

JUDICIAL GATEKEEPING IN COMPLEX TRIALS: FILTERING, SCREENING AND ADMITTING EVIDENCE WHILE MAINTAINING FAIR TRIAL AND EFFICIENCY

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1. Introduction

The administration of justice depends largely on the ability of courts to manage and regulate proceedings brought before them efficiently. Without effective control mechanisms, judicial institutions may become overwhelmed by frivolous claims, incompetent processes, and abusive litigation practices. Judicial gatekeeping serves as a mechanism through which courts, based on the procedural rules of the courts and rules of admissibility of evidence, preserve the integrity of legal proceedings and ensure that only deserving matters are adjudicated and admissible evidence are admitted in a matter before the court. Judicial gatekeeping is not an arbitrary exercise of the court. Rather, it must be rooted in constitutional provisions, statutory enactments, procedural rules, and established judicial precedents. These sources of laws collectively empower judges to screen cases, regulate evidence, and control procedural compliance and competences of witnesses and credibility and reliability of evidence that are presented before the court in a criminal trial or proceeding.

The conversation and discussion in this workshop therefore seek to or is aimed examined at strengthening the participants' understanding of the legal basis of roles of judicial officers as gatekeepers in judicial proceedings, with particular emphasis on its constitutional foundation, statutory framework, procedural mechanisms, and evidential foundations governing the admissibility and evaluation of evidence in trial.

2. Understanding the Concept of Evidence

The law of evidence is an aspect of the procedural law and it relates to the body of rules that governs the receiving of any piece of information or evidence which could be oral, documentary or material aimed at proving or disproving a contested issue of fact in a judicial proceeding. The object of the law of evidence is to lay down rules relating to the admissibility or exclusion of facts and evidence for the purpose of determining the facts in issue before an adjudicator, and as to the manner in which such facts and matters may be placed before the court.¹

In its broad sense evidence refers to anything that is used to determine the truth of an assertion. It governs the use of testimony which could be oral or written statement on oath or affidavit and exhibits; material objects and other documentary materials which are allowed to be

¹ *Phipson on Evidence* (17th ed., 2010, Hodge M. Malek ed,) Sweet and Maxwell, 1

considered in a judicial or administrative proceeding.² Evidence also is directed at judicial propositions relating to how material information on which conclusion is based, provided and evaluated. By pleadings or particulars of claim in civil matters and charge or information in criminal proceedings, notices of facts are given to the court and the parties, whereas evidence suggests, shows or demonstrates a fact by providing reliable and relevant information that makes the acceptance of the facts concrete. This is the reason oral statements of facts is not co-terminus with evidence. To give evidence is to make the recipient of facts believe that they are true.³ Therefore understanding the concept of evidence is very fundamental and key to the role and duty of a judicial officer in his or her role of due administration of justice as without that he or she risk doing great miscarriage of justice to the litigants and the society at large.

Without proper understanding of the concept and rules of evidence there can be no proper evaluation of facts and evidence presented before the court in a proceeding, and where facts and evidence are not properly evaluated based on law and rules of evidence it would be difficult to ensure and guarantee due administration of justice. This is the reason every decision of court must be founded on impeccable evidence laid before the court otherwise that decision must collapse like a pack of cards. In the case of *Sagay v. Sajere*⁴ the Supreme Court in upholding the decision of Court of Appeal for retrial of the matter found and held that there was an absence of evaluation concerning the credibility of witnesses, which is essential in making a proper judgment; that since the trial judge did not have a fair summation of the case nor resolve conflicts in the evidence adequately, a retrial was necessary.

The above emphasizes and underscores the point we have made earlier that the decision of court must be based on the evidence and not on the intuition or opinion of the judge. It shows that a judge must clearly demonstrate that the conclusions arrived at in a judgment must not be based on his intuition and whims but on evidence properly evaluated and assessed. And in order to adequately and justly demonstrate this a judge, be it in the high bench or low bench, the judge must be abreast and rooted in the understanding of the procedural rules and law of evidence.

3. Conceptual Framework for Judicial Gatekeeping

In a nutshell 'Judicial Gatekeeping' refers to the authority exercised by courts to regulate access to justice, determine the competence of cases and control the admissibility of evidence and procedure. This function is central to the effective administration of justice in any legal system. Therefore, judicial gatekeeping is indispensable to maintaining fairness, efficiency and public confidence in the Nigerian judicial and legal system. It encompasses jurisdictional review, assessment of procedural competence, regulation of evidence, and prevention of abuse of process.

3.1 Objectives of Judicial Gatekeeping

The primary objectives of judicial gatekeeping include:

- i. Promoting judicial efficiency;
- ii. Preventing misuse of judicial resources;

² An Almanac of Contemporary Judicial Restatements with Commentaries (1st ed. 2008, 'Iai O. Oshisanya) Spectrum Books Ltd, 559

³ Ibid, 560

⁴ (2000) 6 NWLR (Pt 661) 36

- iii. Protecting litigants from harassment;
- iv. Ensuring procedural fairness; and
- v. Enhancing public confidence in the judiciary.

