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EVIDENCE ACT

An Act to provide for the law of evidence to be applied in all judicial proceedings in or before courts in Nigeria.

[27 of 1943.46 of 1945.20 of 1950.6 of 1955.21 of 1955.52 of 1958. Order 47 of 1951.

L.N. 131 of 1954.47 of 1955. 1991 No. 61.]

[1st June, 1945]

[Commencement.]

PART I

Preliminary

Short title and interpretation

1. Short title and application

[L.N. 47 of 1955.]

(1) This Act may be cited as the Evidence Act.

(2) This Act shall apply to all judicial proceedings in or before any court established in the Federal Republic of Nigeria but it shall not apply-

(a) to proceedings before an arbitrator; or

(b) to a field general court-martial; or

(c) to 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 the President, or the Governor of a State, 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.

[1991 No. 61.]

(3) In judicial proceedings in any criminal cause or matter in or before an Area Court, the Court shall be guided by the provisions of this Act and in accordance with the provisions of the Criminal Procedure Code Law.

[1991 No. 61.]

(4) Notwithstanding anything in this section, an Area Court shall, in judicial proceedings in any criminal cause or matter, be bound by the provisions of sections 138, 139, 140, 141, 142 and 143 of this Act.

[1991 No. 61.]

2. Interpretation

In this Act, except as the context otherwise requires-

"bank" and **"banker"** means any person, persons, partnership or company carrying on the business of bankers and also include any savings bank established under the Federal Savings Bank Act, and also any banking company incorporated under any charter heretofore or hereafter granted, or under any Act heretofore or hereafter passed relating to such incorporation;

[Cap. F20.]

"bankers' books" - the expressions relating to bankers' books include ledgers, day books, cash books, account books and all other books used in the ordinary business of a bank;

"court" includes all judges and magistrates and, except arbitrators, all persons legally authorised to take evidence;

"custom" is a rule which, in a particular district, has, from long usage, obtained the force of law;

"document" includes books, maps, plans, drawings, photographs and also includes any matter expressed or described upon 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;

"fact" includes-

(a) any thing, state of things, or relation of things, capable of being perceived by the senses;

(b) any mental condition of which any person is conscious;

"fact in issue" includes any fact from which either by itself or in connection with other facts the existence, non-existence, nature or extent of any right, liability or disability asserted or denied in any suit or proceeding necessarily follows;

"proceedings" includes arbitrations under the Arbitration and Conciliation Act, and **"court"** shall be construed accordingly;

[Cap. A18.]

"statement" includes any representation of fact, whether made in words or otherwise;

"wife" and **"husband"** mean respectively the wife and husband of a monogamous marriage.

(2) A fact is said to be-

(a) **"proved"** when, after considering the matters before it, the court either believes it to exist or considers its existence so probable that a prudent man ought, in the circumstances of the particular case, to act upon the supposition that it does exist;

(b) **"disproved"** when, after considering the matters before it, the court either believes that it does not exist or considers its non-existence so probable that a prudent man ought, in

the circumstances of the particular case, to act upon the supposition that it does not exist;

(c) **"not proved"** when it is neither proved nor disproved.

3. Relation of relevant facts

One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

4. Presumptions

(1) Whenever it is provided by this Act that the court may presume a fact, it may either regard such fact as proved unless and until it is disproved, or may call for proof of it.

(2) Whenever it is directed by this Act that the court shall presume a fact, it shall regard such fact as proved unless and until it is disproved.

(3) When one fact is declared by this Act to be conclusive proof of another, the court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

5. Savings as to certain evidence

Nothing in this Act shall-

(a) prejudice the admissibility of any evidence which would, apart from the provisions of this Act, be admissible; or

(b) enable documentary evidence to be given as to any declaration relating to a matter of pedigree, if that declaration would not have been admissible as evidence if this Act had not been passed.

PART II

Relevancy

Relevance of facts

6. Evidence may be given of facts in issue and relevant facts

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 as are hereinafter declared to be relevant, and of no others:

Provided that-

(a) the court may exclude evidence of facts which, though relevant or deemed to be relevant to the issue, appear to it to be too remote to be material in all the circumstances of the case; and

(b) this section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force.

7. Relevancy of facts forming part of same transaction

Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.

8. Facts which are the occasion, cause or effect of facts in issue

Facts which are the occasion, cause or effect, immediate or otherwise, of relevant facts or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

9. Motive, preparation and previous or subsequent conduct

(1) Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

(2) The conduct of any party, or of any agent to any party, to any proceedings, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

(3) The word **"conduct"** in this section does not include statements, unless those statements accompany and explain acts other than statements; but this provision shall not affect the relevancy of statements under any other section.

(4) When the conduct of any person is relevant, any statement made to him or in his presence and hearing which affects such conduct is relevant.

10. Facts necessary to explain or introduce relevant facts

Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for the purpose.

11. Things said or done by conspirator in reference to common intention

(1) Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or actionable wrong, anything said, done or written by anyone of such persons in execution or furtherance of their common intention, after the time when such intention was first entertained by anyone of them, is a relevant fact as against each of the persons believed to be so conspiring, for the purpose of proving the existence of the conspiracy as well as for the purpose of showing that any such person was a party to it; but statements made by individual conspirators as to measures taken in the execution or furtherance of any such common intention are not deemed to berelevant as such as against any conspirators, except those by whom or in whose presence such statements are made.

(2) Evidence of acts or statements deemed to be relevant under this section may not be given until the court is satisfied that, apart from them, there are prima facie grounds for believing in the existence of the conspiracy to which they relate.

12. When facts not otherwise relevant become relevant

Facts not otherwise relevant are relevant-

(a) if they are inconsistent with any fact in issue or relevant fact;

(b) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact probable or improbable.

13. Certain facts relevant in proceedings for damages

In proceedings in which damages are claimed, any fact which will enable the court to determine the amount of damages which ought to be awarded is relevant.

14. What customs admissible

(1) A custom may be adopted as part of the law governing a particular set of circumstances if it can be noticed judicially or can be proved to exist by evidence; the burden of proving a custom shall lie upon the person alleging its existence.

(2) A custom may be judicially noticed by the court if it has been acted upon by a court of superior or co-ordinate jurisdiction in the same area to an extent which justifies the court asked to apply it in assuming that the persons or the class of persons concerned in that area look upon the same as binding in relation to circumstances similar to those under consideration.

(3) Where a custom cannot be established as one judicially noticed, it may be established and adopted as part of the law governing particular circumstances by calling evidence to show that persons or the class of persons concerned in the particular area regard the alleged custom as binding upon them:

Provided that in case of any custom relied upon in any judicial proceeding it shall not be enforced as law if it is contrary to public policy and is not in accordance with natural justice, equity and good conscience.

15. Relevant facts as to how matter alleged to be custom understood

Every fact is deemed to be relevant which tends to show how in particular instances a matter alleged to be a custom was understood and acted upon by persons then interested.

16. Facts showing existence of state of mind, or of body, or bodily feeling

(1) Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will or goodwill towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant when the existence of any such state of mind or body or bodily feeling is in issue or relevant.

(2) A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question. *

17. Facts bearing on question whether act was accidental or intentional

When there is a question whether an act was accidental or intentional, or done with a particular knowledge or intention, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

18. Existence of course of business when relevant

When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact.

Admissions

19. "Admission" defined

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 the circumstances, hereinafter mentioned.

20. Admissions by party to proceeding or his agent

(1) Statements made by a party to the proceeding, or by an agent to any such party, whom the court regards, in the circumstances of the case, as expressly or impliedly authorised by him to make them, are admissions.

By suitor in representative character

(2) Statements made by parties to suits, suing or sued in a representative character, are not admissions unless they were made while the party making them held that character.

By party interested in subject matter

(3) Statements made by-

(a) persons who have any proprietary or pecuniary interest in the subject-matter of the proceedings, and who made the statement in their character of persons so interested; or

By person from whom interest derived

(b) persons from whom the parties to the suit have derived their interest in the subject-matter of the suit,

are admissions, if they are made during the continuance of the interest of the persons making the statements.

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* See also section 47

21. Admissions by persons whose position must be proved as against party to suit

Statements made by persons whose position or liability it is necessary to prove as against any party to the suit, are admissions if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position or is subject to such liability.

22. Admissions by persons expressly referred to by party to suit

Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute, are admissions.

23. Proof of admissions against persons making them, and by or on their behalf

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 by his representative in interest, except in the following cases-

(a) an admission may be proved by or on behalf of the person making it when it is of such a nature that, if the person making it were dead, it would be relevant as between third parties under section 33 of this Act;

(b) an admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable; and

(c) an admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission.

24. When oral admissions as to contents of documents are relevant

Oral admissions as to the contents of a document are not relevant, unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the provisions of Part V of this Act, or unless the genuineness of a document produced is in question.

25. Admissions in civil cases when relevant

In civil cases, no admission is relevant if it is made either upon an express condition that evidence of it is not to be given, or in circumstances from which the court can infer that the parties agreed together that evidence of it should not be given:

Provided that nothing in this section shall be taken to exempt any legal practitioner from giving evidence of any matter of which he may be compelled to give evidence under section 170 of this Act.

26. Admissions not conclusive proof, but may estop

Admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions of Part VIII of this Act.

Confessions

27. Definition of "confession"

(1) A confession is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed that crime.

Voluntary confessions relevant against maker

(2) Confessions, if voluntary, are deemed to be relevant facts as against the persons who make them only.

Effect of confessions on co-accused

(3) Where more persons than one are charged jointly with a criminal offence and a confession made by one of such persons in the presence of one or more of the other persons so charged is given in evidence, the court, or a jury where the trial is one with a jury, shall not take such statement into consideration as against any of such other persons in whose presence it was made unless he adopted the said statement by words or conduct.

28. Confession caused by inducement, threat or promise when irrelevant in criminal proceedings

A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority, and sufficient, in the opinion of the court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature.

29. Facts discovered in consequence of information given by accused

Where information is received from a person who is accused of an offence, whether such person is in custody or not, and as a consequence of such information any fact is discovered, the discovery of thatfact, together with evidence that such discovery was made in consequence of the information received from the accused, may be given in evidence where such information itself would not be admissible in evidence.

30. Confession made after removal of duress, relevant

If such a confession as is referred to in section 28 of this Act is made after the impression caused by any such inducement, threat or promise has, in the opinion of the court, been fully removed, it is relevant.

31. Confession otherwise relevant not to become irrelevant because of promise of secrecy

If such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such statement and that evidence of it might be given.

32. Evidence in other proceedings amounting to a confession is admissible

Evidence amounting to a confession may be used as such against the person who gives it, although it was given upon oath, and although the proceeding in which it was given had reference to the same subject-matter as the proceeding in which it is to be proved, and although the witness might have refused to answer the questions put to him; but if, after refusing to answer any such question, the witness is improperly compelled to answer it, his answer is not a voluntary confession.

