**NAVIGATING THE TWILIGHT ZONE:**

**AN OVERVIEW OF THE SUBSTANTIVE AND PROCEDURAL REQUIREMENT OF ADMISSIBILITY UNDER THE EVIDENCE ACT, 2011**

**BY**

**HON. MR. SULAIMAN USMAN SAN, FICMC, FIMC, CMC, FNARC, FCMIL**

**(D.L, LL. B (HONS), B.L , PG Cert (TEXAS), LL.M (LIVERPOOL) LL.M (QMUL)**

**(LIFE BENCHER)**

**ATTORNEY GENERAL, SOKOTO STATE**

**A lecture delivered at all Nigerian Judges Conference of the lower Courts, Held between 14th -18th November, 2022 at Adraws Otutu Obaseki Auditorium, National Judicial Institute, Abuja**

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**INTRODUCTION**

What a pleasure to be here at this All-Judges Conference of Lower Court 2022. I am eager to learn and delighted to participate in this conference for the first time. I would like to thank the Administrator of National Judicial Institute and his team for their Industry, Organizational Capacity and Impactful leadership putting this conference together and inviting me to deliver this lecture.

I was asked to give a lecture on **the Substantive and Procedural Requirement for Admissibility under the Evidence Act 2011** but upon panoramic and a bird eye view of the issue I came up with the topic, **Navigating the Twilight Zone**. An overview of the substantive and procedural requirement of admissibility Under the Evidence Act 2011 because in addressing the topic I must enter the Twilight Zone in which the difference between Substantive and Procedural Requirement of Admissibility will be without distinction hence one must navigate carefully because there is Twilight Zone though the purpose of the admissibility Requirement whether considered Substantive or Procedural must strike a balance between guarding against admission of incredible evidence and deciding the merit of a case without sufficient evidence.

**CONCEPTUAL CLARIFICATION OF TERMS**

To discuss the procedural requirement of admissibility under evidence Act 2011, it is apposite as a starting point to make some conceptual clarification of terms even though legal concepts are generally nebulous and incapable of precise definition because a definition is not more fruitfully definite not definitive of the exposition it calls to mind.

**EVIDENCE: -**

The term “Evidence” is derived from latin word *Evidere* which means “to show clearly”.

Black’s Law Dictionary 10th Edition defined ‘’Evidence’’ as ;

“Something (including testimony, document, and tangible objects) that tends to prove or disprove the existence of an alleged fact[[1]](#footnote-0).”

 Aguda defines evidence as follows;

“Evidence is the means by which facts are proved but excluding inferences and argument. it is common knowledge that a fact can be prove by oral testimony of persons who perceived the fact, or by the production of documents, or by the inspection of things or places- all these will come within the meaning of Judicial Evidence. On a very broad view, it is sometime permissible to include in this list such other means of proving a fact as admission and confession, judicial notice, presumption, and estoppels.”[[2]](#footnote-1)

From the above definition is discernible that Evidence is anything that furnishes proof of fact by causing the believe that facts are true or has happened. In other words, evidence is furnishing the court with what is admissible as evidence in proof of fact in issue before a court, tribunal, or finder of fact or trier of facts. It includes the quantum and quality. Quantum relates to standard of proof required to discharge the legal burden while quality relates to the venerability of the admissibility of evidence which is largely based on fundamental requirements of relevancy. competency, authentication. materiality, and reliability,

**SUBSTANTIVE LAW is defined as –**

“The part of the Law that creates, defines and regulate the rights, duties and powers of parties.[[3]](#footnote-2)

**PROCEDURAL LAW** is defined as: -

“The rule that prescribe the steps for having a right or duty judicially enforced, as opposed to the law that defines the specific rights or duties”.[[4]](#footnote-3)

**REQUIREMENT** is defined as **–**

“Something that must be done because of a law or rule , something legally imposed, called for or demanded”[[5]](#footnote-4).

**ADMISSIBILITY** is defined as:-

“The quality or state of being allowed to be entered into evidence in a hearing, trial, or other official proceeding.[[6]](#footnote-5)”

**RULES OF EVIDENCE SUBSTANTIVE OR PRCEDURAL?**

The question of whether rules of evidence are within the realm of substantive law or procedure has been argued *ad nauseam*. If I may say so, since evidence of a fact is how such fact is proved and the law of evidence consists of requirements and conditions that must be met for evidence to be accepted and acted upon by the court, it follows that the law of evidence falls under the subject matter of 'adjective law', which defines the pleadings, evidencee and procedure.

In other words, evidence deals with rights, the means of establishing those rights as well as the procedure by which those rights are established and enforced. In sum and in the light of the foregoing, it is pertinent to state that the law of evidence consists of both substantive and procedural requirements, ditto admissibility[[7]](#footnote-6). In the paper, we have discussed both substantive and procedural requirement for admissibility under the Evidence Act 2011 albeit by way of overview.

