chief elicits the witness's account without leading questions on contested matters; cross-examination tests it — leading permitted, credit attacked within the rules; re-examination repairs, confined to matters arising from cross. The judge controls the process: improper questions — scandalous, insulting, or needlessly repetitive — are disallowed, and the witness is protected from the ordeal becoming abuse.

Refreshing memory from a contemporaneous note is permitted under conditions; the hostile witness may be cross-examined by the party calling him, with leave, where he proves adverse; and a witness's previous inconsistent statement, properly put, may be proved to destroy his credit or, under the modern law, stand as evidence of its truth in defined cases.

Corroboration

Some evidence requires corroboration by law or by practice: the accomplice's testimony is received with a warning of its danger; children's unsworn evidence requires corroboration by statute; in sexual cases the old mandatory warnings have given way to judicial discretion in many systems, the danger being assessed on the facts. Corroboration must be independent evidence implicating the accused in a material particular.

Worked example

A child of nine saw the intruder. The court first satisfies itself, by gentle questions, that she understands the questions and answers rationally, and whether she understands the oath's duty. Her evidence is then received in the manner the statute prescribes, and the court looks for the corroboration the law requires — evidence law protecting both

the trial's truth and the child's place in it.

Discussion questions

• Who is competent to testify, and what makes a witness compellable?

• Whose privilege is legal professional privilege, and when is it lost?

• What is corroboration, and where is it required?

Chapter summary

In this chapter you have studied the following ground. Who may testify, who must, and how testimony is taken: this chapter teaches competence, compellability, privilege, and the examination of witnesses. On competence and compellability: All persons are competent unless the court considers them prevented by tender years, disease, or like cause from understanding questions and giving rational answers; and competent witnesses are generally compellable — the subpoena's command stands behind the witness box. On privilege: Privilege withholds evidence the law values more in confidence than in court: legal professional privilege — communications between client and lawyer for advice or litigation — is the strongest, belonging to the client, surviving the retainer, lost only by waiver or crime's furtherance. On examination of witnesses: Examination-in-chief elicits the witness's account without leading questions on contested matters; cross-examination tests it — leading permitted, credit attacked within the rules; re-examination repairs, confined to matters arising from cross. On corroboration: Some evidence requires corroboration by law or by practice: the accomplice's testimony is received with a warning of its danger; children's unsworn evidence requires corroboration by statute; in sexual cases the old mandatory warnings have given way to judicial discretion in many systems, the danger being assessed on the

facts. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 5 — Documentary and Electronic Evidence

Documents prove by their contents, under rules of their own: primary and secondary evidence, public and private documents, and the modern law of electronic records. This chapter teaches them.

Primary and secondary evidence

A document's contents are proved by the document itself — primary evidence. Secondary evidence — copies, counterparts, oral accounts of contents — is admitted only where the original's absence is explained on the statute's grounds: loss, destruction, the opponent's possession after notice, public documents, and the other stated cases. The hierarchy protects against the copyist's errors and the forger's opportunities.

Public documents — the acts and records of public bodies — are proved by certified copies, the state's seal standing for the original's production.

Execution and attestation

Where a document is required by law to be attested, its execution must be proved by an attesting witness where one is alive and available; otherwise by the handwriting routes. Documents thirty years old, produced from proper custody, may prove themselves under the ancient-documents presumption — age and custody standing in for witnesses time has taken.

Private documents are proved by handwriting evidence — the writer's admission, the familiar witness, the expert's comparison, the court's own comparison in careful measure.

Electronic evidence

Computer-produced material is received under the modern sections on conditions: the device was regularly used, information of the kind was regularly fed, the device operated properly, and the information reproduces what was fed — proved by a certificate from a responsible officer. The certificate is the gateway; without it, the printout's road is steep.

Screenshots, messages, and call records are documents in this analysis: their proponent must authenticate them — tie them to the device, the account, and the person — and authenticity is a question of evidence, not of the printout's confidence.

Parol evidence in documents

Where parties have reduced their agreement to a document, extrinsic evidence is not admitted to contradict it — the rule met in contract — while evidence is admitted to interpret ambiguity, to prove a collateral matter, or to show the document was not to operate at all. In evidence law the rule protects the written transaction's certainty.

Worked example

A party tenders a photocopy of a receipt, saying the original is with his former partner abroad. The court requires the statutory ground to be laid: the original's situation explained and the copy's fidelity supported. Secondary evidence is a door with a keeper; the explanation is the key, and 'the copy is clearer' opens nothing.