Statements by persons who cannot be called as witnesses

33. Cases in which statement of relevant fact by person who is dead is relevant: dying declaration

(1) Statements, written or verbal, or relevant facts made by a person who is dead, are themselves relevant facts in the following cases-

(a) when the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question; such statements are relevant only in trials for murder or manslaughter of the deceased person and only when such person at the time of making such declaration believed himself to be in danger of approaching death although he may have entertained at the time of making it hopes of recovery;

(b) when the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgement written or signed by him or the receipt of money, goods, securities or property of any kind; or of a document used in commerce written or signed by him; or of the date of a letter or other document usually dated, written or signed by him;

(c) when the statement is against the pecuniary or proprietary interest of the person making it and the said person had peculiar means of knowing the matter and had no interest to misrepresent it;

(d) when the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter had arisen;

(e) subject to the conditions hereinafter mentioned, when the statement relates to the existence of any relationship by blood, marriage or adoption between persons as to whose relationship by blood, marriage or adoption the person making the statement had special means of knowledge.

(2) The conditions above referred to are as follows-

(a) such a statement is deemed to be relevant only in a case in which the pedigree to which it relates is in issue, and not to a case in which it is only relevant to the issue;

(b) it must be made by a declarant shown to be related by blood to the person to whom it relates, or by the husband or wife of such a person;

except that-

(i) a declaration by a deceased parent that he or she did not marry the other parent until after the birth of a child is relevant to the question of the illegitimacy of such child upon any question arising as to the right of the child to inherit real or personal property under the Legitimacy Act; and

(ii) in proceedings for the legitimacy of any person, a declaration made by a person who, if a decree of legitimacy were granted, would stand towards the petitioner in any of the relationships mentioned in paragraph (b) of this subsection, is deemed relevant to the question of the identity of the parents of the petitioner;

(c) it must be made before the question in relation to which it is to be proved had arisen, but it does not cease to be deemed to be relevant because it was made for the purpose of preventing the question from arising.

Declarations by testators

(3) (a) The declarations of a deceased testator as to his testamentary intentions, and as to the contents of his will, are deemed to be relevant-

(i) when his will has been lost, and when there is a question as to what were its contents; or

(ii) when the question is whether an existing will is genuine or was improperly obtained; or

(iii) when the question is whether any and which of more existing documents than one constitute his will.

(b) It is immaterial whether the declarations were made before or after the making or loss of the will.

34. Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated

(1) Evidence given by a witness in a judicial proceeding, or before any person authorised by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or when his presence cannot be obtained without an amount of delay or expense which, in the circumstances of the case, the court considers unreasonable:

Provided-

(a) that the proceeding was between the same parties or their representatives in interest;

(b) that the adverse party in the first proceeding had the right and opportunity to cross-examine; and

(c) that the questions in issue were substantially the same in the first as in the second proceeding.

(2) A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

Absence of public officers

(3) In the case of a person employed in the public service of the Federation or of a State who is required to give evidence for any purpose connected with a judicial proceeding, it shall be sufficient to account for his non-attendance at the hearing of the said judicial proceedings if there is produced to the court, either a Federal Gazette, or a telegram or letter purporting to emanate from the head of his department, sufficiently explaining to the satisfaction of the court his apparent default.

35. When statement may be used in evidence

A statement in accordance with the provisions of sections 290 and 319 of the Criminal Procedure Act may afterwards be used in evidence on the trial of any person accused of an offence to which the same relates, if the person who made the statement be dead, or the court be satisfied that for any sufficient cause his attendance cannot be procured, and if reasonable notice of the intention to take such statement was served upon the person against whom it is to be read in evidence, and he had or might have had if he had chosen to be present full opportunity of cross-examining the person making the same.

36. Admission of written statements of investigating police officers in certain cases

Notwithstanding the provisions of this Act or of any other law, but subject as herein provided, where in the course of any criminal trial, the court is satisfied that for any sufficient reason, the attendance of the investigating police officer cannot be procured, the written and signed statement of such officer may be admitted in evidence by the court if-

(a) the defence does not object to the statement being admitted; and

(b) the court consents to the admission of the statement.

37. Statement of accused at preliminary investigation

Any statements made by an accused person at a preliminary investigation or at a coroner's inquest may be given in evidence.

Statements made in special circumstances

38. Entries in books of account, when relevant

Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

39. Relevancy of entry in public records made in performance of duty

An entry in any public or other official book, register or record, stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record is kept, is itself a relevant fact.

40. Relevancy of statements in maps, charts and plans

Statements of facts in issue or relevant facts made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of Government, as to matters usually represented or stated in such maps, charts or plans, are themselves relevant facts.

41. Relevancy of statement as to fact of public nature contained in certain Acts or notifications

When the court has to form an opinion as to the existence of any fact of a public nature, any statement of it, made in a recital contained in any enactment or in any proclamation or speech of the President in opening the National Assembly or any legislation of the United Kingdom still applicable to Nigeria or in any proclamation or speech, or in any statement made in a Government or public notice appearing in the Federal Gazette or in a State notice or a State public notice appearing in a State Gazette or in any printed paper purporting to be the London Gazette or the Government Gazette of any part of the Commonwealth, is a relevant fact.

[Order 47 of 1951. L.N. 112 of 1964.]

42. Certificates of specified government officers to be sufficient evidence in all criminal cases

(1) (a) Either party to the proceedings in any criminal case may produce a certificate signed by the Government chemist, the Deputy Government chemist, an Assistant Government chemist, a Government pathologist or entomologist, or the Accountant-General or any other chemist so specified by the Government chemist of the Federation or of the State, any pathologist or entomologist specified by the Director of Medical Laboratories of the Federation or of the State, or any accountant specified by the Accountant-General of the Federation or of the State (whether any such officer is by that or any other title in the service of a State or of the Federal Government), and the production of any such certificate may be taken as sufficient evidence of the facts stated therein:

[52 of 1958. L.N. 41 of 1934.]

Provided that, notwithstanding the provisions herein contained, the court shall have the power, on the application of either party or of its own motion, to direct that any such officer shall be summoned to give evidence before the court if it is of the opinion that, either for the purpose of cross-examination or for any other reason, the interests of justice so require.

Certificates of central bank officers as evidence in criminal cases

(b) Where a certificate purports to be signed by an officer of the Central Bank of Nigeria who himself adds after his signature the words "duly authorised by the Governor of the Central Bank of Nigeria for the purposes of section 42 of the Evidence Act", it shall be accepted by all courts and persons as sufficient evidence of the facts stated in the certificate, and no certificate shall be questioned on the ground only of the authorisation; but subject thereto, the proviso to paragraph (a) of subsection (1) of this section shall have effect with regard to any such certificate.

(2) Notwithstanding the provisions of subsection (1) of this section, any certificate issued and produced by any officer in charge of any laboratory established by the appropriate authority, may be taken as sufficient evidence of the facts stated therein:

Provided that, notwithstanding the provisions herein contained, the court shall have the power, on the application of either party or of its own motion, to direct that any such officer shall be summoned to give evidence before the court if it is of the opinion that, either for the purpose of cross-examination or for any other reason, the interests of justice so require.

(3) In this section, unless the context otherwise requires-

"appropriate authority" means the Inspector-General of Police, the Comptroller-General of Customs or the Minister of Health;

"officer" means any officer in charge of any laboratory established pursuant to this Act;

"specified" means specified by notice as may be published in the Federal Gazette.

(4) The President may by notice in the Federal Gazette declare that any person named in such notice, being an officer in the public service of the Federation employed in a forensic science laboratory in a rank not below that of Medical Laboratory Technologist, shall for the purposes of subsection (1) of this section be empowered to sign a certificate relating to any subject specified in the notice, and while such declaration remains in force, the provisions of subsection (1) of this section shall apply in relation to such person as they apply in relation to an officer mentioned in that subsection:

[1955 No. 21. 1958 No. 52.]

Provided that a certificate signed by such person shall not be admissible in evidence if, in the opinion of the court, it does not relate wholly or mainly to a subject so specified as aforesaid.

43. Service of certificates on other party before hearing

Where any such certificate is intended to be produced by either party to the proceedings, a copy thereof shall be sent to the other party at least ten clear days before the day appointed for the hearing and if it is not so sent the court may, if it thinks fit, adjourn the hearing on such terms as may seem proper.

44. Genuineness of certificate to be presumed

The court shall, in the absence of evidence to the contrary, presume that the signature to any such certificate is genuine and that the person signing it held the office which he professed at the time when he signed it.

Facts relevant in special circumstances

45. Family or communal tradition in land cases

Where the title to or interest in family or communal land is in issue, oral evidence of family or communal tradition concerning such title or interest is relevant.

46. Acts of possession and enjoyment of land

Acts of possession and enjoyment of land may be evidence of ownership or of a right of occupancy not only of the particular piece or quantity of land with reference to which such acts are done, but also of other land so

situated or connected therewith by locality or similarity that what is true as to the one piece of land, is likely to be true of the other piece of land.

47. Evidence of scienter upon charge of receiving stolen property

(1) Whenever any person is being proceeded against for receiving any property, knowing it to have been stolen, or for having in his possession stolen property, for the purpose of proving guilty knowledge, there may be given in evidence at any stage of the proceedings-

(a) the fact that other property stolen within the period of twelve months preceding the date of the offence charged he was found or had been in his possession;

(b) the fact that within the five years preceding the date of the offence charged was convicted of any offence involving fraud or dishonesty.

(2) This last mentioned fact may not be proved unless-

(a) seven days' notice in writing has been given to the offender that proof of such previous conviction is intended to be given; and

(b) evidence has been given that the property in respect of which the offender is being tried was found or had been in his possession. *

How much of a statement is to be proved

48. What evidence is to be given when statement forms part of a conversation, document, book or series of letters or papers

When any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, book, or series of letters or papers as the court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances in which it was made.

Judgments of courts of justice when relevant

49. Previous judgments relevant to bar a second suit or trial

The existence of any judgment, order or decree which by law prevents any court from taking cognisance of a suit or holding a trial, is a relevant fact when the question is whether such court ought to take cognisance of such suit or to hold such trial.

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* See section 16.

50. Relevancy of certain judgments in certain jurisdiction

(1) A final judgment, order or decree of a competent court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or

which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such persons to any such thing, is relevant.

(2) Such judgment, order or decree is conclusive proof-

(a) that any legal character which it confers accrued at the time when such judgment, order or decree came into operation;

(b) that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, order or decree declares it to have accrued to that person;

(c) that any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree declared that it had ceased or should cease; and

(d) that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree declares that it had been or should be his property.

51. Relevancy and effect of judgments other than those mentioned in section 50

Judgments, orders or decrees other than those mentioned in section 50 of this Act are relevant if they relate to matters of a public nature relevant to the inquiry; but such judgments, orders or decrees are not conclusive proof of that which they state.

52. Judgments, etc., other than those mentioned in sections 49 to 51, when relevant

Judgments, orders or decrees, other than those mentioned in section 49,50 and 51 of this Act, are irrelevant, unless the existence of such judgment, order or decree is a fact in issue, or is relevant under some other provision of this or any other Act.

53. Fraud or collusion in obtaining judgment, or incompetency of court, may be proved

Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under section 49, 50 or 51 of this Act and which has been proved by the adverse party, was delivered by a court without jurisdiction, or was obtained by fraud or collusion.

54. Judgment conclusive of facts forming ground of judgment

Every judgment is conclusive proof, as against parties and privies, of facts directly in issue in the case, actually decided by the court, and appearing from the judgment itself to be the ground on which it was based; unless evidence was admitted in the action in which the judgment was delivered which is excluded in the action in which that judgment is intended to be proved.