**ADMISSIBILITY OF ORAL EVIDENCE**

Oral evidence also known as testimonial evidence is the evidence given vocally in words of mouth by a witness in court under oath or affirmation. Oral evidence include evidence given by a physically challenged person through signs or by way of any device. The general rule is that all fact except the content of a document may be proved by oral evidence[[8]](#footnote-7). It is a trite law that, a witness can give evidence only of facts of which he has personal knowledge, that is a fact which he has seen, heard, smell, taste touched or perceived with one of his five sensations directly. See *Ehikioya v C.O.P* [[9]](#footnote-8).

 Section 126 Evidence Act 2011 provides.

“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.

See the case of *Dominic v Federal Capital Development Authority* [[10]](#footnote-9).

However, there is an exception to this provision. In the case of *Mallam Sani Ogu v Manid Technology & Multipurpose Cooperative Society Limited[[11]](#footnote-10)*, the court decided that there is an exception where a witness can give oral account of the content of a document if the document cannot be found.  This exception is consistent with section 87(e) of the Evidence Act which provides that oral accounts of contents of a document may be given by secondary evidence of the content of that document by some person who has himself seen the document. In *Okpara v COP* , the appellant was convicted of forging and altering a local purchase order. The local purchase order was not produced at the trial. Instead, there was evidence that the appellant had destroyed it by swallowing it upon being apprehended. It was held that the secondary evidence was admissible to prove the content of the forged document.

In both civil and criminal cases, all facts, except has been permitted by law, may be proved direct oral evidence of the person who has personal knowledge of the facts in issue. See *Dantata Jnr. v Muhammad*[[12]](#footnote-11). There are three exceptions to the requirement that all facts except the content of a document can proved by oral. The exceptions are affidavit evidence, *locus in quo* to see items that are either in court or out of court and by production of document[[13]](#footnote-12).

**ADMISSIBILITY OF DOCUMENTARY EVIDEN CE**

The definition of document under section 258 (1) Evidence Act of 2011, is wide enough to include any book, map, plan, drawing, photograph, and any matter expressed or described upon any substance by means of letters or device upon which data may be stored or recorded such as film, video, tape, soundtracks and audio recordings as well as computer generated documents by means of which information is recorded, stored or retrievable including computer output.

Generally, documentary evidence is admissible in proceedings where direct oral evidence is admissible. In the case of *Okonji v Njokanma,*[[14]](#footnote-13) the supreme court held admissibility of a document must fulfil three requirements thus;

1. The document sought to be tendered must have been pleaded. In the case of *Lawal v. G.B Ollivant (Nig) Ltd*[[15]](#footnote-14), the supreme court held a document must be referred to in the pleading.
2. The document must be relevant to the issue being tried by the court
3. The document must be admissible in law.
4. Proper foundation must be placed for admissibility of the document.[[16]](#footnote-15)

Documentary evidence is the best means of proof and the most reliable piece of evidence, that is permanent, indelible than viva voce testimony that oozes out from the vocal cord of man and susceptible distortion, hence documentary evidence is used as hanger from which to test the veracity of oral evidence[[17]](#footnote-16).

Under section 85 of the Evidence Act , the content of documents may be proved either by primary or secondary evidence..

**Primary Evidence:**

 Primary evidence is the original document itself produced for the inspection of the court. Where the document is made in several parts. Duplicates, counterparts and by uniform process each shall be primary evidence of the others.

Secondary Evidence:

Secondary evidence includes certified true copies, copies made from original, by mechanical or electronic purposes, other copies made from or compared with original, counterparts, and oral accounts of the contents of the documents[[18]](#footnote-17). This is called secondary evidence as provided in section 87 of the Act. See the cases of  *Onwuzuruike V Edozien*[[19]](#footnote-18); *Idi v The State[[20]](#footnote-19)*, *UBA PLC V G.S Ind. Ltd*[[21]](#footnote-20)

**Notice to Produce;-** The Act provides that evidence of the content of document referred to in **Section 89(a)** shall not be given unless the party is proposing to give such secondary evidence has previously given such notice to produce the document to the party in whose possession or power the document is[[22]](#footnote-21);

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases;

1. When the document to be proved is itself a notice
2. When from the nature of the case the adverse party must know that he will be required to produce it.
3. When it appears or is proved that the adverse party has obtained possession of the original by fraud or force
4. When the adverse party or his agent has the original in court; or
5. When the adverse party or his agent has admitted the loss of the document

**Secondary Evidence of Public Document**

The only legally cognisable secondary evidence of a public document is certified true copy. Where however, the pubic document sought to be tendered is itself primary evidence within the meaning of section 86(1) of the Evidence Act, certification of same is unnecessary because the document is admissible in its original state. See *Adebowale V The Nigerian Army[[23]](#footnote-22)*. A public document is certified if and only if;

1. The prescribed legal fees paid
2. A certificate with the words “Certified true copy” is inscribed at the foot of the document.
3. The document is dated.
4. The name of the public officer who certified the document is inscribed.
5. The official title of the certifying officer is stated.
6. The document is sealed or signed.[[24]](#footnote-23)

There is no foundational requirement to be laid in tendering certified true copy of a public document. The document can be tendered from the bar by a counsel and there is no need to call the person who certify it to tender it in evidence. See Ogbuanyinya *V Obi Okudo*[[25]](#footnote-24)*, Vincent Isibor V State [[26]](#footnote-25)*

Reasons for using a certified true copy are as follows.

