LAW OF EVIDENCE

Lecture Note 3

By

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1. Native and Customary Law of Evidence and Islamic Religion Court

- Nigeria consists of over 300 ethnic groups with different culture and traditions. Each group has different ways by which they administer their people. At present, different types of courts called native or customary courts have been and are still in existence.

- They still dispose of more cases than all the other courts put together.

- They are presided over by heads of families of chiefs or traditional rulers.
In the Northern Region, we have Islamic Religion Courts presided over by Islamic Rulers. The rules of evidence in Customary or Native Courts are based on customs but the rules of evidence in Islamic Courts are largely Islamic Rules of Evidence.
• **English Common Law**

• With the coming of the British Colonial Masters, Magistrates Courts, High Courts, Court of Appeal and Supreme Courts were established. Up to 1945, the applicable Law of Evidence in the Magistrate Court, the High Court, the Court of Appeal and Supreme Court was the English Common Law of Evidence including rules of evidence contained in applicable English Statutes.
Section 10 of the Provincial Court Ordinance of 1914 provided that “subject to the terms of the ordinance, the common law of evidence should apply as far as applicable”. That was the position of the law in the colony of Lagos and the protectorate of Nigeria. Although the Law was repealed several times, the position remained substantially the same.
Evidence Act, 2004

The Evidence Act of 2004 swept aside the previous ordinances. Thereafter the Evidence Act of 2004 became the law governing evidence in Nigeria until 2011. The Evidence Act 2004 was applicable throughout the country.

See Ogunnaike v. Ojayemi (1987) 1 NWLR (Pt. 53) 760 at 767, paras. C-E (SC)

Application of section 1 of the Evidence Act – Whether applicable to native courts
Now in my view, the clear wording of the provisions of Section 1(4)(c) (now section 1(2)(c)) of the Evidence Act leaves no room for any doubt that the provisions of the Act do not apply to judicial proceedings before native courts.

It reads: “This Act shall apply to all judicial proceedings in or before any court established in the Federation of Nigeria but it shall not apply to judicial proceedings in or before a native court unless the Governor or Council shall by order confer upon any or all native courts in the State jurisdiction to enforce any or all of the provisions of the Act”
As there is no evidence to show that the Act was made applicable to the trial Customary Court when it gave its judgment, I am of the view that the Court of Appeal was right in their decision that the appellate High Court was in error to have applied the provisions of Sections 45 and 54 to the case. Per Kawu, J.S.C.
2. Evidence Act of 2004

- Prior to coming into force, the Evidence Act of 2004, the Law governing Evidence in Nigeria was the Law applicable in England through provisions of Court Ordinances by which the common law of England was made to be in force in Nigeria as far as applicable.

- The Evidence Act, 2004 was applicable throughout the country. The Evidence Act comes under the exclusive legislative list, 2nd schedule of 1999 Constitution.
The effect of this is that the different evidence laws of different states in the federation no longer had effect. See the case of AZU vs. The State, 1993 7 SC NJ Part 1, 151 @ 157. The Act specifically provides as follows:

“*This Act shall apply to all judicial proceedings in or before any court established in the Federation of Nigeria but it shall not apply to:*

- Proceedings before an arbitrator; or
- A field general court martial; or

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Judicial proceedings in any civil cause or matter in or before any Sharia Court of Appeal, Customary Court of Appeal, Area Court or Customary Court unless any authority empowered to do so under the Constitution by order published in the Gazette, confers upon any or all Sharia Courts of Appeal, Customary Courts of Appeal, Area Courts or Customary Courts in the Federal Capital Territory, Abuja or a state as the case may be, power to enforce any or all the provisions of this Act."
The Act does not apply to all courts and proceedings. It applies only to court established in the federation, for instance, it does not apply to area courts thereby preserving the matters which come under customary and Islamic laws.
3. Evidence Act, 2011


As at today therefore, the main source of Nigerian Law of Evidence is the Evidence Act, 2011
4. Local Statutes

- There are local statutes which provides for admissibility or exclusion of evidence in judicial proceedings. This is another source of Nigerian Law of Evidence. Refer to Section 3 of the Evidence Act, 2011 which reads:

  - “Nothing in this Act shall prejudice the admissibility of any evidence that is made admissible by any other legislation validly in force in Nigeria”.

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5. Constitution

- By provision of the Constitution, Sections 36(1)(5), Section 5(6)(d), Section 7(11), Section 37(38)(1) and Section 39(1) can be considered as source of Evidence.

- It should be noted that by Section 23 of Part 1 of second schedule, the constitution makes evidence a matter within the exclusive legislative competence of the National Assembly.
6. Regulations made by Attorney General

Section 255 of the Evidence Act, 2011 provides that:

- “The Minister charged with responsibility for justice may, from time to time, make regulations generally prescribing further conditions with respect to admissibility of any class of evidence that may be relevant under this Act”.

- This can be another source of Nigerian Law of Evidence, although Attorney General has not made any regulation to that effect
7. Judicial Decisions and Opinions of Jurists

- Judicial decisions and writings of distinguished legal scholars have been held to be a source of Law of Evidence. The constitution or the provisions of law touching on admissibility is relied on in subsequent trials and can therefore be regarded as a source of Nigerian Law of Evidence.
8. The English Common Law

As stated before the enactment of our Evidence Act in 1943 which came into force in 1945, the Law of Evidence which applied in the Magistrate Court, High Court, Appeal Court and Supreme Court was the English Common Law of Evidence. The English Common Law Rules were preserved under the Evidence Act, 2004.
Since the promulgation of Evidence Act, 2011 which is the principal legislation on evidence, the English Common Law ceased to apply.

See

- Aguda: The Law of Evidence
- Jacob Abiodun Dada: The Law of Evidence in Nigeria