55. Effect of judgment not pleaded as estoppel

(1) If a judgment is not pleaded by way of estoppel it is as between parties and privies deemed to be a relevant fact, whenever any matter, which was, or might have been, decided in the action in which it was given, is in issue, or is or is deemed to be relevant to the issue, in any subsequent proceeding.

(2) Such a judgment is conclusive proof of the facts which it decides, or might have decided, if the party who gives evidence of it had no opportunity of pleading it as an estoppel.

56. Judgment conclusive in favour of judge

When any action is brought against any person for anything done by him in a judicial capacity, the judgment delivered, and the proceedings, antecedent thereto, are conclusive proof of facts therein stated, whether they are or are not necessary to give the defendant jurisdiction, if, assuming them to be true, they show that he had jurisdiction.

Opinions of third persons when relevant

57. Opinions of experts

(1) When the court has to form an opinion upon a point of foreign law, native law or custom, or of science or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, native law or custom, or science or art, or in questions as to identity of handwriting or finger impressions, are relevant facts.

(2) Such persons are called **"experts".**

58. Opinions as to foreign law

(1) Where there is a question as to foreign law, the opinions of experts who in their profession are acquainted with such law, are admissible evidence thereof, though such experts may produce to the court books which they declare to be works of authority upon the foreign law in question, which books the court, having received all necessary explanations from the expert, may construe for itself.

(2) Any question as to the effect of the evidence given with respect to foreign law shall, instead of being submitted to the jury, in the case of trial with a jury, be decided by the judge alone. *

59. Opinions as to native law and custom

In deciding questions of native law and custom the opinions of native chiefs or other persons having special knowledge of native law and custom and any book or manuscript recognised by natives as a legal authority, are relevant.

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* See also section 113 (6).

60. Facts bearing upon opinions of experts

Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.

61. Opinion as to handwriting, when relevant

(1) 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 a relevant fact.

(2) A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

62. Opinion as to existence of "general custom or right", when relevant

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

(2) The expression **"general custom or right"** includes customs or rights common to any considerable class of persons.

63. Opinions as to usages, tenets, when relevant

When the court has to form an opinion as to-

(a) the usages and tenets of any body of men or family; or

(b) the constitution and government of any religious or charitable foundation; or

(c) 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 thereon, are relevant facts.

64. Opinion on relationship, when relevant

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 a relevant fact:

Provided that such opinion shall not be sufficient to prove a marriage in proceedings for a divorce or in a petition for damages against an adulterer or in a prosecution for bigamy.

65. Grounds of opinion, when relevant

Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant.

66. Opinions generally irrelevant

The fact that any person is of opinion that a fact in issue, or relevant to the issue, does or does not exist, is irrelevant to the existence of such fact except as provided in sections 57 to 65 of this Act.

Character, when relevant

67. In civil cases, character to prove conduct imputed irrelevant

In civil cases the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him is irrelevant, except in so far as such character appears from facts otherwise relevant.

68. In criminal cases, previous good character relevant

In criminal proceedings the fact that the person accused is of a good character is relevant.

69. Evidence of character of the accused in criminal proceedings

(1) Except as provided in this section, the fact that an accused person is of bad character is irrelevant in criminal proceedings.

(2) The fact than an accused person is of bad character is relevant-

(a) when the bad character of the accused person is a fact in issue;

(b) when the accused person has given evidence of his good character.

(3) An accused person may be asked questions to show that he is of bad character in the circumstances mentioned in paragraph (d) of the proviso to section 160 of this Act.

(4) Whenever evidence of bad character is relevant, evidence of a previous conviction is also relevant. *

70. Character as affecting damages

In civil cases the fact that the character of any person is such as to affect the amount of damages which he ought to receive, is relevant.

71. In libel and slander notice must be given of evidence of character

In actions for libel and slander in which the defendant does not by his defence assert the truth of the statement complained of, the defendant is not entitled on the trial to give evidence in chief with a view to mitigation of damages, as to the circumstances under which the libel or slander was published, or as to the character of the plaintiff, without the leave of the judge, unless seven days at least before the trial he furnishes particulars to the plaintiff of the matters as to which he intends to give evidence.

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* See also section 225.

72. Meaning of word "character"

In sections 67 to 71 of this Act the word "**character"** means reputations as distinguished from disposition, and except as previously mentioned in those sections, evidence may be given only of general reputation, and not of particular acts by which reputation or disposition is shown.

PART III

Proof

Facts which need not be proved

73. Fact judicially noticeable need not be proved

No fact of which the *court must take judicial notice need be proved.

74. Facts of which court must take judicial notice

(1) The court shall take judicial notice of the following facts-

(a) all laws or enactments and any subsidiary legislation made thereunder having the force of law now or heretofore in force, or hereafter to be in force, in any part of Nigeria;

(b) all public Acts passed or hereafter to be passed by the National Assembly and all subsidiary legislation made thereunder, and all local and personal Acts directed by the National Assembly to be judicially noticed;

[Order 47 of 1951. L.N. 112 of 1964. L.N. 47 of 1955.]

(c) the course of proceeding of the National Assembly and of the Houses of Assembly of the States of Nigeria;

(d) the assumption of office of the President and of any seal used by the President;

(e) all seals of which English courts take judicial notice; the seals of all the courts of Nigeria; the seals of notaries public, and all seals which any person is authorised to use by any Act of the National Assembly or other enactment having the force of law in Nigeria;

(f) the existence, title and national flag of every State or Sovereign recognised by Nigeria;

(g) the divisions of time, the geographical divisions of the world, the public festivals, fasts and holidays notified in the Federal Gazette or fixed by Act;

(h) the territories within the Commonwealth or under the dominion of the British Crown;

(i) the commencement, continuance and termination of hostilities between the Federal Republic of Nigeria and any other State or body of persons;

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* See also section 225.

(j) the names of the members and officers of the court and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all legal practitioners and other persons authorised by law to appear or act before it;

(k) the rule of the road on land or at sea;

(l) all general customs, rules and principles which have been held to have the force of law in or by any of the superior courts of law or equity in England, the Supreme Court of Nigeria or the Court of Appeal or by the High Court of the State or of the Federal Capital Territory, Abuja or by the Federal High Court and all customs which have been duly certified to and recorded in any such court;

(m) the course of proceeding and all rules of practice in force in the High Court of justice in England and in the High Court of a State and of the Federal Capital Territory, Abuja and in the Federal High Court.

(2) In all cases in subsection (1) of this section and also on all matters of public history, literature, science or art, the court may resort for its aid to appropriate books or documents of reference.

(3) If the court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

75. Facts admitted need not be proved

No fact need be proved in any civil proceedings which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

PART IV

Oral evidence and the inspection of real evidence

76. Proof of fact by oral evidence

All facts, except the contents of documents, may be proved by oral evidence.

77. Oral evidence must be direct

Oral evidence must, in all cases whatever, be direct-

(a) if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw that fact;

(b) if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard that fact;

(c) if it refers 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-

(i) the opinions of experts expressed in any treatise commonly offered for sale, and the grounds of 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;

(ii) if oral evidence refers to the existence or condition of any material thing other than a document, the court may, if it thinks fit, require the production of such material thing for its inspection, or may inspect or may order or permit a jury to inspect any movable or immovable property, the inspection of which may be material to the proper determination of the question in dispute and in the case of such inspection being ordered or permitted, the court shall either be adjourned to the place where the subject-matter of the said inspection may be and the proceedings shall continue at that place until the court further adjourns back to its original place of sitting or to some other place of sitting, or the court shall attend and make an inspection of the subject-matter only, evidence, if any, of what transpired there being given in court afterwards; in either case the accused, if any, shall be present.

PART V

Documentary evidence

Affidavits

78. Court may order proof by affidavit

A court may in any civil proceeding make an order at any stage of such proceeding directing that specified facts may be proved at the trial by affidavit with or without the attendance of the deponent for cross-examination, notwithstanding that a party desires his attendance for cross-examination and that he can be produced for that purpose.

79. Affidavits to be filed

Before an affidavit is used in the court for any purpose, the original shall be filed in the court, and the original or an office copy shall alone be recognised for any purpose in the court.

[L.N. 112 of 1964.]

80. Before whom sworn

Any affidavit sworn before any judge, officer or other person in the Commonwealth to take affidavits, may be used in the court in all cases where affidavits are admissible.

81. Sworn in foreign parts

Any affidavit sworn in any foreign parts out of Nigeria or out of any part of the Commonwealth before a judge or magistrate, being authenticated by the official seal of the court to which he is attached, or by a public notary, or before a British minister or consul, may be used in the court in all cases where affidavits are admissible.

82. Proof of seal and signature

The fact that an affidavit purports to have been sworn in manner hereinbefore prescribed shall be prima facie evidence of the seal or signature, as the case may be, of any such court, judge, magistrate or other officer or person therein mentioned, appended or subscribed to any such affidavit, and of the authority of such court, judge, magistrate or other officer or person to administer oaths.

83. Affidavit not to be sworn before certain persons

An affidavit shall not be admitted which is proved to have been sworn before a person on whose behalf the same is offered, or before his legal practitioner, or before a partner or clerk of his legal practitioner.

84. Defective in form

The court may permit an affidavit to be used, notwithstanding it is defective in form according to this Act, if the court is satisfied that it has been sworn before a person duly authorised.

85. Amendment and re-swearing

A defective or erroneous affidavit may be amended and re-sworn by leave of the court, on such terms as to time, costs or otherwise as seem reasonable.

86. Contents of affidavits

Every affidavit used in the court shall contain only a statement of facts and circumstances to which the witness deposes, either of his own personal knowledge or from information which he believes to be true.

87. No extraneous matter

An affidavit shall not contain extraneous matter, by way of objection, or prayer, or legal argument or conclusion.

88. Grounds of belief to be stated

When a person deposes to his belief in any matter of fact, and his belief is derived from any source other than his own personal knowledge, he shall set forth explicitly the facts and circumstances forming the ground of his belief.

89. Informant to be named

When such belief is derived from information received from another person, the name of his informant shall be stated, and reasonable particulars shall be given respecting the informant, and the time, place and circumstances of the information.