Discussion questions

• What is primary evidence, and when may secondary evidence be given?

• How are public documents proved?

• State the conditions for computer-produced evidence.

Chapter summary

In this chapter you have studied the following ground. Documents prove by their contents, under rules of their own: primary and secondary evidence, public and private documents, and the modern law of electronic records. On primary and secondary evidence: A document's contents are proved by the document itself — primary evidence. On execution and attestation: Where a document is required by law to be attested, its execution must be proved by an attesting witness where one is alive and available; otherwise by the handwriting routes. On electronic evidence: Computer-produced material is received under the modern sections on conditions: the device was regularly used, information of the kind was regularly fed, the device operated properly, and the information reproduces what was fed — proved by a certificate from a responsible officer. On parol evidence in documents: Where parties have reduced their agreement to a document, extrinsic evidence is not admitted to contradict it — the rule met in contract — while evidence is admitted to interpret ambiguity, to prove a collateral matter, or to show the document was not to operate at all. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 6 — Burden, Standard, and Presumptions in Practice

This chapter works the burdens in real cases: the criminal trial's structure, civil presumptions, estoppel, and the facts that need no proof.

The criminal burden at work

The prosecution proves every element beyond reasonable doubt; if at the close of its case the evidence, taken at its highest, cannot sustain a conviction, the submission of no case succeeds and the accused is discharged without defence. Where the statute places a burden on the accused — insanity, and facts within statutory defences — he discharges it on the balance of probabilities.

The 'golden thread' — the prosecution's duty throughout — is qualified only by the exceptions the law states expressly; the student should resist every invitation to widen them by analogy.

Civil burdens and shifting proof

In civil cases the asserting party proves on the balance of probabilities — more likely than not — and the evidential burden passes as the scales move: the defendant who would answer a proved case must produce his answer or lose on it. Illegality and fraud alleged in civil proceedings must be proved with a cogency proportioned to their gravity, though the standard's name does not change.

Presumptions of law decide where evidence is equal: the presumption of regularity, of legitimacy, of death after the statutory absence, of continuance — each rebuttable by evidence, each a rule for the undecided case.

Estoppel

Estoppel bars a party from denying what he has represented or what has been adjudged: estoppel by record — a matter once decided between the parties is decided forever, res judicata; estoppel by deed; and estoppel by conduct, where a representation relied upon to detriment binds its maker. In criminal law, estoppel yields to the public interest in the trial's correctness, save for the double-jeopardy pleas, which are estoppel's criminal form.

Res judicata's conditions — same parties, same issue, final judgment of a competent court — are strictly kept, for the doctrine's peace is bought with the possibility of an uncorrected error.

Facts not requiring proof

Judicial notice takes the notorious and the statutorily directed; formal admissions bind their maker; and facts the pleadings admit need no evidence. The trial's economy depends on these mercies: proof is for the disputed, not for everything.

Worked example

At the close of the prosecution's case in a theft trial, the only evidence of taking is a witness who 'believes' the goods in the accused's shop are the stolen ones, with no identifying mark proved. Taken at its highest, belief without identification cannot sustain the element of taking the complainant's goods. The no-case submission succeeds — the burden's discipline applied at the trial's midpoint, exactly where it belongs.

Discussion questions

• When does a submission of no case succeed?

• What standard does the accused meet where the law burdens him?

• State res judicata's three conditions.

Chapter summary

In this chapter you have studied the following ground. This chapter works the burdens in real cases: the criminal trial's structure, civil presumptions, estoppel, and the facts that need no proof. On the criminal burden at work: The prosecution proves every element beyond reasonable doubt; if at the close of its case the evidence, taken at its highest, cannot sustain a conviction, the submission of no case succeeds and the accused is discharged without defence. On civil burdens and shifting proof: In civil cases the asserting party proves on the balance of probabilities — more likely than not — and the evidential burden passes as the scales move: the defendant who would answer a proved case must produce his answer or lose on it. On estoppel: Estoppel bars a party from denying what he has represented or what has been adjudged: estoppel by record — a matter once decided between the parties is decided forever, res judicata; estoppel by deed; and estoppel by conduct, where a representation relied upon to detriment binds its maker. On facts not requiring proof: Judicial notice takes the notorious and the statutorily directed; formal admissions bind their maker; and facts the pleadings admit need no evidence. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 7 — Revision: The Evidence Map

The closing chapter rebuilds the subject: relevance's gate, hearsay's wall and doors, the witness's road, the document's hierarchy, and the burdens that govern all.