1. A problem may arise if the original of the same public document is required in two or more courts at the same time.
2. To avoid the risk of their loss.
3. To forestall the need of calling officials to court to testify as to the geniuses of the copies made from the original document. See **ANYAKORA VS. OBIAKOR.**[[27]](#footnote-26)

There are conflicting decisions of courts regarding the admissibility of photocopy of certified true copy of public document. It was settled in the Supreme Court decision in the case of ***Magaji VS. Nigerian Army***,[[28]](#footnote-27) that photocopy of certified true copy of public document are admissible and need no further certification[[29]](#footnote-28). There are also other decision that demands a recertification or further certification of a photocopy of a certified true copy of public documents. See *Arabka v Egbue[[30]](#footnote-29)*, *Iteogu v LPDC [[31]](#footnote-30)*.

**ADMISSIBILITY OF HEARSAY EVIDENCE**

Hearsay evidence is the recitation of the statement of a person who is not called to testify before the court the gist of which is intended to prove or establish a fact. By virtue of section 37 of the evidence Act 2011, hearsay means a statement -

1. Oral or written made otherwise than by a witness in a proceeding; or
2. Contained or recorded in a book, document or any record whatever, proof of which is not admissible under any provision of the Act, which is tendered in evidence for the purpose of proving the truth of the matter stated in it. See Ismail v F.R.N. (2020) 2 NWLR (Pt. 1707) 85. See Saraki v F.R.N (2018) 16 NWLR (Pt. 1646) 405.

A statement would be hearsay if it is not made in oral proceedings before the court but is tendered to establish the truth of the facts asserted. In ***Subramaniam v Public Prosecutor[[32]](#footnote-31)***. The Privy Council laid down the criteria of admissibility of hearsay evidence as follows;

Evidence of a statement made to a witness by a person who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay, and it is admissible where it is proposed to establish by the evidence not the truth of the statement but the fact that the statement was made.

Hearsay evidence is not admissible in judicial proceedings in Nigeria.  However, there are exceptions where hearsay is admissible:

1. Dying Declarations- Statement Relating to Cause of Death under Section 40

Dying Declaration is one of the exceptions to hearsay evidence rule where it is not a mere hearsay but admissible hearsay for the purpose of establishing the fact in issue. Section 40 of the Act provides that:

A statement made by a person as to the cause of his death, or as to any of the Statements relating to circumstances of the events which resulted in his death in cases in which the cause of that person’s death comes into question, is admissible where the person who made it believed himself to be in danger of approaching death, although he may have entertained at the time of making it hopes of recovery.

Thus, the purpose of the dying declaration is to prove the circumstances of death of the deceased. It is not a mere expression of opinion of the killer’s motive. Akpan v State (1992) 6 NWLR (Pt. 248) 439. However, any declaration made after the deceased has abandoned the belief of being in danger of approaching death will not be admissible. Momo Garba v R. (1959) 4 FSC 162.

1. Statement Made during Business

The whole essence of tendering evidence is to establish truth of facts in issue. Thus, where such truth can be easily inferred from the circumstances surrounding the making of the statement and the possibility of its rebuttal is slim, such statement will be admissible even if not tendered by the maker. *JUBRIL v. FRN[[33]](#footnote-32)*. A statement is admissible when made by a person in the ordinary course of business. However, the maker must have made the statement contemporaneously with the transaction recorded or so soon thereafter that the court considers it likely that the transaction was at that time still fresh in his memory. Section 41.

1. Statement Against Interest of Maker with Special Knowledge

Where a person makes a statement, which militates against his pecuniary or proprietary interest, or which, if true, would expose him to either criminal or civil liability, such a person is unlikely to repeat it in court. Except he is a compellable witness, such fact may never be tendered in a proceeding except through a third party who became aware of that statement. Section 42 of the Act therefore provides that such third party may tender that statement in evidence, and it would be admissible, if it can be shown that the maker of the statement had peculiar means of knowing the matter stated.

1. Statement Relating to Existence of a Relationship

Section 44 of the Act provides that where a witness testifies as to the existence of a relationship by blood, marriage or adoption between persons, such statement will be admissible even if the witness is not a part of that relationship, provided that the person making the statement had special means of knowing the relationship exists.

1. Declarations by Testator

Often, testators discuss the content or nature of their will with third parties, especially their lawyers. Such discussion may include their testamentary intentions, the content of the will, total number of wills executed, and so on. Since a will only takes effect upon death, the testator is never around to resolve controversies surrounding his will, especially where the will is lost.