Judicial gatekeeping thus represents a balance between access to justice and institutional integrity.

3.2 Definition of key terms in the topic-

- a. **Judicial:** this refers to anything related to courts, judges or the administration of justice. It describes the actions, powers and processes involving legal actions, proceedings and judgment and also interpretation of laws
- b. **Gatekeeping:** this refers to the judge's role in screening and filtering evidence and expert testimony before using the rules of evidence and principles of admissibility by ensuring the evidence is relevant, reliable, meets the requirement for admissibility and not unduly prejudicial to any of the party. The essence is to ensure that the judicial officer screens and filter out junks, irrelevant facts or confusing materials, balances fairness and ensure efficiency.
- c. **Complex Trials:** A complex trial is a legal proceeding that involves multiple parties, large volumes of evidence, technical issues or intricate legal questions. It often requires extended time, specialized knowledge and careful case management to ensure fairness and efficiency.
- d. **Filtering and screening of evidence:** Screening and filtering of evidence is the process whereby a judge reviews piece or item of evidence in proceeding using the any of the rules of admissibility to decide what is admissible or otherwise. It involves checking for relevance, reliability and legal compliance and excluding irrelevant and prejudicial facts.
- e. **Fair Trial:** this relates to a legal proceeding where both or parties to the proceedings have equal opportunity to present their case, evidence is properly evaluated and the judge or magistrate remain impartial throughout the duration of the proceeding. Fair trial is about justice, transparency and due process and the competence of the adjudicator to creditably handle the proceeding.
- f. **Judicial Efficiency:** this means resolving cases quickly, fairly and with minimal waste of time and resources. It involves smart case management, timely rulings and reducing backlogs without compromising justice.

However, for the purpose of this workshop our focus will be on judicial gatekeeping within the context of evidential rules of relevance and admissibility in civil and criminal proceedings in Nigeria.

4.1 Legal Framework of Judicial Gatekeeping and Law of Evidence in Nigeria

The Nigerian Constitution and the Law of Evidence and the procedural laws and rules and laws of various court in Nigeria are the foundation and statutory basis for the gatekeeping roles of our judicial officers in our legal and adjudicatory system. These laws determine the procedures, manner and mode of initiating proceedings by litigants, counsel and other court users and the roles, duties and powers of the courts in determining the outcome thereof. These essentially may be reduced or classified into two sources.

4.1.1 Primary Sources

Under the Constitution of the Federal Republic of Nigeria (as Amended), 1999, Evidence is assigned to the Exclusive Legislative List in the 2nd Schedule under as item 23. The indication

is that matters of evidence primarily is role of the National Assembly to legislate for the nation. Besides, section 6 of the Constitution vests on the Court created in the Constitution the judicial powers of the Federation. Thus, the judicial gatekeeping role flows naturally from this vesting as the courts must regulate the processes through which judicial power is exercised.

Also, under Part 4 of the Constitution there are provisions relating to procedural rules of court during trial and hearing of matters. This guarantees fair hearing and due process, which underpin evidential rules, including the right to present and challenge documentary evidence. The exclusion of incompetent cases and unreliable evidence serves to protect this constitutional guarantee. The Constitution created special courts and delineated their various roles, jurisdictions and subject matters. Courts are constitutionally bound to decline jurisdiction where matters fall outside their jurisdictional limits. Jurisdiction therefore constitutes the first layer of judicial gatekeeping. And the Constitution being the basic norm ranks in hierarchy above any other provisions of law in this regard.

However, the Evidence Act, Laws of the Federation (as Amended) 2023, is the primary enactment in Nigeria that regulate and govern evidential rules of procedures in the various courts across Nigeria where the law is meant to be applied.⁵

4.1.2 Secondary Sources

Secondary rules of evidence in this circumstance refers to others rules of evidence that are provided in other legislation other than the principal Act. These other provisions gain their validity by virtue of section 3 of the Nigerian Evidence Act which provides that nothing in the provisions of the Act shall prejudice the admissibility of any evidence that is made admissible by any other legislation validly in force in Nigeria. The implication of the above is that the Act is not the only source that guides and dictates the manner of presentation of evidence in judicial proceedings in court in Nigeria. The Administration of Criminal Justice Act (ACJA) 2015 introduces modern case management principles in criminal proceedings. The Act strengthens judicial control over criminal litigation and enhances gatekeeping efficiency.⁶ The Laws and Rules of various High Courts of the States of the federation made provisions with respect to evidence. For example, Order 35 of the Rivers State High Court (Civil Procedure) Rules provides on the use of witness written depositions and oral examinations of witnesses in open court. It also provides on document which may be tendered from the bar either by counsel or a party when not represented by a counsel. Besides the provisions in the Rules of courts, the Administration of Criminal Justice Act and Laws of the States various provides on the manner of recording of a suspect statement.