The whole in one view

Every item of evidence faces four questions. Is it relevant to a fact in issue? Is it admissible — does an exclusionary rule bar it, or an exception save it? By what mode is it proved — witness, document, thing? And what is its weight, under the governing burden and standard? Four questions, asked in order, are the subject.

Revise by the exclusions: hearsay, opinion, character, similar fact, privilege, confession's voluntariness — for each, state the rule, the reason, and the exception. The reasons are the memory's glue.

The trial as the map's country

Watch the map work in a trial: the charge fixes the facts in issue; pleadings and openings mark the relevance field; each witness is competence, examination, privilege, and corroboration in motion; each document climbs the primary-evidence hierarchy; the addresses argue burden and weight; the judgment applies the standard. The student who can narrate a trial in evidence terms knows the subject.

Further study runs to the Evidence Act read entire, section by section, for in this subject the statute is unusually close to the whole law — and then to the appellate cases where its phrases have been weighed.

Worked example

A final problem gathers all four questions: a deceased cashier's ledger, tendered against his alleged accomplice. Relevance is plain;

admissibility must climb hearsay's wall by the entries-in-duty exception and the document rules; the mode is documentary, proved by the bank's officer and the certificate regime where applicable; weight is for the tribunal, tested against the accomplice rules. Four questions, and the problem is solved in their order.

Discussion questions

• Recite the four questions every item of evidence faces.

• Why are the reasons for exclusions the memory's glue?

• Why should the Evidence Act be read entire in this subject?

Chapter summary

In this chapter you have studied the following ground. The closing chapter rebuilds the subject: relevance's gate, hearsay's wall and doors, the witness's road, the document's hierarchy, and the burdens that govern all. On the whole in one view: Every item of evidence faces four questions. On the trial as the map's country: Watch the map work in a trial: the charge fixes the facts in issue; pleadings and openings mark the relevance field; each witness is competence, examination, privilege, and corroboration in motion; each document climbs the primary-evidence hierarchy; the addresses argue burden and weight; the judgment applies the standard. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

PRACTICE PROBLEMS WITH GUIDED OUTLINES

Four problems follow, one for each of the first four chapters' ground. Attempt each in writing, under time, before reading its outline. The outline names the points a full answer must reach; it does not write the answer — that labour is yours, and it is where the learning is.

Problem 1 — What Evidence Law Is

Advise on a dispute raising the ground of this chapter. A full answer must reach, in order: Facts in issue and relevance; The kinds of evidence; Burden and standard in outline; Judicial notice and admissions. It must state each doctrine before applying it, must argue the other side's best point, and must conclude. Compare your attempt with the chapter's worked example: "In a boundary dispute, a party tenders a ballad sung at festivals praising his grandfather's farm 'from the river to the hill'. The court separates the questions: is it relevant — ..."

Problem 2 — Relevance and Admissibility

Advise on a dispute raising the ground of this chapter. A full answer must reach, in order: Res gestae — the same transaction; Motive, preparation, and conduct; Admissions and confessions; Opinion and experts. It must state each doctrine before applying it, must argue the other side's best point, and must conclude. Compare your attempt with the chapter's worked example: "An accused charged with poisoning is shown to have bought the same poison days earlier, telling the seller it was 'for rats', though he keeps no grain store. Motive is not in issue..."

Problem 3 — Hearsay

Advise on a dispute raising the ground of this chapter. A full answer must reach, in order: The rule and its reasons; The exceptions in outline; Documents and hearsay; Confessions and admissions distinguished. It must state each doctrine before applying it, must argue the other side's best point, and must conclude. Compare your attempt with the chapter's worked example: "A witness testifies: 'The market woman told me the accused was at the scene.' Tendered to prove the accused was at the scene, it is pure hearsay — the market woman perceived, and s..."

Problem 4 — Witnesses

Advise on a dispute raising the ground of this chapter. A full answer must reach, in order: Competence and compellability; Privilege; Examination of witnesses; Corroboration. It must state each doctrine before applying it, must argue the other side's best point, and must conclude. Compare your attempt with the chapter's worked example: "A child of nine saw the intruder. The court first satisfies itself, by gentle questions, that she understands the questions and answers rationally, and whether she understands the ..."

A LAST WORD TO THE STUDENT

You have finished this teaching book. Finish is the wrong word: a law book is a tool, and it earns its place only when you return to it with a problem in your hand. Keep it beside the other books of this library, work the questions again after a month, and let each return teach you what the first reading could not. That is how lawyers are made — by return, by work, and by patience.

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