Thus, such statement made to third parties will be admissible in proving the deceased testator’s testamentary intentions, the content of his will when his will has been lost, and when there is question as to what its contents were, the genuineness or facts surrounding the proper execution of the will, or which of more existing documents than one constitutes his will.

However, it is immaterial whether the declarations were made before or after the making or loss of the will. Section 45 EA.

**ADMISSIBILITY OF OPINION EVIDENCE**

Opinion evidence is the evidence of what the witness thinks, believes, or infers regarding facts in dispute, as distinguished from his personal knowledge of the facts themselves.

The general rule is that a witness cannot be allowed to give his opinion as to the existence or non-existence of a fact in issue or relevant fact. Such evidence of opinion will be irrelevant and therefore inadmissible. This means a witness generally is only allowed to testify to facts known to him. *ANPP v USMAN* [[34]](#footnote-33).

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 relevant to the fact in issue is inadmissible except as provided in sections 68 to 76 of this Act.

These exceptions to the general rule can be generally categorised into: opinion of experts and opinion of non-experts.

Opinion of Experts

An expert is a person who is especially skilled in the field which he is giving evidence. Bello v C.O.P[[35]](#footnote-34) (2018) 2 NWLR (Pt. 1603) 267. Oderah Inv Co Ltd v Ecobank (Nig) Plc (2020) 10 NWLR (Pt. 1731) 65.

An Expert is a person who, through education or experience, has developed skill or knowledge in a particular subject that he or she may form an Opinion that will assist a fact-finder. Omisore v Aregbesola (2015) 15 NWLR (Pt. 1482) 205.

**Admissibility of Expert Opinion**

According to section 68 (1) of the EA, 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 identity of handwriting or finger impressions, the opinions of persons skilled in such foreign law, customary law or custom, or science or art, or in questions as to identity of handwriting or finger impressions, are admissible. Airtel Networks Ltd Plus Ltd (2020) 15 NWLR (Pt. 1747) 235. Okorie v State (2018) 11 NWLR (Pt. 1629) 1. Bille v State(2016) 15 NWLR (Pt. 1536) 363.

Persons so specially skilled as mentioned in subsection (1) of this section are called experts. See Sec 68(2) of the Act.

For expert opinion to be admissible, it is the requirement of the law that the expert must be called as a witness, he must give his qualifications and experience before he begins to give his evidence at all. Thus, opinion of an expert would not be used where the expert is not called to establish his qualifications and experience before the court. Ogiale v Shell Pet Dev. Co (Nig) ltd (1997) 1 NWLR (Pt. 480) 148.

However, a court is not bound to accept the opinion of an expert and act on it especially where such opinion conflicts with common sense and the usage of mankind. See SHELL PET DEV CO (NIG) LTD v TIEBO VII (1996) 4 NWLR (Pt. 445) 657.

Expert Opinion as to Foreign Law:

When a question as to foreign law arises during the trial of a case, the opinion of an expert who, in his profession, is acquainted with the foreign law in question is relevant and admissible. Sec 69 of the EA.

An expert in foreign law need not be one who is qualified to practice in the courts of the foreign country. In Brailey v Rhodesia Consolidated Ltd, a reader in Roman-Dutch law to the Council of Legal Education in London was held by an English court to be an expert in Roman-Dutch law.

Also, an expert witness in foreign law need not be a person of the legal profession if his official position makes him conversant with the particular branch of the foreign law. Said Ajani v Comptroller of Customs.

 Expert Opinion as to Science or Art

When a court has to form opinion upon a point of science or art, the opinion of persons specially skilled in that branch of science or art is relevant as being that of an expert.

A man of science or art who is put forward as an expert must show evidence of special skill in the particular branch of science or art in which he is called to give opinion. See Yan Tittidabale v Sokoto Native Authority.

When an expert is testifying, his opinion evidence must be confined to the matter in which he is specially skilled. See R v Kusmack.

Expert Opinion as to Customary Law

 In deciding questions of customary law and custom, the opinions of traditional rulers, Chiefs or other persons having special knowledge of the customary law and custom and any book or manuscript recognised as legal authority by people indigenous to the locality in which such law or custom applies, are admissible. Sec 70 EA. However, for such book or manuscript to be admissible, it must be put in as evidence in the case. See Bello Adedibu v Gbadamosi Adewoyin.

Opinion of Non-Experts

There are instances under the law where the opinion on non-experts will be admissible if the course of justice is not to be made unduly difficult. They include:

* 1. Opinion as to Handwriting: According to sec 72 of EA, when the court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed, that it was or was not written or signed by that person is admissible. A person is said to be acquainted with the handwriting of another when:
1. He has seen that other person write or:
2. When he has received documents purported to be written by that other person in answer to documents written by himself or written under his authority and addressed to that other person; or
3. When in the ordinary course of business, documents alleged to be written by that other person have been habitually submitted to him.  Sec 72 (2).

In Salami Lawal v Commissioner of Police, the trial magistrate accepted the evidence of opinion of a witness who was not an expert but who stated that he was conversant with the appellant’s signature as they worked together as proof that the appellant had made certain signatures in dispute. It was held that the trial magistrate was right in so doing.