5. Admissibility of Evidence Under the Evidence Act

The Evidence Act regulates the issues of relevance, admissibility and evaluation of evidence in courts' proceedings. Any evidence admitted in a proceeding is presumed to have passed these tests of relevance and admissibility under the rules of evidence. Section 1 of the Evidence Act, 2011 provides that evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts which are hereafter declared to be relevant; and of no other provided that the court may exclude evidence of facts which though relevant or deems to be relevant to the issue, appears to it to be remote to be material in all the circumstances of the case, and that this section shall not enable any person to give evidence of

⁵ The Evidence Act is inapplicable in Customary Court, Area Court and Sharia Court except where it required to be applied where criminal proceedings are being conducted in those courts

⁶ See sections to 15 to 17 ACJA on police taking of suspects extra judicial statement during police investigations

a fact which he is disentitled to prove by any provision of law for the time being in force. Fundamentally, the basic criterion for admissibility of evidence is relevance of the facts sought to be given in evidence and the passing of the test of admissibility of the piece of evidence though it is shown to be relevant. Therefore, while all admissible evidence is relevant, it not all relevant evidence that is admissible.

5.1 The concept of Relevance and Admissibility

5.1.1 Relevance-

Relevance is the most important rule of evidence. The principle is that only relevant evidence is admissible. The requirement is that it must relate directly to facts in issue or relevant facts. If it is not relevant and does not relate to the facts in issue, it is inadmissible even if it is true. Irrelevant evidence is inadmissible. See *Sections 1–12, Evidence Act 2011(as Amended 2023)*

5.1.2 Admissibility Rule

Even if evidence is relevant, it must also be legally permissible and admissible for it to be admitted. Some evidence is excluded by law such as privileged communications between lawyer and his client, spouses, public officers and others in fiduciary relationship, and evidence obtained in violation of statutory provisions in some cases. See *Sections 182–196*

5.1.3 The Exclusionary Rule –

Section (1) (a) and (b) provide that the court may exclude the evidence of facts which though relevant or deemed to be relevant to the issue, appears to it to be too remote to be material in all the circumstances of the case, and that the court has the power not to allow any person give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force.

5.2 Rules of Admissibility

(a) **Oral Evidence:** Oral evidence is the statement of a witness in court whether made on oath or by affirmation which is offered as evidence of the truth of that which is stated.⁷ It is the direct evidence or testimony on oath of the eyewitness who saw or perceived the incidence with any of the senses. Section 208 and 209 gives the court the discretion to take the unsworn testimony of some persons on religious grounds and also that of a child who is below 14 years of age. The evidence is taken unsworn or without affirmation where in the opinion of the court the child understands the duty of speaking the truth or possess sufficient intelligence to justify the taking of his evidence. All facts, excepts the contents of a document, may be proved by oral evidence.⁸ Oral evidence in practice includes mainly the evidence-in-chief of a witness, the cross-examination and re-examination.⁹ the evidence of a dumb witness is treated as oral evidence.¹⁰ Part XII of the Evidence Act essentially deals with the taking of oral evidence and examination of witnesses.

(b) **Hearsay Evidence:** Hearsay is the evidence of a witness about what someone else said, and not what the witness personally knows or experienced with his senses¹¹. Generally,

⁷ *Cross on Evidence* (6th ed.), p. 37

⁸ Sections 125 and 126

⁹ *Okoro v. State* (2012) 4 NWLR (PT.1290) 351 SC

¹⁰ Section 176

¹¹ *Privy Council in Subramaniam v. Police Prosecutor* (1956) 1 WLR 965

hearsay evidence is inadmissible except as provided under the Evidence Act. Hearsay evidence could be oral or written. In **Armel's Transport Ltd v. Martins**¹² the court held that the report of police on point of impact in an action for negligent driving whose report was based on what the people in the vehicle told him which the police did not see it himself was hearsay. Also, in **Aiworo v. State**¹³, an expert evidence of a psychiatrist which was based on the information supplied to the expert by the accused relatives when the expert did not see nor examine the accused at the material time was held by the Supreme Court to be hearsay. Thus, in simple and clear term hearsay is secondary evidence of oral evidence or a second-hand evidence. However, section 37 of the Evidence Act set out the general rule on hearsay evidence while sections 39 to 45 of the Act state the exceptions to the rule. There are other sections in the Act which may have bearing on the hearsay rules as set out in section 38.¹⁴ The exceptions to the hearsay rules are as follows –

- i. Statement made by persons who cannot be called as witness – section 39 Evidence Act; cf section 33
- ii. Statement relating to cause of death – section 40(1) and (2)
- iii. Statement made in course of business – section 41
- iv. Statement against the interest of the maker with special knowledge – section 42
- v. Statement of opinion as to public rights or custom and matter of general interest – section 43
- vi. Statement relating to the existence of a relationship – section 44
- vii. Declaration by testator – section 45
- viii. Proof of evidence in subsequent proceedings of the truth stated therein – section 46