90. Provisions in taking affidavits

The following provisions shall be observed by persons before whom affidavits are taken-

(a) every affidavit taken in a cause or matter shall be headed in the court and in the cause or matter;

(b) it shall state the full name, trade or profession, residence, and nationality of the deponent;

(c) it shall be in the first person, and divided into convenient paragraphs, numbered consecutively;

(d) any erasure, interlineation or alteration made before the affidavit is sworn, shall be attested by the person before whom it is taken, who shall affix his signature or initial in the margin immediately opposite to the interlineation, alteration or erasure;

(e) where an affidavit proposed to be sworn is illegible or difficult to read, or is in the judgment of the person before whom it is taken so written as to facilitate fraudulent alteration, he may refuse to swear the deponent, and require the affidavit to be rewritten in an unobjectionable manner;

(f) the affidavit when sworn shall be signed by the witness or, if he cannot write, marked by him with his mark, in the presence of the person before whom it is taken;

(g) (i) the jurat shall be written without interlineation, alteration or erasure immediately at the foot of the affidavit, and towards the left side of the paper, and shall be signed by the person before whom it is taken;

(ii) it shall state the date of the swearing and the place where it is sworn;

(iii) it shall state that the affidavit was sworn before the person taking the same;

(iv) where the deponent is illiterate or blind it shall state the fact, and that the affidavit was read over (or translated into his own language in the case of a witness not having sufficient knowledge of English), and that the witness appeared to understand it;

(v) where the deponent makes a mark instead of signing, the jurat shall state that fact, and that the mark was made in the presence of the person before whom it is taken;

(vi) where two or more persons join in making an affidavit their several names shall be written in the jurat and it shall appear by the jurat that each of them has been sworn to the truth of the several matters stated by him in the affidavit;

(h) the person before whom it is taken shall not allow an affidavit, when sworn, to be altered in any manner without being re-sworn;

(i) if the jurat has been added and signed the person before whom it is taken shall add a new jurat on the affidavit being re-sworn; and in the new jurat he shall mention the alteration;

(j) the person before whom it is taken may refuse to allow the affidavit to be re-sworn, and may require a fresh affidavit;

(k) the person before whom an affidavit may be taken may take without oath the declaration of any person affirming that the taking of any oath whatsoever is, according to his religious belief, unlawful, or who, by reason of immature age or want of religious belief, ought not, in the opinion of the person taking the declaration, to be admitted to make a sworn affidavit and the person taking the declaration shall record in the attestation the reason of such declaration being taken without oath.

Admissibility of documentary evidence

91. Admissibility of documentary evidence as to facts in issue

In any civil proceedings where direct oral evidence of a fact would be admissible, any statement made by a person in a document and tending to establish that fact, shall, on production of the original document, be admissible as evidence of that fact if the following conditions are satisfied-

(a) if the maker of the statement either-

(i) had personal knowledge of the matters dealt with by the statement; or

(ii) where the document in question is or forms part of a record purporting to be a continuous record, made the statement (in so far as the matters dealt with thereby are not within his personal knowledge) in the performance of a duty to record information supplied to him by a person who had, or might reasonably be supposed to have, personal knowledge of those matters; and

(b) if the maker of the statement is called as witness in the proceedings:

Provided that the condition that the maker of the statement shall be called as a witness need not be satisfied if he is dead, or unfit by reason of his bodily or mental condition to attend as a witness, or if he is beyond the seas and it is not reasonably practicable to secure his attendance, or if all reasonable efforts to find him have been made without success.

(2) In any civil proceedings, the court may at any stage of the proceedings, if having regard to all the circumstances of the case it is satisfied that undue delay or expense would otherwise be caused, order that such a statement as is mentioned in subsection (1) of this section shall be admissible as evidence or may, without any such order having been made, admit such a statement in evidence-

(a) notwithstanding that the maker of the statement is available but is not called as a witness;

(b) notwithstanding that the original document is not produced, if in lieu thereof there is produced a copy of the original document or of the material part thereof certified to be a true copy in such manner as may be specified in the order or as the court may approve, as the case may be.

(3) Nothing in this section shall render admissible as evidence any statement made by a person interested at a time when proceedings were pending or anticipated involving a dispute as to any fact which the statement might tend to establish.

(4) For the purposes of this section, a statement in a document shall not be deemed to have been made by a person unless the document or the material part thereof was written, made or produced by him with his own hand, or was signed or initialled by him or otherwise recognised by him in writing as one for the accuracy of which he is responsible.

(5) For the purpose of deciding whether or not a statement is admissible as evidence by virtue of the foregoing provisions, the court may draw any reasonable inference from the form or contents of the document in which the statement is contained, or from any other circumstances, and may, in deciding whether or not a person is fit to attend as a witness, act on a certificate purporting to be the certificate of a registered medical practitioner, and where the proceedings are with a jury, the court may in its discretion reject the statement notwithstanding that the requirements of this section are satisfied with respect thereto, if for any reason it appears to it to be inexpedient in the interests of justice that the statement should be admitted.

92. Weight to be attached to evidence

(1) In estimating the weight, if any, to be attached to a statement rendered admissible as evidence by this Act, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement, and in particular to the question whether or not the statement was made contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not the maker of the statement had any incentive to conceal or misrepresent facts.

(2) For the purpose of any rule of law or practice requiring evidence to be corroborated or regulating the manner in which uncorroborated evidence is to be treated, a statement rendered admissible as evidence by this Act, shall not be treated as corroboration of evidence given by the maker of the statement.

Primary and secondary documentary evidence

93. Proof of contents of documents

The contents of documents may be proved either by primary or by secondary evidence.

94. Primary evidence

(1) Primary evidence means the document itself produced for the inspection of the court.

(2) Where a document has been executed in several parts, each part shall be primary evidence of the document.

(3) Where a document has been executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart shall be primary evidence as against the parties executing it.

(4) Where a number of documents have all been made by one uniform process, as in the case of printing, lithography, or photography, each shall be primary evidence of the contents of the rest; but where they are all copies of a common original, they shall not be primary evidence of the contents of the original.

95. Secondary evidence Secondary evidence includes-

(a) certified copies given under the provisions hereinafter contained;

(b) copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies;

(c) copies made from or compared with the original;

(d) counterparts of documents as against the parties who did not execute them;

(e) oral accounts of the contents of a document given by some person who has himself seen it.

96. Proof of documents by primary evidence

Documents must be proved by primary evidence except in the cases hereinafter mentioned.

97. Cases in which secondary evidence relating to documents may be given

(1) Secondary evidence may be given of the existence, condition or contents of a document in the following cases-

(a) 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 when, after the notice mentioned in section 98 of this Act, such person does not produce it;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c) when the original has been destroyed or lost and in the latter case all possible search has been made for it;

(d) when the original is of such a nature as not to be easily movable;

(e) when the original is a public document within the meaning of section 109 of this Act;

(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in Nigeria, to be given in evidence;

(g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in court, and the fact to be proved is the general result of the whole collection;

(h) when the document is an entry in a banker's book.

(2) The secondary evidence admissible in respect of the original documents referred to in the several paragraphs of subsection (1) of this section is as follows-

(a) in paragraphs (a), (c) and (d), any secondary evidence of the contents of the document is admissible;

(b) in paragraph (b), the written admission is admissible;

(c) in paragraph (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible;

(d) in paragraph (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents;

(e) in paragraph (h), the copies cannot be received as evidence unless it be first proved that the book in which the entries copied were made was at the time of making one of the ordinary books of the bank, and that the entry was made in the usual and ordinary course of business, and that the book is in the custody and control of the bank, which proof may be given orally or by affidavit by a partner or officer of the bank, and that the copy has been examined with the original entry and is correct, which proof must be given by some person who has examined the copy with the original entry and may be given orally or by affidavit.

(3) When a seaman sues for his wages he may give secondary evidence of the ship's articles and of any agreement supporting his case, without notice to produce the originals.

98. Rules as to notice to produce

Secondary evidence of the contents of the documents referred to in paragraph (a) of subsection (1) of section 97 of this Act, shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, or to a legal practitioner employed by such party, such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as the court considers reasonable in the circumstances of the case:

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the court thinks fit to dispense with it-

(a) when the document to be proved is itself a notice;

(b) when, from the nature of the case, the adverse party must know that he will be required to produce it;

(c) when it appears or is proved that the adverse party has obtained possession of the original by fraud or force;

(d) when the adverse party or his agent has the original in court;

(e) when the adverse party or his agent has admitted the loss of the document.

99. Proof that bank is incorporated under law

The fact of any bank having duly made a return to the Board of Inland Revenue in Nigeria, may be proved in any legal proceedings by production of a copy of its return verified by the affidavit of a partner or officer of the bank, or by the production of a copy of a newspaper purporting to contain a copy of such return published by the said Board of Inland Revenue; the fact that any savings bank is established under the Federal Savings Bank Act, may be proved by a certificate purporting to be under the hand of the managing director in charge of such savings bank; the fact of any banking company having been incorporated under any charter hereafter or here before granted may be proved by the production of a certificate of a partner or officer of the bank that it has been duly incorporated under such charter.

[Cap. F20.]

Proof of execution of documents

100. Proof of signature and handwriting of person alleged to have signed or written document produced

If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

101. Identification of person signing a document

(1) Evidence that a person exists having the same name, address, business or occupation as the maker of a document purports to have, is admissible to show that such document was written or signed by that person.

(2) Evidence that a document exists to which the document the making of which is in issue purports to be a reply, together with evidence of the making and delivery to a person of such earlier document, is admissible to show the identity of the maker of the disputed document with the person to whom the earlier document was delivered.

102. Evidence of sealing and delivery of a document

(1) Evidence that a person signed a document containing a declaration that a seal was his seal, is admissible to prove that he sealed it.

(2) Evidence that the grantor on executing any document requiring delivery expressed an intention that it should operate at once, is admissible to prove delivery.

103. Proof of instrument to validity of which attestation is necessary

(1) In any proceedings, whether civil or criminal, an instrument to the validity of which attestation is required by law may, instead of being proved by an attesting witness, be proved in the manner in which it might be proved if no attesting witness were alive:

Provided that nothing in this section shall apply to the proof of wills or other testamentary documents.

(2) If no attesting witness is alive, an instrument to the validity of which attestation is required by law is proved by showing that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the documents is in the handwriting of that person.

104. Admission of execution by party to attested document

The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.

105. Cases in which proof of execution or of handwriting unnecessary

(1) A person seeking to prove the due execution of a document, is not bound to call the party who executed the document or to prove the handwriting of such party or of an attesting witness in any case where the person against whom the document is sought to be proved-

(a) produces such document and claims an interest under it in reference to the subject-matter of the suit; or

(b) is a public officer bound by law to procure its due execution, and he has dealt with it as a document duly executed.

(2) Nothing in this section contained shall prejudice the right of a person to put in evidence any document in the manner mentioned in sections 97 and 123 of this Act.

106. Proof when attesting witness denies the execution

If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

107. Proof of document not required by law to be attested

An attested document not required by law to be attested may be proved as if it was unattested.

108. Comparison of signature, writing, seal or finger impressions with others admitted or proved

(1) In order to ascertain whether a signature, writing, seal or finger impression is that of the person by whom it purports to have been written or made, any signature, writing, seal or finger impression admitted or proved to the satisfaction of the court to have been written or made by that person may be compared with the one which is to be proved although that signature, writing, seal or finger impression has not been produced or proved for any other purpose.

(2) The court may direct any person present in court to write any words or figures or to make finger impressions for the purpose of enabling the court to compare the words, figures or finger impressions so written with any words, figures or finger impressions alleged to have been written or made by such person:

Provided that where an accused person does not give evidence he may not be so directed to write any words or figures or to make finger impressions.

(3) After the final termination of the proceedings in which the court required any person to make his finger impressions such impressions shall be destroyed.

Public and private documents

109. Public documents

The following documents are public documents-

(a) documents forming the acts or records of the acts-

(i) of the sovereign authority;

(ii) of official bodies and tribunals; and

(iii) of public officers, legislative, judicial and executive, whether of Nigeria or elsewhere;

(b) public records kept in Nigeria of private documents.

110. Private documents

All documents other than public documents are private documents.