* 1. Opinion as to the existence of General Custom or Right

When the court must form an opinion as to the existence of any general custom or right, the opinion as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed are admissible. Sec 73(1).

The expression “general custom or right” includes customs or rights common to any considerable class of persons. Sec 73(2).

* 1. Opinions as to Usages and Tenets

According to section 74 of the EA, when the court has to form an opinion as to:

1. The usages and tenets of any body of men or family;
2. The constitution and government of any religious or charitable foundation; or
3. The meaning of words or terms used in particular districts or by particular classes of people, the opinions of persons having special means of knowledge on the matters specified in this section, are admissible.
	1. Opinion as to Relationship

According to section 75 of the Act, when the court has to form an opinion as to the relationship of one person to another, the opinion expressed by conduct, as to the existence of such relationship of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is admissible

The section provides that such opinion shall not be sufficient to prove a marriage in proceeding for a divorce or in a petition for damages against an adulterer or in a prosecution for bigamy.

**ADMISSIBILITY OF AN ADMISSION**

According to Section 20 of the Evidence Act, 2011, 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. Admissions are usually the best evidence of the facts admitted. See the case of Ihiabe v. Zakari [[36]](#footnote-35).

The value of an admission depends on the circumstances in which it was made. Like any other type of evidence, the court has to consider the circumstances under which it was made and determine what weight to be attached to it. See Joe Iga & Ors v Ezekiel Amakri & Ors (1976) 11 SC @ 11.

**Forms of Admission include:**

* + 1. Formal admission
		2. Informal Admission
		3. Admission made in a representative capacity
		4. Admission made ‘without prejudice’.

**Formal Admission**

Formal admissions are admissions made by a party to a civil proceeding so as to relieve the other party of the necessity of proving the matters admitted. Accordingly, when both parties have agreed about a particular matter in their pleadings, such matter need not be proved, and they should accept such agreed fact as established. In other words, facts admitted need no further proof. See Sec 123 Evidence Act. See *Onyiorah v Onyiorah* [[37]](#footnote-36) See *Idris v. A.N.P.P*.[[38]](#footnote-37).

**Informal Admission**

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.

By the provision of section 27 of the Evidence Act, admissions are not conclusive proof of the matters, but they may operate as estoppel. See S.P.D.C.N.Ltd v Oruambo [[39]](#footnote-38).This means that evidence may be called to rebut any such admissions. See Ehidimhen v Musa [[40]](#footnote-39). A statement made to oneself in soliloquy, if overheard by a stranger, may amount to an admission against the maker.

**Proof and Relevance of Admissions**

Admissions are relevant and may be proved as against the person who makes them or his representative in interest, but they cannot be proved by or on behalf of the person who makes them or his representative in interest. Sec 24 Evidence Act. See Kamalu v Umunna [[41]](#footnote-40).

However, paragraphs (a), (b) and (c) of section 24 of the Evidence Act provides for circumstances under which an admission can be proved by or on behalf of the person who has made it or by his representative in interest.

**ADMISSIBILITY OF A CONFESSIONAL STATEMENT**

As a starting point, section 28 of the Evidence Act 2011, defines as follows;

A confession means admission made at any time by an accused person stating or suggesting the inference that he committed the crime.

Confessional statement under this section includes extra judicial and judicial confession, incriminating admission, supects oral or written acknowledgement of the truth of the facts of the charge or an essential part of it. A confession is stronger than evidence of a eyewitness because it comes out of the “horse’s mouth” of the defendant himself. Accordingly, for a confession to be acceptable in evidence, it must be freely and voluntarily made by the defendant. See the cases of Ikemson v The State[[42]](#footnote-41); Akibu v State[[43]](#footnote-42)The repealed Evidence Act 2004, established the requirement of voluntariness.

In contrast, section 29 (2)(a) and (b) of the Evidence Act 2011, a broader yardstick has been introduced. It requires that the confessional statement sought to be tendered by the prosecution must not have been obtained by oppression, including torture, inhuman or degrading treatment or threat of violence whether amounting to torture.

In the English case of *R V Fulling [[44]](#footnote-43)*, the defendant made a full confession when interviewed by the police, but appeal on the ground that confession had been extracted from her by oppressive conduct on the part of the police, The Court of Appeal in interpreting section 76(2) (a) of the Police and Criminal Evidence Act, 1984, which is *in pari materia* with Evidence Act 2011, it was held as follows;

This is in turn lead us to believe that oppression in Section

 76(a) should be given its ordinary grammatical meaning.

IIn *C.O.P V Alozie* [[45]](#footnote-44) (SC) Nweze JSC said as follows;

The courts are bound to reject an accused persons confession which eventuated from torture , duress, threat, or inducement.