(c) **Opinion Evidence:** The general rule is that evidence based on the opinion of the witness is irrelevant and inadmissible. Section 67 of the Evidence Act provides that the opinion of any person as to the existence or non-existence of a fact in issue or irrelevant to the fact in issue is inadmissible except as provided in sections 68 to 76 of the Evidence Act. The grounds more commonly given for the rejection of opinion evidence are that they since they are not founded on any evidence are worthless and that they tend to usurp the functions of the court whose province alone it is to draw conclusion of law or fact or both.¹⁵ However, when the court has to form an opinion upon a point of foreign law, customary law or custom or of science or art, or as to handwriting or finger impressions, the opinion of anyone who is skilled in that area in question are admissible. To be regarded as an expert it must be shown that the person is trained and skilled in that area, he must be called as a witness and must declare his qualifications before his opinion or evidence would be admissible. The exception to the inadmissibility of opinion evidence are of two kind- the opinion of experts under sections 68 to 71 and the opinion of non-experts under section 72 to 76. In **Iden v. State**¹⁶ the court held that the main function of an expert witness is to assist the court arrive at the truth in judicial process. The court therefore, is not bound to accept expert evidence where it is not consistent with the ordinary course of events known to the court and it is at variance with other facts in the

¹² (1970) 6 NSCC 22

¹³ (1987) 18 NSCC (Pt II) 710

¹⁴ See section 28 Evidence Act.

¹⁵ *North Cheshire & Manchester Brewery Ltd v. Manchester Brewery Co. Ltd* (1899) AC 83; Phipson on Evidence 7th ed., 2010 Sweet & Maxwell

¹⁶ (1994) 8 NWLR (Pt.365) 719 CA

case already established in evidence. In **Ozigbo v. Police**¹⁷ the Supreme Court held that where there are conflicting opinions of two expert the court will determine which to believe.

5.3 Documentary Evidence:

By virtue of section 83 (1) of the Evidence Act, in any proceeding where direct oral evidence of a fact would be admissible, any statement made by a person in a document which seems to establish that fact shall, on production of the original document, be admissible as evidence of that fact upon the satisfaction of the conditions stated and required under the Act. Under the best evidence rule, documentary evidence is generally regarded as the best evidence to prove any given facts in issue.¹⁸

Under section 258(1) of the Evidence Act, document is defined to include books, maps, plans, graphs, drawings, photographs, 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. It also includes any disc, tape, sound track or other devices in which sounds or other data are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced from it; and 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 any device by means of which information is recorded, stored or retrievable including computer output.

Documentary evidence is classified into primary and secondary evidence and the essence is to fix the mode of tendering and admitting them by the court mainly for authentication. Sections 85 to 92 makes provisions for two main categories of documentary evidence and how they can be tendered and utilized in proceeding for prove of facts.

5.3.1 Primary Evidence of Document-

This is the document itself produced for the inspection of the court.¹⁹ In *Ogu v. M.T.& M.C.S Ltd*²⁰ the court held that the best evidence of the content of a document is the production of the document for inspection itself. Thus, where a document is made in several part. Therefore, the following documents are regarded as primary evidence that is documents made and executed in several parts, documents executed in counterparts by one or some of the same parties, a number of documents made one uniform process like in the case of printing, lithography, photocopy or other electrical process, each shall be primary evidence of the contents of the rest. However, where they are copies of a common original, they shall not be primary evidence of the original.²¹

5.3.2 Secondary Evidence-

These are copies of document made from the original not from the same uniform process. Section 87 of the Evidence Act provides that secondary evidence includes certified true copies, copies made from the original by mechanical or electronic process which ensures the accuracy of the copy, copies compared with the copy and made from the original, counterparts of document as against the party who did not execute them and oral accounts of the contents of a document given by some person who has himself seen the document.

¹⁷ (1976) 10 NSCC 124

¹⁸ *Adda v. Liman* (2011) All FWLR (Pt. 587) 765

¹⁹ Section 86 Evidence Act

²⁰ (2011) 8 NWLR (Pt 1249) 345

²¹ Section 86 (2) to (4) Evidence Act

5.3.3 Proof of Documentary Evidence

In *Densy Industries (Nig.) Ltd v. Uzokwe*²² it was held that where there is evidence that there exists a document on an issue before the court, the best evidence is the production of the document unless it has been destroyed or stolen or can only be procured by incurring heavy and substantial expenses. The production could be either way of primary or secondary evidence. Failure to do so in the absence of a tenable explanation will be fatal to the case of the party. The above makes it abundantly clear that content of a document shall be proved by primary evidence except in manners or cases stated in the Act.²³ This is the general rule, and wherever the Evidence Act allows for the admission of secondary evidence it becomes the exception to the general rule. However, the case of public document, the only legally admissible secondary evidence is the certified true copy of the original and it may be tendered without the necessity of calling the person who certify it as a witness.

