



EVIDENCE ACT

Complete Annotation



Sanni & Etti

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Preface

This book was initially conceived as a note on the provisions of the Evidence Act. However, the need to provide a text which attempts to deal comprehensively with any jurisprudential matter which might arise or has arisen from the application of the Evidence Act or any other legislation dealing with an evidentiary issue such as section 27 (5) Independent Corrupt Practices & Other Related Offences Commission Act, section 31 National Archives Act, section 13 Oaths Act, section 12(2) National Industrial Court of Nigeria Act, the Copyright Act 2022, the Electoral Act 2010 & the Electoral Act 2022 (particularly section 137), order 49 rule 4 Federal High Court (Civil Procedure) Rules 2019, section 30 (3) Violence Against Persons (Prohibition) Act 2015, section 15 Administration of Criminal Justice Act (ACJA), and similar provisions in similar laws of various States like section 9 of the Administration of Criminal Justice Law of Lagos State (ACJL), the Land Instruments Registration Laws (LIRL) of various States, etc and the need to provide the readers with a reference point and sufficient information on their immediate queries on issues of evidence have led us to expand the initial conception and produce not just an annotation but a textbook on evidence, leaving no area untouched. Therefore, this work is appropriate for students, academics, practitioners, jurists, lawmakers, policymakers and anyone interested in the subject.

Although the Evidence Act 2011 does not pretend to define evidence, its provisions and the case law have undoubtedly portrayed evidence as what proves or disproves a point in contention. The process or procedure adopted to establish proof or disproof may, however, affect what is tendered, who tenders it, how it is tendered, when it is tendered, why it is tendered, whether what is tendered is acceptable as evidence, whether what is tendered constitutes evidence or has probative value, having met the substantive and procedural conditions. These matters are embodied in the Evidence Act and other statutes and more significantly in court decisions. With this task in mind, we have identified the conditions for invoking the provisions of the Evidence Act.

Anyone interested in the subject (including a trier of facts) needs to take these matters as guidelines. A fact may be considered evidence only if these guidelines are followed. Failure to be so guided

made the Legal Practitioners Disciplinary Committee fall into a grave error in *Gbenoba v LPDC* [2021] 6 NWLR (Part 1773) 499 (SC).

The notable new provisions include sections 84, 84A-84D on electronic evidence, section 206 on witness pre-testimonial caution, section 255 on ministerial regulations and section 258 on definitions of new terms/phrases. In most cases, the provisions' wordings, phrases or terms have changed.

Since its enactment in 2011, the interpretation of the provisions of the Evidence Act has created more discussions on whether the Act should be amended, whether strict compliance with its provisions is mandatory or whether a court of record may depart from its application. It was not until June 2023 that it got its first amendment.

Despite the landmark decision in *Dickson v Sylva* (2016) LPELR-41257(SC) and the liberal interpretation in *Daudu v FRN* (2018) 10 NWLR (Part 1626) 169, 188-89 (SC), section 84 on computer-generated evidence has had the largest chunk of criticisms. Some of its inadequacies were discussed in *Stanbic IBTC Bank Plc v Longterm Global Capital Ltd* (2021) LPELR-55610(CA).

The Evidence Act is by no means the only evidentiary legislation: sections 2 and 3 of the Evidence Act; *Ayeni v Dada* (1978) 11 NSCC 147, 160 (Fatai-Williams JSC); *Onochie v Odogwu* [2006] 6 NWLR (Part 975) 65, 88 (Ogbuagu JSC). Indeed, it has been held that the National Industrial Court of Nigeria (NICN) may depart from the provisions of the Evidence Act: *Adegboyu v UBA* (CA/IL/20/2021, 14 April 2022 (Amadi JCA). These and many more issues are discussed in this book. Where ambiguity is identified or clarity is required in some of the provisions of the Evidence Act, we have given suggestions as to how to recast them. We have also given suggestions as to the deletion of superfluous provisions.

We have in this book the pronouncements of jurists with their names indicated where necessary. Where reference is made to a judge in a case, only the judge's surname followed by the conventional abbreviation identifying their judicial office is indicated. In order not to add to the volume of the work, we have tried to avoid the full names of parties and too many alternative citations of cases. But where a case appears at different places, different citations are given. Where 'The State' is a party as in a criminal matter, 'State' is simply used. Some reports have different editions that make the pages in one edition not correspond with another. Readers are advised to look up cases with

those citations with caution. Furthermore, in the citations of case reports, '[]' and '()' are used interchangeably for the years of the reports. Oxford University Standard for the Citation of Legal Authorities (OSCOLA) has been largely followed while keeping in mind the golden rules of citation – consistency and consideration for the reader. The name of the court is usually mentioned last but where the judge's name with his judicial office title is mentioned, or where the citation indicates the court, the name of the court may be omitted.

To locate the commentary on a section of the Evidence Act, users of this book are advised to look up the section as indicated at the head of each page. There are a name index and a comprehensive subject matter index. Appendix I contains suggestions and recommendations. Appendix II contains a list of corresponding sections in the repealed Evidence Act 1945 and the Evidence Act 2011. Appendix III is an index of names. It is, therefore, hoped that this book serves as a veritable tool for all its users.