The law is trite that no answer to a question and no statement is admissible unless it is shown by the prosecution not to have been obtained in an oppressive manner or by inducement. Furthermore, the true test of the voluntariness of a confessional statement is whether an accused person while writing his statement was properly guided to write what he wanted to write and not what he did not want to write and would not have written but for some form of threat of harm or inducement or whatever that would make his statement involuntary. **State v Rabiu (2013) 8 NWLR (Pt. 1357) 585**.

Moreover, the burden of proving that the statement of an accused was voluntarily made is on the prosecution and it must be proved beyond reasonable doubt..On establishing the voluntariness of a confessional statement, the accused need not prove that the statement credited to him was involuntary see **State v Obobolo (2018) 4 NWLR (Pt. 1610) 399.**

When the defendant’s statement is tendered by the prosecution, the defendant can challenge admissibility of such statement in one of two ways, either.

1. That he did not make the statement; or
2. That he made the statement or signed it but not voluntarily.

In the first case, where the objection to admissibility of the statement is based on the ground that the defendant never made the statement, this can arise in so many ways, such as;

1. He never made the statement at all;
2. He never signed it or made any thumb impression on it;
3. It was never read over to him before signing.
4. He was never cautioned before making the statement.
5. The statement was not confirmed before superior police officer;
6. The signature thereon is not his own;
7. The statement was not counter signed by the police before whom it was made; and
8. The statement is mutilated or altered.

All these will not affect the admissibility of the statement in evidence. The statement is admissible, and these issues raised will go the weight to be attached to the statement at the end of the case.[[46]](#footnote-45)

In the second case, where the objection is hinged on the ground that the defendant made the statement but not voluntarily, that is to say, he was forced, tortured, compelled, induced by any threat to make the statement or some promises by a person in authority or subjected to any oppression, them the court will proceed to decide whether or not the statement was voluntary, by conducting mini trial known as *‘trial-within-trial’ or voire dire*.[[47]](#footnote-46)

It is being opined presently that the issue of trial-within-trail shall be jettisoned so that the moment the issue of voluntariness of the statement is raised by the defendant, the parties in the conduct of their case will adduce evidence to that effect which will be considered at the end of the case along with the substantive matter. Such statement of the defendant ‘may’ be taken in the presence of a legal practitioner, officer of legal aid council of Nigeria, official of a civil society organisation or justice of the peace or any other person of his choice.[[48]](#footnote-47)

In **CHARLES V FRN**[[49]](#footnote-48) the court construed the word ‘may’ in **Section 17(2)** of the **ACJA** as ‘shall’ and held that

1. Non-compliance with the provision of the section renders the statement inadmissible; and
2. That such a purported confessional statement shall be thrown out of the window for non-compliance.

In **OGUNTOYINBO V FRN**[[50]](#footnote-49) it was held that non-compliance with **Section 17(2)** will not affect the admissibility of the statement because;

1. The word ‘may’ used in that **Section 17(2)** is permissive; and
2. That evidence act being a specific act for evidence takes precedence over the **ACJA 2015**.

Indeed, Sections 15(4) and 17(2) of the ACJA impose a duty on police officers and other law enforcement officer’s agency to do video recording of confessional statements of a suspect.

**ADMISSIBILITY OF COMPUTER GENERATED EVIDENCE**

Generally, a computer is an electronic device that receive data or input, store it and yield result of output as at a tremendous speed. Under and by virtue of the Evidence Act 2011 computer is any device for storing and processing information whether by calculation, comparison, or any other process.[[51]](#footnote-50)

Before the advent of the **Evidence Act 2011**, the admissibility of electronic or computer-generated evidence though admissible under common law by dint of section 5(a) of the repealed Evidence Act chapter E14, Laws of the Federation of Nigeria 2004 was contentious because of lack of clear provisions as to whether it should be treated as primary or secondary evidence and also whether it should be tendered by the maker.

**The Evidence Act 2011**,[[52]](#footnote-51) provides for the admissibility of computer-generated evidence once the conditions set out by **Section 84 (2)** are fulfilled.

**The Evidence Act 2011**, under **Section 84** provides for the admissibility of computer-generated evidence. The section applies to both civil and criminal proceedings because of the use of the phrase “*In any proceedings*”. The distinction between primary and secondary evidence does not apply to computer generated evidence. By virtue of section 84(2) of the Evidence Act, four conditions must be met before a statement produced by a computer may be admissible in evidence. These includes,

1. That the documents must have been produced over a period when the computer was regularly used
2. That over that period, similar information of the kind contained in the statement was regularly supplied to it.
3. That throughout the relevant period the computer was operating properly and if the computer was out of operation during the part of that period, that did not affect the accuracy of the document or it content. In *DPP V Mckeown,[[53]](#footnote-52)* it was held that all that the section required is that the computer is was in good working condition.
4. That the information drives from information supplied to the computer in the ordinary course of the activities then being carried on.[[54]](#footnote-53)

The Evidence Act also provides for the requirement of production of a certificate of authenticity to satisfy the conditions set out in **Section 84 (2)** signed by a person occupying a responsible official position in relation to the operation of the relevant device or activities. And such a certificate will be evidence of any matter stated in the certificate.[[55]](#footnote-54) In fact, once a statement is produced by a computer passes the test or conditions set by **Section 84(2)** it becomes admissible. See ***FRN VS. FANI-KAYODE***[[56]](#footnote-55)

**Section 84(1)** and **(2)** requires anyone who wishes to introduce computer evidence must lay the necessary foundation identifying the document and describing the manner and the state of the computer through which it was produced by way of oral evidence from the witness box See ***KUBOR ANOR VS DICKSON ORS****[[57]](#footnote-56)* **Section 84(4)** provides for the condition of production of a certificate of authenticity to satisfy the conditions set out in **Section 84(2)**.