5.3.4 Circumstances in Which Secondary Evidence may be Given-

Secondary evidence is admissible upon the satisfaction of certain conditions, referred to as laying of evidential foundation. Section 89 of the Evidence provides in detail the circumstances where secondary evidence may be given of the existence, condition or contents of a document and they include the following cases- when the original is shown or appears to be in the possession or power: (i) of the person against whom the document is sought to be proved, or (ii) of any person legally bound to produce it and the person fails to produce it after notice has been given in line section 91; when the existence, condition or content of the original have been shown to have been admitted in writing by the person against whom it is proved or by his representative in interest; when the original has been destroyed; when the original is of such a nature as not to be easily movable; when the original is a public document under section 102; when the original is required to be proved by certified copy by the Act or any other law; when the original consists of numerous accounts or other documents which it will not be convenient to easily produce in court; and when the original is an entry in a banker's book.

In *Jacob v. A. G. Akwa Ibom State*²⁴ the court held that the document sought to be tendered being a photocopy, a secondary evidence and there being no notice to the respondent to produce the original before the appellant sought to tender it and that the appellant having not laid proper foundation for the admissibility of the document renders the document inadmissible for none compliance with the provision of section 97(1) (a) of the Evidence Act, 1990 which is similar with the present section 89. Also, in *A. C. B v. Nwodika*²⁵ the court held that photocopies per se of a document without more, are not admissible in evidence; that proper and sufficient foundation must be laid in order to make a photocopy of a document admissible. However, section 90 of the Evidence Act goes further to categorize the nature of secondary evidence under section 89 and the circumstance in which they will be admissible in proof of the original.

5.4 Admissibility of Confessional Statements

By virtue of section 28(1) of the Evidence Act, it is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed the crime. It could be made in pretrial custody or during trial. Thus, in so far as the confession of the accused is relevant to the trial or charged before the court, it may be given in evidence against the accused person or suspect provided it is not excluded by the provisions of section 29 of the Act. A

²² (1992)2 NWLR (Pt. 591) 392 CA

²³ Section 88 Evidence Act

²⁴ (2002) FWLR (Pt. 86) 578 CA

²⁵ (1996) 4 NWLR (Pt443) 470 CA

confession could be made orally or in writing, and whichever way, they both carry the same evidential weight.

The accused person is required to challenge the admissibility of the confessional statement at the time when the prosecution seeks to tender it in one or two ways- either by denying the authorship of the statement, which primarily does not affect its admissibility but the probative value or by showing that though he made the statement and signed it, that it was not obtained voluntarily but by torture, threat or inducement. In such circumstance the court shall call for trial within trial to ascertain the veracity of the allegation of involuntariness by the accused person.

Again, the Administration of Criminal Justice Act and Laws of the various States have made provisions sections 15 and 17 of the Act requiring that in taking the statement of the accused person outside court, such statement must be video-recorded by the police if it is not taken in the presence of one or more independent persons such as a legal practitioner representing the accused, officer of the Legal Aid Counsel, officer of the civil liberty or society organization or any other person of the accused person's choice. The Supreme Court in its recent decisions have settled the scope and effect of non-compliance by the police or law enforcement agencies with the above provisions of the Act.²⁶ In the case of *FRN v. Akaeze*, the Supreme Court held that any confessional statement which fails to comply with the above requirement is inadmissible and should be rejected.

5.5. Admissibility of Computer-Generated Evidence-

By virtue of section 258 of the Evidence Act the definition of a document now includes document generated from computer or any digital device in any of the forms or manner described in the Act. The Amendment made further elaboration and expanded the scope of the meaning of admissible electronic records. By the virtue above, electronic records stored, recorded in optical or magnetic media or cloud computing data produced by a computer are now admissible document. This also has expanded to electronic oath taking of affidavit which can be done electronically through audio visual means; the law now recognizes the use of electronic or digital signature and as well as publication of official document electronically.²⁷

Therefore, in any proceedings before the court any statement contained a document by any of the computer or digital device shall be admissible as evidence of any fact stated in it of which direct oral evidence would be admissible. However, it is required that certain conditions need to be fulfilled or satisfied in relation to the statement or device before the computer and digital document would be admissible.²⁸ *R v. Shepherd*, an English authority, Lord Griffiths noted and held that the object of section 69 of the English Evidence Act on Computer generated evidence is that it requires anyone who wishes to introduce computer evidence to produce evidence that will establish that it is safe to rely on the document produced by the computer; that such document cannot be discharged without evidence by the application that the computer is working correctly.