111. Certified copies of public documents

(1) Every public officer having the custody of a public document which any person has a right to inspect shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorised by law to make use of a seal, and such copies so certified shall be called certified copies.

(2) Any officer who, by the ordinary course of official duty, is authorised to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

112. Proof of documents by production of certified copies

Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

113. Proof of other official documents

The following public documents may be proved as follows-

(a) Acts of the National Assembly or Laws of a State legislature, proclamations, treaties or other acts of State, orders, notifications, nominations,

appointments and other official communications of the Government of Nigeria or of any State thereof or of any Local Government-

[Order 47 of 1951. L.N. 112 of 1964. L.N 131 of 1954.120 of 1957. L.N. 112 of 1964 (7Edw. 7, c. 16.).]

(i) which appear in the Federal Gazette or the Gazette of a State, by the production of such Gazette, and shall be prima facie proof of any fact of a public nature which they were intended to notify;

(ii) by a copy thereof certified by the officer who authorised or made such order or issued such official communication;

(iii) by the records of the departments certified by the heads of those departments respectively or by the Minister or in respect of matters to which the executive authority of a State extends by the Governor or any person nominated by him; or

(iv) by any document purporting to be printed by order of Government;

(b) the proceedings of the Senate or of the House of Representatives-

by the minutes of that body or by published Acts or abstracts, or by copies purporting to be printed by order of Government;

(c) the proceedings of a State House of Assembly-

by the minutes of that body or by published Laws, or by copies purporting to be printed by order of Government;

(d) the proceedings of a municipal body in Nigeria by a copy of such proceedings, certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body;

(e) Acts of Parliament of the United Kingdom and other statutes thereof enacted, including proclamations, orders or regulations issued by Her Majesty or by the Privy Council, or by any department of Her Majesty's Government-

by copies or extracts contained in the London Gazette, or purporting to printed by the Queen's Printer;

(f) the Acts or ordinances of any other part of the Commonwealth, and the subsidiary legislation made under the authority thereof-

[L.N. 112 of 1964.]

by a copy purporting to be printed by the Government Printer of any such country;

(g) treaties or other acts of State of the United Kingdom or proclamations, treaties or acts of State of any other country by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign;

(h) books printed or published under the authority of the government of a foreign country, and purporting to contain the statutes, code or other written law of such country, and also printed published

books of reports of decisions of the courts of such country, and books proved to be commonly admitted in such courts as evidence of the law of such foreign country;*

(i) any judgement, order or other judicial proceeding outside Nigeria, or any legal document filed or deposited in any court-

[L.N. 112 of 1964.]

(i) by a copy sealed with the seal of a foreign or other court to which the original document belongs, or, in the event of such court having no seal, to be signed by the judge, or, if there be more than one judge, by anyone of the judges of the said court, and such judge must attach to his signature a statement in writing on the said copy that the court whereof he is judge has no seal; or

(ii) by a copy which purports to be certified in any manner which is certified by any representative of Nigeria, or if there is no such representative appointed, then by any representative of the United Kingdom in or for such country to be the manner commonly in use in that country for the certification of copies of judicial records;

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* See also section 58.

(j) public documents of any other class elsewhere than in Nigeria-

by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of a notary public, or a consul or diplomatic agent that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.

Presumptions as to documents

114. Presumption as to genuineness of certified copies

(1) The court shall presume every document purporting to be a certificate, certified copy or other document, which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer in Nigeria who is duly authorised thereto, to be genuine, provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

(2) The court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.

115. Presumption as to documents produced as record of evidence

Whenever any document is produced before any court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorised by law to take such evidence or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any judge or magistrate, or by any such officer as aforesaid, the court shall presume-

(a) that the document is genuine;

(b) that any statements as to the circumstances in which it was taken, purporting to be made by the person signing it, are true; and

(c) that such evidence, statement or confession was duly taken.*

[Order 47 of 1951. L.N. 112 of 1964.]

116. Presumption as to gazettes, newspapers, private Acts of the National Assembly and other documents

The court shall presume the genuineness of every document purporting to be the official Gazette of Nigeria or of a State or the Gazette of any part of the Commonwealth or to be a newspaper or journal, or to be a copy of the resolutions of the National Assembly printed by the Government Printer, and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody.

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* See section 35.

117. Presumption as to document admissible in United Kingdom without proof of seal or signature

When any document is produced before any court, purporting to be a document which by the law in force for the time being in any part of the Commonwealth would be admissible in proof of any particular in any court of justice in any part of the Commonwealth, without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the court shall presume-

[L.N. 112 of 1964.]

(a) that such seal, stamp or signature, is genuine; and

(b) that the person signing it held, at the time when he signed it, the judicial or official character which he claims,

and the document shall be admissible for the same purpose for which it would be admissible in the United Kingdom.

118. Presumption as to powers of attorney

The court shall presume that every document purporting to be a power of attorney, and to have been executed before and authenticated by a notary public, or any court, judge, magistrate, consul or representative of Nigeria or, as the case may be, of the President, was so executed and authenticated.

[L.N. 112 of 1964.]

119. Presumption as to public maps and charts

(1) All maps or charts made under the authority of any government, or of any public municipal body, and not made for the purpose of any proceedings, shall be presumed to be correct, and shall be admitted in evidence without further proof.

(2) Where maps or charts so made are reproduced by printing, lithography, or other mechanical process, all such reproductions purporting to be reproduced under the authority which made the originals shall be admissible in evidence without further proof.

120. Presumption as to books

The court may presume that any book to which it may refer for information on matters of public or general interest, the statements of which are relevant facts and which is produced for its inspection, was written and published by the person, and at the time and place, by whom or at which it purports to have been written or published.

121. Presumption as to telegraphic messages

The court may presume that a message, forwarded from a telegraph office to the person to whom such message purports to be addressed, corresponds with a message delivered for transmission at the office from which the message purports to be sent; but the court shall not make any presumption as to the person by whom such message was delivered for transmission.

122. Presumption as to due execution of documents not produced

The court shall presume that every document, called for and not produced after notice to produce given under section 98 of this Act, was attested, stamped and executed in the manner required by law.

123. Presumption as to documents twenty years old

Where any document, purporting or proved to be twenty years old, is produced from any custody which the court in the particular case considers proper, the court may presume that the signature and every other part of such document which purports to be in the handwriting of any particular person is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

124. Meaning of expression "proper custody"

Documents are said to be in proper custody within the meaning of sections 116 to 123 of this Act if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

125. Presumption as to date of document

When any document bearing a date has been proved, it is presumed to have been made on the day on which it bears date, and if more documents than one bear date on the same day, they are presumed to have been executed in the order necessary to effect the object for which they were executed, but independent proof of the correctness of the date will be required if the circumstances are such that collusion as to the date might be practised, and would, if practised, injure any person, or defeat the objects of any law.

126. Presumption as to stamp of a document

When any document is not produced after due notice to produce, and after being called for, it is presumed to have been duly stamped unless it be shown to have remained unstamped for some time after its execution.

127. Presumption as to sealing and delivery

When any document purporting to be, and stamped as, a deed, appears or is proved to be or to have been signed and duly attested, it is presumed to have been sealed and delivered although no impression of a seal appears thereon.

128. Presumption as to alterations

(1) No person producing any document which upon its face appears to have been altered in a material part can claim under it the enforcement of any right created by it, unless the alteration was made before the completion of the document or with the consent of the party to be charged under it or his representative in interest; the provisions of this subsection shall extend to cases in which the alteration was made by a stranger, whilst the document was in the custody of the person producing it, but without his knowledge or leave.

(2) Alterations and interlineations appearing on the face of a deed are, in the absence of all evidence relating to them, presumed to have been made before the deed was completed.

(3) Alterations and interlineations appearing on the face of a will are, in the absence of all evidence relating to them, presumed to have been made after the execution of the will.

(4) There is no presumption as to the time when alterations and interlineations appearing on the face of writings not under seal were made except that it is presumed that they were so made that the making would not constitute an offence.

(5) An alteration is said to be material when, if it had been made with the consent of the party charged, it would have affected his interest or varied his obligations in any way whatever.

(6) An alteration which in no way affects the rights of the parties or the legal effect of the instrument is immaterial.

129. Presumption as to age of parties to a document

The persons expressed to be parties to any conveyance shall, until the contrary is proved, be presumed to be of full age at the date thereof.

130. Presumption as to statements in documents twenty years old

Recitals, statements, and descriptions of facts, matters, and parties contained in deeds, instruments, Acts of the National Assembly, or statutory declarations, twenty years old at the date of the contract, shall, unless and except so far as they may be proved to be inaccurate, be taken to be sufficient evidence of the truth of such facts, matters and descriptions.

131. Presumptions as to deeds of corporations

In favour of a purchaser a deed shall be deemed to have been duly executed by a corporation aggregate if its seal be affixed thereto in the presence of and attested by its clerk, secretary, or other permanent officer or his

deputy, and a member of the board of directors, council, or other governing body of the corporation; and where a seal purporting to be the seal of a corporation has been affixed to a deed, attested by persons purporting to be persons holding such offices as aforesaid, the deed shall be deemed to have been executed in accordance with the requirements of this section, and to have taken effect accordingly.

PART VI

The exclusion of oral by documentary evidence

132. Evidence of terms of judgments, contracts, grants and other dispositions of property reduced to a documentary form

(1) When any judgment of any court or any other judicial or official proceedings, or any contract, or any grant or other disposition of property has been reduced to the form of a document or series of documents, no evidence may be given of such judgment or proceedings, or of the terms of such contract, grant or disposition of property except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained; nor may the contents of any such document be contradicted, altered, added to or varied by oral evidence:

Provided that any of the following matters may be proved-

(a) fraud, intimidation, illegality; want of due execution; the fact that it is wrongly dated; existence, or want or failure, of consideration; mistake in fact or law; want of capacity in any contracting party, or the capacity in which a contracting party acted when it is not inconsistent with the terms of the contract; or any other matter which, if proved, would produce any effect upon the validity of any document, or of any part of it, or which would entitle any person to any judgment, decree, or order relating thereto;

(b) the existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, if from the circumstances of the case the court infers that the parties did not intend the document to be a complete and final statement of the whole of the transaction between them;

(c) the existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property;

(d) the existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property;

(e) any usage or custom by which incidents not expressly mentioned in any contract are annexed to contracts of that description; unless the annexing of such incident to such contract would be repugnant to or inconsistent with the express terms of the contract.

(2) Oral evidence of a transaction is not excluded by the fact that a documentary memorandum of it was made, if such memorandum was not intended to have legal effect as a contract, grant or disposition of property.

(3) Oral evidence of the existence of a legal relationship is not excluded by the fact that it has been created by a document, when the fact to be proved is the existence of the relationship itself, and not the terms on which it was established or is carried on.

133. Evidence as to the interpretation of documents

(1) Evidence may be given to show the meaning of illegible or not commonly intelligible characters of foreign, obsolete, technical, local and provincial expressions, of abbreviations and words used in a peculiar sense.

(2) Evidence may not be given to show that common words, the meaning of which is plain, and which do not appear from the context to have been used in a peculiar sense, were in fact so used.

(3) If the words of a document are so defective or ambiguous as to be unmeaning, no evidence can be given to show what the author of the document intended to say.