The fulfilment of the condition for the admissibility of computer-generated document is either by oral evidence under **Section 84(1)** and **(2)** or by a certificate under **Section 84(4)**.[[58]](#footnote-57) It should be noted that section 84(4)(c) states that *“… for the purpose of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and believe of the person stating it.”* this suggests that it will be appropriate if the certificate takes the form of an affidavit. Moreover, where a public document is electronically generated, it must be certified in accordance with section 104. See **KUBOR & ANOR VS. DICKSON & ORS.**[[59]](#footnote-58)However, it is not every document generated from a computer that qualifies as computer generated evidence requiring authentication under section 84 of the Evidence Act 2011. Thus in the case of ***Attorney General of the Federation v Princewell Ugonna Anuebunwa*** [[60]](#footnote-59), the Supreme Court held as follows;

**“It would be ridiculous to assume that a document which was typed using a computer is computer generated document,”**

In addition to rules of admissibility of electronic evidence under the current law in Nigeria, the court is permitted to make a presumption 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 the computer for transmission, but such presumptions are not permitted on the person to whom the message is sent.[[61]](#footnote-60)

Furthermore, section 34 of the Evidence Act provides for the weight the court attribute to statements admitted in evidence as electronic evidence. It provides that the court shall consider all circumstances, focusing on the accuracy or otherwise of such statement. This includes contemporaneity, as well as the existence of the motive to conceive or misrepresent facts.

**ADMISSIBILITY OF STATEMENT RECORDED BY AN INTERPRETER**

Where an interpreter is used in the recording of the statement of a defendant, such a statement is in law inadmissible unless the person who was used in the interpretation of the statement is called as a witness in the proceedings as well as the person who recorded the same evidence. The rationale behind calling an interpreter as a witness is that it is the interpreter who understands both the language spoken by the defendant and the language understood by the officer who recorded the statement, otherwise the information given by the interpreter to the recording officer may be considered as hearsay, See **NWAEZE VS. THE STATE.**[[62]](#footnote-61)

**ADMISSIBILITY OF STATEMENT MADE BY PERSONS WHO CANNOT BE CALLED AS WITNESSES**

By **Section 39** and **46 of Evidence Act**, a statement made in a judicial proceeding by a person who cannot be called as a witness because the person is dead, cannot be found, has become incapable of giving evidence or whose attendance cannot be procured without an amount of delay or expense is admissible; provided that-

1. The proceeding was between the same parties or their representatives in interests.
2. The adverse party in the first proceeding had the right and opportunity to cross-examine; and
3. The questions in issue were substantially the same in the first as in the second proceeding.

**ADMISSIBILITY OF STATEMENT MADE BY A PARTY IN THE PENDING CASE**

**Section 83(3)** provides that any statement made by a person interested at a time proceedings were pending or anticipated involving a dispute as to any fact which the statement might tend to establish is inadmissible… See **NAICON VS. PRUDENTIAL UNION ASSURANCE.**[[63]](#footnote-62)

However, document made by person who are merely expert with no person or real interest in outcome of the pending or anticipated litigation has been held to be admissible in the circumstance. **APENA VS AIYETOBI**[[64]](#footnote-63) the court held that; a surveyor who prepares a survey plan in respect of a land in dispute in a pending case and tenders it in evidence is not a person interested within the context of **Section 83(3)**. A surveyor or any expert in any field of knowledge who makes a statement in any form in respect of the matter in court at any stage of the proceeding is generally regarded as a person who has no intention to depart from the truth as he sees it from his professional expertise. See **ASHCROFT VS HERITAGE BANKING CO LTD ORS**.[[65]](#footnote-64)

**ADMISSIBILITY OF EVIDENCE ILLEGALLY OBTAINED**

Evidence obtained improperly or even in contradiction of a law shall be admissible pursuant to **Section 14** of the Act, unless the court is of the opinion that desirability of admitting the evidence is outweighed by the undesirability of admitting evidence that has been obtained in that manner. In other words, illegally obtained evidence is admissible in law if it is relevant. What can be punished is the illegality in obtaining it. See **MUSA VS. SADAU**.[[66]](#footnote-65)

In Sadau, a cache of fake documents and other items were recovered when a search warrant was executed at the house of the defendant. The Supreme Court held that the evidence was relevant and admissible notwithstanding the way and manner it was obtained. In Abubakar V Chuks [2007]18 NWLR (PART 1066)386 AT 402; [2008] ALL FWLR (PART 408) 207 AT 227;, the court held that once evidence is relevant and admissible the manner it was obtained is of no consequence. See Ayode v FRN [2019] 45831 9 (CA).