6. Evaluation of Evidence

The administration of justice depends largely on the proper evaluation of evidence presented before the courts. In judicial proceedings evidence is broadly categorized into oral and

²⁶ *FRN V. Akaeze* (2024) 12 NWLR (Pt. 1951) SC; *FRN V. Nnajofofor* (2024) 10 NWLR (Pt.1947) 443 Sc

²⁷ Sections 84 to 84D

²⁸ Section 84(2)

documentary evidence. The Evidence Act, 2011 (as amended) provides the statutory framework governing the admissibility, relevance, and probative value of evidence, while judicial decisions supply interpretative guidance. These principles governing the evaluation of oral and documentary evidence are embodied in the statutory provisions and judicial pronouncements of superior courts that regulate their use. The role of courts in assessing relevance, credibility, authenticity, consistency, and weight of evidence has been emphasised again and again by the superior court.

Evidence constitutes the foundation upon which judicial decisions are made because courts rely on legally admissible oral and documentary evidence to determine issues in disputes presented before it by litigants. The Evidence Act regulates what evidence is admissible and how it should be assessed. Courts are empowered to evaluate evidence based on established principles developed through case law.

Key provisions of the Evidence Act that guides the tendering, admissibility and evaluation of evidence include- Sections 1–11 on Relevancy and facts in issue; Sections 12–13 on Admissibility; Sections 83–84m on Documentary and electronic evidence; Sections 125–136 on burden and standard of proof; Sections 86–90 on public and private documents; and Sections 93–97 on Primary and secondary evidence. These provisions regulate how oral and documentary evidence are tendered, admitted and evaluated by the trial courts and ascribing appropriate probative values on admitted evidence.

6.1 Evaluation of Oral Evidence

Section 125 of the Evidence Act provides that oral evidence must be direct. This means that a witness must testify to what he personally saw, heard, or perceived through any of his or her senses. Hearsay evidence is generally inadmissible except on the grounds and circumstances provided under sections 38 to 45 of the Evidence Act. Oral evidence must be presented through testimony of witnesses in court on oath and subjected to cross-examination.

6.1.1 Principles Governing Evaluation of Oral Evidence

- i. **Credibility of Witnesses** - Courts assess the credibility of witness based on demeanour, consistency, truthfulness, and Corroborative or supportive evidence which is in material particular to the testimony of the witness.
- ii. **Demeanour of Witnesses** - Demeanour refers to the conduct and behavior of witnesses in court. Trial courts are best placed to assess and appraised the demeanour of witnesses on oath. In *Onwujuba v. Obienu* (1991) 4 NWLR (Pt. 188) 16, the Supreme Court held that appellate courts rarely interfere with findings based on demeanour of witnesses.
- iii. **Consistency and Contradictions** - Material contradictions weaken oral evidence. In *Afolalu v. State* (2010) 16 NWLR (Pt. 1220) 584, the court held that minor inconsistencies do not vitiate evidence, but material contradictions may.
- iv. **Corroboration** - Certain types of oral evidence require corroboration, such as Confessional statements later retracted and or evidence of accomplices and the unsworn evidence of a child. In *R v. Baskerville* (1916) 2 KB 658, applied in Nigeria, it was held that corroboration must implicate the accused in material particulars.

6.1.2 Evaluation of Oral Evidence in Civil and Criminal Cases

- i. **Civil Cases** - In civil matters, oral evidence is evaluated on the balance of probabilities. *In Mogaji v. Odojin*²⁹, the court developed the “imaginary scale” principle for weighing evidence.
- ii. **Criminal Cases** - *In criminal cases, oral evidence must establish guilt beyond reasonable doubt* *In Woolmington v. DPP*³⁰ adopted in Nigeria, the prosecution bears the burden of proof.

7. Evaluation of Documentary Evidence -

Section 258 defines documents to include: Written materials, maps, photographs, electronic records, digital data and other computer-generated materials. Documents serve as permanent records and are often regarded as more reliable than oral

7.1 Primary and Secondary Evidence

- i. **Primary Evidence**- Section 86 provides that documents must be proved by primary evidence, that is, the original document.
- ii. **Secondary Evidence** -Section 89 allows secondary evidence in specified circumstances, such as loss or destruction of the original. In *A.G. Federation v. Kashamu*³¹ the Supreme Court emphasized strict compliance with conditions for secondary evidence.

7.1.2 Public and Private Documents

- i. **Public Documents**- Section 102 defines public documents. Certified true copies are admissible. In *Minister of Lands v. Azikiwe*³², certified copies were held admissible without further proof.
- ii. **Private Documents** -Private documents require proof of execution. In *Ogbunyiya v. Okudo*³³, the court held that private documents must be authenticated.

7.1.3 Proof and Authentication of Documents

Documents must be properly pleaded, tendered through competent witnesses and authenticated. In *Alade v. Olukade*³⁴, failure to prove execution rendered a document worthless.