Any textbook on Evidence Act in Nigeria including this book has its origin in the Digest of Sir James Stephen (Stephen's Digest), which invariably is the ancestor of the Evidence Act 2011. We appreciate earlier writers' immeasurable contributions on Evidence Act's annotation. We hope this work contributes to their earlier attempts at making the law of evidence and the provisions of the Evidence Act more comprehensible.

We are grateful to every contributor to the success of this work. We are particularly indebted to the following: Dr Abubakri Yekini, Law lecturer, University of Manchester, UK for providing useful suggestions; the entire staff of Ayinde Sanni & Co for their invaluable assistance and access to the firm's physical library and e-library; our well-wishers whose anxiety to read the book was a source of encouragement to us. Special gratitude to our families for their support and, above all, to our Lord for making this endeavour a reality.

This book reflects the law as at December 2023.

Sanni & Etti.

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List of Abbreviations

ACJA	Administration of Criminal Justice Act
ACJL	Administration of Criminal Justice Law
AIR	All India Report
All FWLR	All Federation Weekly Law Report
All NLR	all Nigeria Law Report
BOMLR	Bombay Law Reporter
CA	Court of Appeal
CFRN	Constitution of the Federal Republic of Nigeria
CLR	Criminal Law Report
FJ	Federal Justice
FOI	Freedom of Information Act
FWLR	Federation Weekly Law Report
HC	High Court
HL	House of Lords
INEC	Independent National Electoral Commission
J	Judge/Justice
JA/JCA	Justice Court of Appeal
JSC	Justice Supreme Court
LCN	Law Care Nigeria
LFN	Laws of the Federation of Nigeria
LPDC	Legal Practitioners Disciplinary Committee
LPELR	Law Pavilion Electronic Law Report
MC	Magistrates' Court
NCC	Nigerian Criminal Cases
NICN	National Industrial Court of Nigeria
NSCC	Nigerian Supreme Court Cases
NWLR	Nigeria Weekly Law report
PC	Privy Council
PEPC	Presidential Election Petition Court
SC	Supreme Court/Supreme Court Reports
SCJE	Supreme Court Judgments on Evidence
WLR	Weekly Law Reports
WRN	Weekly Reports of Nigeria

Evidence Act 2011

ARRANGEMENT OF SECTIONS

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Evidence Act 2011		v	Evidence Act 1945		
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7 = 10	8 = 11	9 = 12	10 = 13	11 = 16	12 = 17
13 = 18	14 = 227	15 = 227	16 = 14	17 = 14(2)	18 = 14(3)
19 = 15	20 = 19	21 = 20	22 = 21	23 = 22	24 = 23
25 = 24	26 = 25	27 = 26	28 = 27	29 = 28	30 = 29
31 = 30	32 = 32	33 = 48	34 = 92	35 = 46	36 = 47
37 = ---	38 = ---	39 = 33	40 = 33(1)(a)	41 = 33(1)(b)	42 = 33(1)(c)
43 = 33(1)(d)	44 = 33(e)	45 = 33(a)(b)	46 = 34(i)	47 = 35	48 = 35
49 = 36	50 = 34(3)	51 = 38	52 = 39	53 = 40	54 = 41
55 = 42(1)	56 = 42(1)(b)	57 = 43	58 = 44	59 = 49	60 = 50
61 = 51	62 = 52	63 = ---	64 = 53	65 = 56	66 = 45
67 = 66	68 = 57(1)	69 = 58	70 = 59	71 = 60	72 = 61
73 = 62	74 = 63	75 = 64	76 = 65	77 = 72	78 = 70
79 = 70	80 = 71	81 = 68	82 = 69	83 = 91	84 = ---
84A = ---	84B = ---	84C = ---	84D = ---		
85 = 93	86 = 94	87 = 95	88 = 96	89 = 97	90 = 97
91 = 98	92 = 99	93 = 100	94 = 94(i)	95 = 102(i)	96 = 103(i)
97 = 104	98 = 105	99 = 106	100 = 107	101 = 108(i)	102 = 109
103 = 110	104 = 111(i)	105 = 112	106 = 113	107 = 78	108 = 79
109 = 80	110 = 81	111 = 82	112 = 83	113 = 84	114 = 85
115 = 86	116 = ---	117 = 90	118 = 90(h)	119 = 90(g)	120 = 90(k)
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- The scope and the conditions of the provisions of the Evidence Act
- Abundant cross-references
- Electronic evidence/Computer-generated document and its jurisprudence
- Analyses of the jurisprudence of admissibility, burden of proof, trial-within-the-trial, character evidence, affidavit evidence, witness statement, public/private documents, compellability, etc
- Suggestions and recommendations (Appendix I)
- cross-references of Evidence Act 1945 and Evidence Act 2011 (Appendix II)
- An index of jurists whose decisions are cited (Appendix III)