**ADMISSIBILITY OF CHARACTER EVIDENCE**

Black’s Law dictionary defines “Character Evidence” as;

 Evidence regarding someone’s general personality traits or propensities of a praiseworthy or blameworthy nature.

The admissibility requirements of Evidence of character are envisaged in 77 – 82 of the Evidence Act 2011, where character has been defined to mean reputation as distinguished from disposition. Thus, evidence may be given only of general reputation and not of acts by which reputation or disposition is shown.

**Evidence of Character in Criminal Cases**

1. Accused’s Good Character

In criminal proceedings, evidence of the fact that a defendant is of good character is admissible. See section 81 of the Evidence Act.

Such evidence may be brought forth on cross-examination of witnesses for the prosecution or defence. The accused may himself on examination-in-chief give evidence of his own good character or call witness as to his good character.

In Muhammadu Haruna & Anor. V Police [1967] NMLR 37, a witness for the appellant who was charged with the abetment of robbery called his bank manager as a witness. The manager gave evidence as follows: I know the accused’s financial background. He is financially sound. Since I have known the accused, I don’t remember him getting involved in any trouble. It was held that the trial court was in error to have disregarded the evidence which was evidence of good character under the Evidence Act.

Evidence of good character cannot demolish a clearly established offence against an accused person. But in rare cases it may operate on the mind of the judge as to create a doubt in the case against the accused.

However, whenever evidence of good character of the accused is relevant and admissible, evidence given by the prosecution in rebuttal is also admissible.

1. Accused’s Bad Character

Generally, evidence of the fact that a defendant is of bad character is inadmissible in criminal proceeding. See Sec 82(1) Evidence Act.

In Odogwu v State [2013] 14 NWLR (Pt. 1373) 74, the Supreme court held that by virtue of section 82(1) of the evidence Act, 2011, except as provided in the section, evidence of the fact that a defendant is of bad character is inadmissible in criminal proceedings.

Exceptions to the Rule

Section 82(2) and (3) of the Act provides exceptions to the general rule.

The section provides that the fact that an accused person is of bad character is relevant:

1. When the bad character of the defendant is a fact in issue
2. When the defendant has given evidence of his good character
3. A defendant may be asked questions to show that he is of bad character in the circumstances mentioned in paragraph (g) of the proviso to section 180.

 Also, whenever evidence of bad character is admissible, evidence of previous conviction is also admissible. OKEKE v. STATE (2016) LPELR-40024(CA)

Evidence of Character in Civil Cases

In Civil cases, evidence of character of either party to a judicial proceeding is generally inadmissible. The reason is that it is not only irrelevant but also would unduly harass and prejudice the party.

By virtue of section 78 of the Act, in civil cases evidence of the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him is inadmissible except in so far as such character appears from facts otherwise relevant.

The only exception to the above section is where such character appears from facts otherwise relevant.

**DOCUMENT TENDERED FOR IDENTIFICATION PURPOSES**

The evidence Act makes no provision for evidence to be tendered for identification (ID) purposes. Document are tendered as ‘exhibits’ or not tendered at all. A document tendered for identification purpose has no probative value what so ever. In effect it is as if nothing is tendered. **EGWU VS. EGWU.**[[67]](#footnote-66)

**CONCLUSION**

Under the Evidence Act 2011, like its predecessor, the rules governing admissibility of evidence constitute the basis upon which trials of cases in courts are determined. In conducting trial in court, witnesses are called before the court to give evidence either oral, documentary and real, it is upon this evidence that the court can discern which evidence are relevant to the issues before it and admit them and discard the ones that are not admissible as discussed extensively above.

The rule of admissibility of evidence lies basically upon three things, whether the evidence before the court is relevant, material, and competent to be admissible. It is worthy of note that where a piece of evidence is relevant, it must still pass the admissibility test for it to be admitted in evidence. That is why it is said that all admissible evidence is relevant but not all relevant documents are admissible.

Admissibility of evidence is different from the weight r probative value that the court would give during evaluation of evidence. Therefore, it is important to understand the provision of the law with respect to substantive and procedural requirement of admissibility having regard to the nature and character of the evidence being relied upon to prove or disprove a fact in issue,

If I have succeeded in refreshing your memory and tickling you into appreciating the requirements for admissibility under the Evidence Act 2011, I am grateful that I have been of some use to you, if not however, I consign this paper to the dust bin. All I have tried to say is that the requirements of admissibility under the Evidence Act 2011 despite the distinction without difference between substantive and procedural requirement are put enshrined to ensure that only credible evidence is relied upon to back up or refute arguments to establish a claim before the court or justify a defence. Indeed a court act only on what is demonstrated and tested before it through assertion and evidence as well cross examination and argument.

Thank you

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