(4) In order to ascertain the relation of the words of a document to facts, every fact may be proved to which it refers, or may probably have been intended to refer, or which identifies any person or thing mentioned in it. Such facts are hereinafter called the "circumstances of the case".

(5) If the words of a document have a proper legal meaning, and also a less proper meaning, they must be deemed to have their proper legal meaning, unless such a construction would be unmeaning in reference to the circumstances of the case, in which case they may be interpreted according to their less proper meaning.

(6) If the document has one distinct meaning in reference to the circumstances of the case, it must be construed accordingly, and evidence to show that the author intended to express some other meaning is not admissible.

(7) If the documents applies in part but not with accuracy or not completely to the circumstances of the case, the court may draw inferences from those circumstances as to the meaning of the document, whether there is more than one, or only one thing or person to whom or to which the inaccurate description may equally well apply and in such cases no evidence can be given of statements made by the author of the document as to his intentions in reference to the matter to which the document relates, though evidence may be given as to his circumstances, and as to his habitual use of language or names for particular persons or things.

(8) If the language of the document, though plain in itself, applies equally well to more objects than one, evidence may be given both of the circumstances of the case and of statements made by any part to the document as to his intentions in reference to the matter to which the document relates.

(9) If the document is of such a nature that the court will presume that it was executed with any other than its apparent intention, evidence may be given to show that it was in fact executed with its apparent intention.

134. Application of this Part

(1) Sections 132 and 133 of this Act apply only to parties to documents, and their representatives in interest, and only to cases in which some civil right or civil liability is dependent upon the terms of a document in question.

(2) Any person other than a party to a document or his representative in interest may, notwithstanding the existence of any document, prove any fact which he is otherwise entitled to prove.

(3) Any party to any document or any representative in interest of any such party may prove any such fact for any purpose other than that of varying or altering any right or liability depending upon the terms of the document.

(4) Nothing in this Part contained shall be taken to affect any of the provisions of any enactment as to the construction of wills.

PART VII

Production and effect of evidence

Of the burden of proof

135. Burden of proof

(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

136. On whom burden of proof lies

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

137. Burden of proof in civil cases

(1) In civil cases the burden of first proving the existence or non-existence of a fact lies on the party against whom the judgment of the court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings.

(2) If such party adduces evidence which ought reasonably to satisfy a jury that the fact sought to be proved is established, the burden lies on the party against whom judgment would be given if no more evidence were adduced; and so on successively, until all the issues in the pleadings have been dealt with.

(3) Where there are conflicting presumptions, the case is the same as if there were conflicting evidence.

138. Burden of proof beyond reasonable doubt

(1) If the commission of a crime by a party to any proceeding is directly in issue in any proceeding civil or criminal, it must be proved beyond reasonable doubt.

(2) The burden of proving that any person had been guilty of a crime or wrongful act is, subject to the provisions of section 141 of this Act, on the person who asserts it, whether the commission of such act is or is not directly in issue in the action.

(3) If the prosecution prove the commission of a crime beyond reasonable doubt, the burden of proving reasonable doubt is shifted on to the accused. *

139. Burden of proof as to particular fact

The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person, but the burden may in course of a case be shifted from one side to the other; in considering the amount of evidence necessary to shift the burden of proof, regard shall be had by the court to the opportunity of knowledge with respect to the fact to be proved which may be possessed by the parties respectively.

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* See section 141 (3).

140. Burden of proving fact to be proved to make evidence admissible

(1) The burden of proving any fact necessary to be proved in order-

(a) to enable a person to adduce evidence of some other fact; or

(b) to prevent the opposite party from adducing evidence of some other fact,

lies on the person who wishes to adduce, or to prevent the adduction of, such evidence, respectively.

(2) The existence or non-existence of facts relating to the admissibility of evidence under this section is to be determined by the court.

141. Burden of proof in criminal cases

(1) Where a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any exception or exemption from, or qualification to, the operation of the law creating the offence with which he is charged, is upon such person.

[L.N. 46 of 1945.]

(2) The burden of proof placed by this Part of this Act upon an accused charged with a criminal offence shall be deemed to be discharged if the court is satisfied by evidence given by the prosecution, whether on cross-examination or otherwise, that such circumstances in fact exist.

(3) Nothing in section 138, 142 of this Act or in subsection (1) or (2) of this section shall-

(a) prejudice or diminish in any respect the obligation to establish by evidence according to law any acts, omissions or intentions which are legally necessary to constitute the offence with which the person accused is charged; or

(b) impose on the prosecution the burden of proving that the circumstances or facts described in subsection (2) of this section do not exist; or

(c) affect the burden placed on an accused person to prove a defence of intoxication or insanity.

142. Proof of facts especially within knowledge

When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. *

143. Exceptions need not be proved by prosecution

Any exception, exemption, proviso, excuse, qualification, whether it does or does not accompany in the same section the description of the offence in the Act, order, by-law, regulation, or other document creating the offence, may be proved by the accused, but need not be specified or negatived in the charge, and, if so specified or

negatived, no proof in relation to the matter so specified or negatived shall be required on the part of the prosecution.

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* See section 141 (3).

144. Presumption of death from seven years' absence and other facts

(1) A person shown not to have been heard of for seven years by those, if any, who, if he had been alive, would naturally have heard of him, is presumed to be dead unless the circumstances of the case are such as to account for his not being heard of without assuming his death; but there is no presumption as to the time when he died, and the burden of proving his death at any particular time is upon the person who asserts it.

(2) For the purpose of determining title to property where two or more persons have died in circumstances in which it is uncertain which survived the other, they are presumed to have died in order of seniority.

(3) There is no presumption as to the age at which a person died who is shown to have been alive at a given time.

145. Burden of proof as to relationship in the case of partners, landlord and tenant, principal and agent

When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships respectively, is on the person who affirms it.

146. Burden of proof as to ownership

When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

147. Proof of good faith in transactions where one party is in relation of active confidence

Where there is question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.*

148. Birth during marriage usually conclusive proof of legitimacy

Without prejudice to section 84 of the Matrimonial Causes Act, where a person was born during the continuance of a valid marriage between his mother and any man, or within 280 days after dissolution, the mother remaining unmarried, the court shall presume that the person in question is the legitimate son of that man.

149. Court may presume existence of certain facts

The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case, and in particular the court may presume-

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* See section 141 (3).

(a) that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;

(b) that a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or states of things usually cease to exist, is still in existence;

(c) that the common course of business has been followed in particular cases;

(d) that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;

(e) that when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

150. Presumptions of regularity and of deeds to complete title

(1) When any judicial or official act is shown to have been done in a manner substantially regular, it is presumed that formal requisites for its validity were complied with.

(2) When it is shown that any person acted in a public capacity it is presumed that he had been duly appointed and was entitled so to act.

(3) When a person in possession of any property is shown to be entitled to the beneficial ownership thereof, there is a presumption that every instrument has been executed which it was the legal duty of his trustees to execute in order to perfect his title.

(4) When a minute is produced purporting to be signed by the chairman of a company incorporated under the Companies and Allied Matters Act, and purporting to be a record of proceedings at a meeting of the company, or of its directors, it is presumed, until the contrary is shown, that such meeting was duly held and convened and that all proceedings thereat have been duly had, and that all appointments of directors, managers and liquidators are valid.

PART VIII

Estoppel

151. Estoppel

When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative in interest shall be allowed,

in any proceedings between himself and such person or such person's representative in interest, to deny the truth of that thing.

152. Estoppel of tenant; and of licensee of person in possession

No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such licence was given.

153. Estoppel of bailee, agent and licensee

No bailee, agent or licensee is permitted to deny that the bailor, principal or licensor, by whom any goods were entrusted to any of them respectively, was entitled to those goods at the time when they were so entrusted:

Provided that any such bailee, agent or licensee may show that he was compelled to deliver up any such goods to some person who had a right to them as against his bailor, principal or licensor, or that his

bailor, principal or licensor wrongfully and without notice to the bailee, agent or licensee, obtained the goods from a third person who has claimed them from such bailee, agent or licensee.

154. Estoppel of person signing bill of lading

Every bill of lading in the hands of a consignee or endorsee for valuable consideration, representing goods to have been shipped on board a vessel, is conclusive proof of that shipment as against the master or other person signing the same, notwithstanding that some goods or some part thereof may not have been so shipped, unless such holder of the bill of lading had actual notice at the time of receiving the same that the goods had not been in fact laden on board:

Provided that the master or other person so signing may exonerate himself in respect of such misrepresentation by showing that it was caused without any default on his part, and wholly by the fraud of the shipper or of the holder or some person under whom the holder holds.

PART IX

Witnesses

Competence of witnesses generally

155. Who may testify

(1) All persons shall be competent to testify, unless the court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by reason of tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

(2) A person of unsound mind is not incompetent to testify unless he is prevented by his mental infirmity from understanding the questions put to him and giving rational answers to them.

156. Dumb witnesses

(1) A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open court.

(2) Evidence so given shall be deemed to be oral evidence.

157. Case in which banker not compellable to produce books

A banker or officer of a bank shall not, in any legal proceeding to which the bank is not a party, be compellable to produce any banker's book the contents of which can be proved in the manner provided in section 97 of this Act, or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of the court made for special cause.

158. Parties to civil suit, and their wives or husbands

Subject to the proviso contained in section 148 of this Act, in all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses.

159. Competency in criminal cases

Subject to the provisions of this Part of this Act, in criminal cases the accused person, and his or her wife or husband, and any person and the wife or husband of any person jointly charged with him and tried at the same time, is competent to testify.

160. Competency of person charged to give evidence

Every person charged with an offence shall be a competent witness for the defence at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person:

Provided that-

(a) a person so charged shall not be called as a witness in pursuance of this section except upon his own application;

(b) the failure of any person charged with an offence to give evidence shall not be made the subject of any comment by the prosecution;

(c) a person charged and being a witness in pursuance of this section may be asked any question in cross-examination, notwithstanding that it would tend to incriminate him as to the offence charged;

(d) a person charged and called as a witness in pursuance of this section shall not be asked, and if asked, shall not be required to answer, any question tending to show that he has committed or been convicted of or been charged with any offence other than that wherewith he is then charged, or is of bad character, unless-

(i) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged; or

(ii) he has personally or by his legal practitioner asked questions of the witnesses for the prosecution with a view to establish his own good character or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution; or

(iii) he has given evidence against any other person charged with the same offence;

(e) when the only witness to the facts of the case called by the defence is the person charged he shall be called as a witness immediately after the close of the evidence for the prosecution;

(f) every accused person called as a witness in pursuance of this section shall, unless otherwise ordered by the court, give his evidence from the witness box or other place from which the other witnesses give their evidence;

(g) nothing in this section shall affect the right of the person charged to make a statement without being sworn;

(h) in cases where the right of reply depends upon the question whether evidence has been called for the defence, the fact that the person charged has been called as a witness shall not of itself confer on the prosecution the right of reply.

161. Evidence by husband or wife: when compellable

(1) When a person is charged-

(a) with an offence under any of the enactments contained in sections 217, 218, 219, 221, 222, 223,224,225,226,231,300,301,340,341,357 to 362, 369, 370 and 371 of the Criminal Code; or

[Cap. C38.]