7.1.4 Electronic and Computer-Generated Evidence

Section 84 governs electronic evidence. A certificate of compliance is required. In *Dickson v. Sylva*³⁵, the Supreme Court insisted on strict compliance with Section 84. However, in *Kubor*

²⁹ (1978) 4 SC 91

³⁰ (1935) AC 462

³¹ (2020) 7 NWLR (Pt. 1722) 1,

³² (1969) 1 All NLR 49

³³ (1979) 6–9 SC 32

³⁴ (1976) 2 SC 183

³⁵ (2017) 8 NWLR (Pt. 1567) 167

*v. Dickson*³⁶, the court clarified that electronic evidence is admissible only upon satisfaction of statutory

7.1.5 Weight Attached to Documentary Evidence

Courts attach greater weight to documentary evidence than oral evidence in case of conflict. In *Fashanu v. Adekoya*³⁷, the Supreme Court held that documentary evidence is superior to oral testimony. Similarly, in *Kimdey v. Military Governor of Gongola State*³⁸, documentary evidence prevailed over contradictory oral evidence. However, where oral and documentary evidence conflict, courts prefer documentary evidence. In *A.G. Oyo State v. Fairlakes Hotel Ltd*³⁹, the court held that documents speak louder than words. Again, where documents are ambiguous, oral evidence may be admitted to explain them.

Conclusion

The trial judge has a duty to - Review evidence, make findings, resolve conflicts, and assign relative probative value and weight each evidence before the court. In *Ogunleye v. Oyewole*⁴⁰, the court stated that evaluation is not a mere summary but a reasoned assessment. Failure to evaluate evidence properly may result in appellate intervention. Evaluation of oral and documentary evidence is central to the Nigerian judicial process. While oral evidence depends largely on credibility and demeanour, documentary evidence derives strength from authenticity and permanence. The Evidence Act and judicial precedents provide a robust framework for assessing both forms of evidence. Effective application of these principles promotes justice, fairness, and confidence in the legal system.

³⁶ (2013) 4 NWLR (Pt. 1345) 534

³⁷ (1974) 6 SC 83

³⁸ (1988) 2 NWLR (Pt. 77) 445

³⁹ (1989) 5 NWLR (Pt. 121) 255

⁴⁰ (2000) 14 NWLR (Pt. 687) 290

APPENDIX A

Classroom Handout – Evaluation of Evidence Criminal Case Study

CLASSROOM HANDOUT

Evaluation of Evidence: Facts in Issue, Credibility, and Gaps

Case Study: *The State v. Musa Bello*

Learning Objectives

By the end of this exercise, students should be able to:

1. Identify facts in issue from a criminal charge.
2. Assess the reliability and credibility of witnesses.
3. Detect gaps and inconsistencies in evidence.
4. Apply the standard of proof beyond reasonable doubt.
5. Develop basic judicial reasoning skills.

Background Scenario

On 12th March 2024, at about 9:00 p.m., a robbery occurred at Ade Supermarket, Wuse, Abuja. During the incident, ₦450,000 was stolen and the owner, Mr. Samuel Ade, was injured. Musa Bello, a commercial motorcyclist, was arrested and charged with armed robbery. The prosecution alleges that Musa Bello was one of the robbers.

Summary of Evidence

Prosecution Witnesses

PW1 – Mr. Samuel Ade (Victim)

- Three men robbed him.
- One of them held a knife.
- Identified Musa as the attacker.
- Shop was “brightly lit”.
- He was injured and in shock.
- Incident lasted about two minutes.

PW2 – Mrs. Fatima Lawal (Neighbour)

- Heard shouting.
- Saw someone run away on a motorcycle.
- Said the person “looked like Musa”.
- It was raining lightly.
- Streetlight was off.
- Distance: about 30 metres.

PW3 – Investigating Police Officer

- Arrested Musa on “information received”.
- No identification parade.
- No weapon recovered.
- No CCTV footage.

Defence Evidence

Accused – Musa Bello

- Denied involvement.
- Claimed he was at a mechanic workshop from 7:00 p.m. to 10:00 p.m.
- Raised an alibi.

DW1 & DW2 – Mechanics

- Said Musa was with them on the night.

- Could not recall the exact date.
- Had no written records.

PART A: Individual Exercise

Question 1: Facts in Issue

List five (5) facts that the prosecution must prove to secure conviction.

Question 2: Witness Evaluation

For each witness, state:

- (a) One factor supporting credibility
- (b) One factor weakening credibility

PW1: _____

PW2: _____

PW3: _____

DW1/DW2: _____

Question 3: Gaps in Evidence

Identify four (4) missing links in the prosecution's case.

1. _____

2. _____

3. _____

4. _____

Question 4: Inconsistencies

Mention three (3) contradictions or uncertainties in the evidence.

1. _____

2. _____

3. _____

Question 5: Standard of Proof

In your opinion, has the prosecution proved its case beyond reasonable doubt? Give two (2) reasons.

PART B: Group Activity

Students will work in groups of 4–6 and assign the following roles:

- Prosecutor
- Defence Counsel
- Judge
- Observers

Task

1. Prosecutor prepares a 5-minute argument for conviction.
2. Defence Counsel prepares a 5-minute argument for acquittal.
3. Judge prepares a short ruling.
4. Observers note strengths and weaknesses.

PART C: Mini-Trial Simulation

Each group conducts a simulated hearing:

- Prosecution Address – 5 minutes
- Defence Address – 5 minutes
- Judge’s Ruling – 3 minutes
- Feedback – 2 minutes

PART D: Class Discussion

Discuss the following questions:

1. Was PW1’s identification reliable?
2. Should an identification parade have been conducted?
3. How important was the alibi?
4. Did the police investigation meet professional standards?
5. Would you convict as a judge? Why?

APPENDIX B

Civil Law Classroom Handout – Evaluation Of Evidence Case Study CLASSROOM HANDOUT (CIVIL PROCEEDING) Evaluation of Evidence: Facts in Issue, Reliability, and Gaps Case Study: *Adewale v. Greenfield Construction Ltd*

Learning Objectives

By the end of this exercise, students should be able to:

1. Identify material facts in issue in a civil dispute.
2. Assess the reliability and credibility of oral and documentary evidence.
3. Detect gaps and inconsistencies in evidence.
4. Apply the standard of proof on the balance of probabilities.
5. Develop analytical and advocacy skills in civil proceedings.

Background Scenario

In January 2023, Mr. Tunde Adewale entered into a written contract with Greenfield Construction Ltd for the renovation of his residential bungalow in Ibadan.

Contract Terms

- Contract Sum: ₦5,000,000
- Duration: 3 months (February–April 2023)
- Payment:
- ₦3,000,000 advance
- ₦2,000,000 on completion

Mr. Adewale paid the advance in February 2023.

Work commenced in March 2023.

By August 2023, the renovation was still incomplete.

Mr. Adewale terminated the contract and sued for breach of contract, refund, and damages.

The defendant denied liability and claimed that the delay was caused by the claimant's interference and failure to supply materials.

Summary of Evidence

Claimant's Evidence

CW1 – Mr. Tunde Adewale (Claimant)

- Tendered the written contract.
- Tendered bank transfer receipt of ₦3,000,000.
- Claimed work stopped in May 2023.
- Said only about 40% of work was done.
- Claimed complaints were ignored.

Under Cross-Examination:

- Admitted design changes in April 2023.
- Admitted travelling abroad in May for three weeks.
- Could not produce written complaints.

CW2 – Mrs. Funke Adewale (Wife)

- Confirmed slow progress.
- Said workers were absent most days.
- Could not give exact dates.
- Was often away at work.

Documentary Evidence (Claimant)

- Contract agreement.
- Bank receipt.
- Photographs of unfinished building (July 2023).

Defendant’s Evidence

DW1 – Mr. Chinedu Okorie (Project Manager)

- Claimed claimant kept changing designs.
- Claimed claimant failed to supply materials.
- Said work stopped due to lack of materials.
- Tendered site logbook.

Under Cross-Examination:

- Logbook entries were irregular.
- Some entries were blank.
- Some were unsigned.

DW2 – Mr. Sadiq Musa (Site Supervisor)

- Claimed workers were always present.
- Said delays were due to claimant’s instructions.
- Could not remember exact dates.
- Had no independent records.

Issues for Determination

1. Whether a valid contract existed.
2. Whether the defendant breached the contract.
3. Whether the delay was caused by the claimant.
4. Whether the claimant is entitled to refund and damages.

PART A: Individual Exercise

Question 1: Facts in Issue

List five (5) material facts the claimant must prove to succeed in this case.

Question 2: Reliability of Evidence

For each witness, state:

- (a) One factor supporting reliability
- (b) One factor weakening reliability

CW1: _____

CW2: _____

DW1: _____

DW2: _____

Question 3: Gaps in Evidence

Identify four (4) missing links in the evidence of either party.

1.

2.

3.

4.

Question 4: Inconsistencies

Mention three (3) contradictions or uncertainties in the evidence.

1.

2.

3.

Question 5: Standard of Proof

On the balance of probabilities, should the claimant succeed? Give two reasons.

PART B: Group Activity

Students will work in groups of 4–6 and assign the following roles:

- Claimant’s Counsel
- Defendant’s Counsel
- Judge
- Observers

Task

1. Claimant’s Counsel prepares a 5-minute argument for judgment in favour of the claimant.
2. Defendant’s Counsel prepares a 5-minute argument for dismissal of the claim.
3. Judge prepares a short ruling.
4. Observers note strengths and weaknesses of arguments.

PART C: Mini-Hearing Simulation

Each group conducts a simulated civil hearing:

- Claimant’s Address – 5 minutes
- Defendant’s Address – 5 minutes
- Judge’s Ruling – 3 minutes
- Feedback – 2 minutes

PART D: Class Discussion

Discuss the following questions:

1. Did the claimant contribute to the delay?
2. How reliable were the site records?
3. Should design changes affect liability?
4. Was termination justified?
5. How should damages be assessed?

Optional Homework

Essay (1000 words):

“Evaluate the role of documentary evidence in resolving construction contract disputes.”