(b) subject to the provisions of section 36 of the Criminal Code, with an offence against the property of his or her wife or husband; or

(c) with inflicting violence on his or her wife or husband; the wife or husband of the person charged shall be a competent and compellable witness for the prosecution or defence without the consent of the person charged.

When competent

(2) When a person is charged with an offence other than one of those mentioned in the preceding subsection, the husband or wife of such person respectively is a competent and compellable witness but only upon the application of the person charged.

Communications made during marriage

(3) Nothing in this section shall make a husband compellable to disclose any communication made to him by his wife during the marriage or a wife compellable to disclose any communication made to her by her husband during the marriage.

Failure to give evidence not to be commented on

(4) The failure of the wife or husband of any person charged with an offence to give evidence shall not be made the subject of any comment by the prosecution.

162. Communications during Islamic marriage privileged

When a person charged with an offence is married to another person by a marriage other than a monogamous marriage, such last named person shall be a competent and compellable witness on behalf of either the prosecution or the defence:

Provided that in the case of a marriage by Islamic law neither party to such marriage shall be compellable to disclose any communication made to him or her by the other party during such marriage.

Competency in proceedings relating to adultery

163. Evidence by spouse as to adultery

The parties to any proceedings instituted in consequence of adultery and the husbands and wives of the parties shall be competent to give evidence in the proceedings, but no witness in any such proceedings, whether a party thereto or not, shall be liable to be asked or bound to answer any question tending to show that he or she has been guilty or adultery, unless he or she has already given evidence in the same proceeding in disproof of the alleged adultery.

Communications during marriage

164. Communications during marriage

No husband or wife shall be compelled to disclose any communication made to him or her during marriage by any person to whom he or she is or has been married; nor shall he or she be permitted to disclose any such communication, unless the person who made it, or that person's representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for an offence specified in subsection (1) of section 161 of this Act.

Official and privileged communications

165. Judges and magistrates

No judge and, except upon the special order of the High Court of the State, or of the Federal Capital Territory, Abuja or the Federal High Court, no magistrate, shall be compelled to answer any questions as to his own conduct in court as such judge or magistrate, or as to anything which came to his knowledge in court as such judge or magistrate; but he may be examined as to other matters which occurred in his presence whilst he was so acting.

[L.N. 47 of 1955.]

166. Information as to commission of offences

No magistrate or police officer shall be compelled to say whence he got any information as to the commission of any offence, and no officer employed in or about the business of any branch of the public revenue shall be compelled to say whence he got any information as to the commission of any offence against the public revenue.

167. Evidence as to affairs of State

Subject to any directions of the President in any particular case, or of the Governor where the records are in the custody of a State, no one shall be permitted to produce any unpublished official records relating to affairs of State, or to give any evidence derived therefrom, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

[L.N. 131 of 1954.]

168. Official communications

No public officer shall be compelled to disclose communications made to him m official confidence, when he considers that the public interests would suffer by the disclosure.

169. Communications between jurors

A juror may not give evidence as to what passed between the jurymen in the discharge of their duties, except as to matters taking place in open court.

170. Professional communication

(1) No legal practitioner shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such legal practitioner by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment:

Provided that nothing in this section shall protect from disclosure-

(a) any such communication made in furtherance of any illegal purpose;

(b) any fact observed by any legal practitioner in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

(2) It is immaterial whether the attention of such legal practitioner was or was not directed to such fact by or on behalf of his client.

(3) The obligation stated in this section continues after the employment has ceased.

171. Sections 170 to apply to interpreters and clerks

The provisions of section 170 of this Act shall apply to interpreters, and the clerks and agents of legal practitioners.

172. Privilege not waived by volunteering evidence

If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section 170 of this Act, and, if any party to a suit or proceedings calls any such legal practitioner as a witness, he shall be deemed to have consented to such disclosure only if he questions such legal practitioner on matters, which, but for such question, he would not be at liberty to disclose.

173. Confidential communication with legal advisers

No one shall be compelled to disclose to the court any confidential communication which has taken place between him and a legal practitioner consulted by him, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the court necessary to be known in order to explain any evidence which he has given, but no others.

174. Production of title-deeds of witness not a party

No witness who is not a party to a suit shall be compelled to produce his title-deeds to any property or any document in virtue of which he holds any property as pledgee or mortgagee or any document the production of which might tend to incriminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom he claims.

175. Production of documents which another person could refuse to produce

No one shall be compelled to produce documents in his possession which any other person would be entitled to refuse to produce if they were in his possession, unless such last mentioned person consents to their production.

176. Witness not to be compelled to incriminate himself

No one is bound to answer any question if the answer thereto would, in the opinion of the court, have a tendency to expose the witness or the wife or husband of the witness to any criminal charge, or to any penalty or forfeiture which the judge regards as reasonably likely to be preferred or sued for:

[L.N. 46 of 1945.]

Provided that-

(a) a person charged with an offence, and being a witness in pursuance of section 160 of this Act, may be asked and is bound to answer any question in cross-examination notwithstanding that it would tend to criminate him as to the offence charged;

(b) no one is excused from answering any question only because the answer may establish or tend to establish that he owes a debt or is otherwise liable to any civil suit either at the instance of the State or any other person;

(c) nothing in this section contained shall excuse a witness at any inquiry by direction of the Attorney-General of the Federation, or of the Attorney-General of a State, under Part 49 of the Criminal Procedure Act, from answering any question required to be answered under the provisions of section 458 of that Act.

[Cap. C41.]

Corroboration

177. In actions for breach of promise

No plaintiff in any action for breach of promise of marriage can recover a verdict, unless his or her testimony is corroborated by some other material evidence in support of such promise; and the fact that the defendant did not answer letters affirming that he had promised to marry the plaintiff is not such corroboration.

178. Accomplice

(1) An accomplice shall be a competent witness against an accused person, and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice:

Provided that in cases tried with a jury when the only proof against a person charged with a criminal offence is the evidence of an accomplice, uncorroborated in any material particular implicating the accused, the judge shall warn the jury that it is unsafe to convict any person upon such evidence, though they have a legal right to do so and in all other cases the court shall so direct itself.

Co-accused not an accomplice

(2) Where accused persons are tried jointly and any of them gives evidence on his own behalf which incriminates a co-accused, the accused who gives such evidence shall not be considered to be an accomplice.

179. Number of witnesses

(1) Except as provided in this section, no particular number of witnesses shall in any case be required for the proof of any fact.

Treason and treasonable offences

(2) (a) No person charged with treason or with any of the felonies mentioned in sections 40, 41 and 42 of the Criminal Code can be convicted, except on his own plea of guilty, or on the evidence in open court of two witnesses at the least to one overt act of the kind of treason or felony alleged, or the evidence of one witness to one overt act and one other witness to another overt act of the same kind of treason or felony.

(b) This subsection does not apply to cases in which the overt act of treason alleged is the killing of the President, or a direct attempt to endanger the life or injure the person of the President.

Evidence on charge of perjury

(3) A person shall not be convicted of committing perjury or of counseling or procuring the commission of perjury, upon the uncorroborated testimony of one witness, contradicting the oath on which perjury is assigned, unless circumstances are proved which corroborate such witness.

Exceeding speed limit

(4) A person charged under the Road Traffic Law of a State with driving at a speed greater than the allowed maximum shall not be convicted solely on the evidence of one witness that in his opinion he was driving at such speed.

Sedition and sexual offences

(5) A person shall not be convicted of the offence mentioned in paragraph (b) of subsection (1) of section 51 or in section 218, 221, 223, or 224 of the Criminal Code upon the uncorroborated testimony of one witness.

[Cap. C38.]

PART X

Taking oral evidence and the examination of witnesses

The taking of oral evidence

180. Oral evidence to be on oath or affirmation

Save as otherwise provided in sections 182 and 183 of this Act, all oral evidence given in any proceedings must be given upon oath or affirmation administered in accordance with the provisions of the Oaths Act.

[Cap. O1.]

181. Absence of religious belief does not invalidate oath

Where an oath has been duly administered and taken, the fact that the person to whom the same was administered had, at the time of taking such oath, no religious belief, does not for any purpose affect the validity of such oath.

182. Cases in which evidence not given upon oath may be received

(1) Any court may on any occasion, if it thinks it just and expedient, receive the evidence, though not given upon oath, of any person declaring that the taking of any oath whatsoever is, according to his

religious belief, unlawful or who, by reason of want of religious belief, ought not, in the opinion of the court, to be admitted to give evidence upon oath.

(2) The fact that in any case evidence not given upon oath has been received, and the reasons for the reception of such evidence, shall be recorded in the minutes of the proceedings.

183. Unsworn evidence of child

(1) In any proceeding for any offence the evidence of any child who is tendered as a witness and does not, in the opinion of the court, understand the nature of an oath, may be received, though not given upon oath, if, in the opinion of the court, such child is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth.

(2) If the court is of opinion as stated in subsection (1) of this section, the deposition of a child may be taken, though not on oath, and shall be admissible in evidence in all proceedings where such deposition if made by an adult would be admissible.

(3) A person shall not be liable to be convicted of the offence unless the testimony admitted by virtue of this section and given on behalf of the prosecution is corroborated by some other material evidence in support thereof implicating the accused.

(4) If any child whose evidence is received as aforesaid wilfully gives false evidence in such circumstances that he would, if the evidence had been given on oath, have been guilty of perjury, he shall be guilty of an offence against section 191 of the Criminal Code and, on conviction, shall be dealt with accordingly.

184. Evidence of first and second class chiefs

Where in any suit brought by or against a first or second class chief in either his official or personal capacity such chief desires to give evidence, or where in any other suit the evidence of such a chief is required, the evidence of the chief shall not be given at the hearing of the suit, but shall be taken in the form of a deposition or otherwise in accordance with the terms of an order to that effect to be made by the court, and the evidence so taken shall be admissible at the hearing if, when it was so taken, the other party to the suit had an opportunity of being present and of cross-examining:

Provided that the evidence of the chief shall be given at the hearing of the suit if he so desires, or if the court, having regard to all the circumstances, considers it to be necessary that his evidence should be so given and makes an order to that effect.

The examination of witnesses

185. Order of production and examination of witnesses

The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and in the absence of any such law, by the discretion of the court.

186. Judge to decide as to admissibility of evidence

(1) When either party proposes to give evidence of any fact, the court may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the court shall admit the evidence if it thinks that the fact, if proved, would be relevant and not otherwise.

(2) If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact, and the court is satisfied with such undertaking.

(3) If the relevancy of one alleged fact depends upon another alleged fact being first proved, the court may, in its discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

187. Ordering witnesses out of court

(1) On the application of either party, or of its own motion, the court may order witnesses on both sides to be kept out of court; but this provision does not extend to the parties themselves or to their respective legal advisers, although intended to be called as witnesses.

Preventing communication with witnesses

(2) The court may during any trial take such means as it considers necessary and proper for preventing communication with witnesses who are within the court house or its precincts awaiting examination.

188. Examination-in-chief

(1) The examination of a witness by the party who calls him shall be called his examination-in-chief.

Cross-examination

(2) The examination of a witness by a party other than the party who calls him shall be called his cross-examination.

Re-examination

(3) Where a witness has been cross-examined and is then examined by the party who called him, such examination shall be called his re-examination.

189. Order of examinations

(1) Witnesses shall be first examined-in-chief, then, if any other party so desires, cross-examined, then, if the party calling him so desires, re-examined.

(2) The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

Direction of re-examination

(3) The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

190. Cross-examination by co-accused of prosecution witness

In criminal proceedings where more than one accused are charged at the same time, each accused shall be allowed to cross-examine a witness called by the prosecution before the witness is re-examined.

191. Cross-examination by co-accused of witness called by an accused

Where more than one accused are charged at the same time, a witness called by one accused may be cross-examined by the other accused and if cross-examined by the other accused such cross-examination shall take place before cross-examination by the prosecution.

192. Production of documents without giving evidence

Any person, whether a party or not, in a cause may be summoned to produce a document without being summoned to give evidence, and if he causes such document to be produced in court the court may dispense with his personal attendance.

193. Cross-examination of person called to produce a document

A person summoned to produce a document does not become a witness by the mere fact that he produces it and cannot be cross-examined unless and until he is called as a witness.

194. Witnesses to character

Witnesses to character may be cross-examined and re-examined.

195. Leading questions

Any question suggesting the answer which the person putting it wishes or expects to receive is called a leading question.

196. When they must not be asked

(1) Leading questions must not, if objected to by the adverse party, be asked in examination-in-chief, or in re-examination, except with the permission of the court.

(2) The court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

197. When they may be asked

Leading questions may be asked in cross-examination.

198. Evidence as to matters in writing

(1) Any witness may be asked, whilst under examination, whether any contract, grant or other disposition of property, as to which he is giving evidence, was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it.

(2) A witness may however give oral evidence of statements made by other persons about the contents of a document if such statements are in themselves relevant facts.

199. Cross-examination as to previous statements in writing

A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question in the suit or proceeding in which he is cross-examined without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, called to those parts of it which are to be used for the purpose of contradicting him.

200. Questions lawful in cross-examination

When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend-

(a) to test his accuracy, veracity or credibility; or

(b) to discover who he is and what is his position in life; or

(c) to shake his credit, by injuring his character:

Provided that a person charged with a criminal offence and being a witness may be cross-examined to the effect, and under the circumstances, described in paragraph (d) of the proviso to section 160 of this Act.

201. Court to decide whether question shall be asked and when witness compelled to answer

(1) If any such question relates to a matter not relevant to the proceedings, except in so far as it affects the credit of the witness by injuring his character, the court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it.

(2) In exercising its discretion, the court shall have regard to the following considerations-

(a) such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the court as to the credibility of the witness on the matter to which he testifies;

(b) such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the court as to the credibility of the witness on the matter to which he testifies;

(c) such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence.

(3) The court may, if it sees fit, draw, from the witness's refusal to answer, the inference that the answer if given would be unfavourable.

202. Question not to be asked without reasonable grounds

No such question as is referred to in section 201 of this Act ought to be asked, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well founded.

203. Procedure of court in case of question being asked without reasonable grounds

If the court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any legal practitioner, report the circumstances of the case to the Attorney-General of the Federation or other authority to which such legal practitioner is subject in the exercise of his profession.

[L.N. 131 of1964.]

204. Indecent and scandalous questions

The court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

205. Questions intended to insult or annoy

The court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the court needlessly offensive in form.

206. Exclusion of evidence to contradict answers to questions testing veracity

When a witness has been asked and has answered any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him; but, if he answers falsely, he may afterwards be charged with an offence against section 191 of the Criminal Code and, on conviction, shall be dealt with accordingly:

[Cap. C38.]

Provided that-

(a) if a witness is asked whether he has been previously convicted of any crime and denies it, evidence may be given of his previous conviction;

(b) if a witness is asked any question tending to impeach his impartiality and answers it by denying the facts suggested he may be contradicted. *

207. How far a party may discredit his own witness

The party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may, in case the witness shall, in the opinion of the court, prove hostile, contradict him by other evidence, or by leave of the court, prove that he has made at other times a statement inconsistent with his present testimony; but before such last mentioned proof can be given the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness and he must be asked whether or not he has made such statement.

208. Proof of contradictory statement of hostile witness

If a witness upon cross-examination as to a former statement made by him relative to the subject-matter of the trial, and inconsistent with his present testimony, does not distinctly admit that he has made such statement, proof may be given that he did in fact make it; but before such proof can be given the circumstances of the supposed statement sufficient to designate the particular occasion must be mentioned to the witness, and he must be asked whether or not he has made such statement.

209. Cross-examination as to previous statements in writing

A witness may be cross-examined as to previous statements made by him in writing relative to the subject-matter of the trial without such writing being shown to him, but if it is intended to contradict such witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him:

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*See section 225

Provided always that it shall be competent for the court at any time during the trial, to require the production of the writing for its inspection, and the court may thereupon make use of it for the purposes of the trial, as it shall think fit.

210. Impeaching credit of witness

The credit of a witness may be impeached in the following ways by any party other than the party calling him or with the consent of the court by the party who calls him-

(a) by the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;

(b) by proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence;

(c) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted.

211. Cross-examination of prosecutrix in certain cases

When a man is prosecuted for rape or for attempt to commit rape or for indecent assault, it may be shown that the woman against whom the offence is alleged to have been committed was of a generally immoral character, although she is not cross-examined on the subject; the woman may in such a case be asked whether she has had connection with other men, but her answer cannot be contradicted and she may also be asked whether she has had connection on other occasions with the prisoner, and if she denies it she may be contradicted.

212. Evidence of witness impeaching credit

A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with an offence against section 191 of the Criminal Code and, on conviction, shall be dealt with accordingly.

213. Questions tending to corroborate evidence of relevant fact, admissible

When a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies.

214. Former statements of witness may be proved to corroborate later testimony as to same fact

In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

215. What matters may be proved in connection with proved statement relevant under section 33 or 34

Whenever any statement relevant under section 33 or 34 of this Act is proved, all matters may be proved either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness and had denied upon cross-examination the truth of the matters suggested.

216. Refreshing memory

(1) A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the court considers it likely that the transaction was at the time fresh in his memory.

(2) The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it he knew it to be correct.

(3) An expert may refresh his memory by reference to professional treatises.

217. Testimony to facts stated in document mentioned in section 216

A witness may also testify to facts mentioned in any such document as is mentioned in section 216, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

218. Right of adverse party as to writing used to refresh memory

Any writing referred to under the provisions of the two last preceding sections must be produced and shown to the adverse party if he requires it: such party may, if he pleases, cross-examine the witness thereupon.

219. Production of documents

(1) A witness, subject to the provisions of section 220 of this Act, summoned to produce a document shall, if it is in his possession or power, bring it to court, notwithstanding any objection which there may be to its production or to its admissibility and the validity of any such objection shall be decided by the court.

Inspection of documents

(2) The court, if it sees fit, may inspect the document or take other evidence to enable it to determine on its admissibility.

Translation of documents

(3) If for such a purpose, it is necessary to cause any document to be translated, the court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence and, if the translator disobeys such direction, he shall be held to have committed an offence under subsection (1) of section 97 of the Criminal Code.

220. Exclusion of evidence on grounds of public interest

(1) The Minister, or in respect of matters to which the executive authority of a State extends, the Governor or any person nominated by him, may in any proceedings object to the production of documents or request the exclusion of oral evidence, when, after consideration, he is satisfied that the production of such document or the giving of such oral evidence is against public interest; and any such objection taken before trial shall be by affidavit and any such objection taken at the hearing shall be by certificate produced by a public officer.

[L.N. 131 of 1954. L.N. 20 of 1957.]

(2) Any such objection, whether by affidavit sworn by the Minister or by certificate under his hand (or by affidavit sworn by or certificate under the hand of the Governor or person nominated by him as aforesaid), shall be conclusive and the court shall not inspect such documents or be informed as to the nature of such oral evidence but shall give effect to such affidavit or certificate.

[L.N. 131 of 1954. L.N. 120 of 1957.]

221. Giving as evidence of document called for and produced on notice

When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so.

222. Using, as evidence, of document production of which was refused on notice

When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence without the consent of the other party or the order of the court.

223. Judge's power to put questions or order production

The court or any person empowered by law to take evidence may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order or, without the leave of the court, to cross-examine any witness upon any answer given in reply to any such question:

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:

Provided further that this section shall not authorise any judge to compel any witness to answer any question or to produce any document which such witness would be entitled to refuse to answer or produce under sections 162 to 176 of this Act, if the question were asked or the document were called for by the adverse party; nor shall the judge ask any question which it would be improper for any other person to ask under section 201 or 202 of this Act, nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

224. Power of jury or assessors to put questions

In cases tried by jury or with assessors, the jury or assessors may put any questions to the witnesses, through or by leave of the judge, which the judge himself might put and which he considers proper.

PART XI

Evidence of previous conviction

225. Proof of previous conviction

(1) Where it is necessary to prove a conviction of a criminal offence the same may be proved-

(a) by the production of a certificate of conviction containing the substance and effect of the conviction only, purporting to be signed by the registrar or other officer of the court in whose custody is the record of the said conviction;

(b) if the conviction was before a customary court, by a similar certificate signed by the clerk of court or scribe of the court in whose custody is the record of the said conviction; or

(c) by a certificate purporting to be signed by the Comptroller-General of Prisons or officer in charge of the records of a prison in which the prisoner was confined giving the offence for which the prisoner was convicted, the date and the sentence.

(2) If the person alleged to be the person referred to in the certificate denies that he is such person, the certificate shall not be put in evidence unless the court is satisfied by the evidence that the individual in question and the person named in the certificate are the same.

Proof of previous conviction outside Nigeria

(3) (a) A previous conviction in a place outside Nigeria may be proved by the production of a certificate purporting to be given under the hand of a police officer in the country where the conviction was had, containing a copy of the sentence or order and the fingerprints of the person or photographs of the fingerprints of the person so convicted, together with evidence that the fingerprints of the person so convicted are those of the accused person.

[L.N. 46 of 1945.]

Certificates under subsection (3) (a) prima facie evidence

(b) A certificate given under paragraph (a) of this subsection shall be prima facie evidence of all facts therein set forth without proof that the officer purporting to sign the same did in fact sign it and was empowered so to do.

226. Additional mode of proof in criminal proceedings of previous conviction

[L.N. 6 of 1955.]

(1) For the purposes of this section **"the central registrar"** means the person in charge of the principal registry of criminal records established under the provisions of the Prevention of Crimes Act.

[Cap. P27.]

(2) A previous conviction may be proved against any person in any criminal proceedings by the production of such evidence of the conviction as is mentioned in this section, and by showing that his fingerprints and those of the person convicted are the fingerprints of the same person.

(3) A certificate-

(a) purporting to be signed by or on behalf of the central registrar; and

[1959 No. 30.]

(b) containing particulars relating to a conviction extracted from the criminal records kept by him or a photographic copy certified as such of particulars relating to a conviction as entered in the said records; and

(c) certifying that the copies of the fingerprints exhibited to the certificate are copies of the fingerprints appearing from the said records to have been taken from the person convicted on the occasion of the conviction,

shall be evidence of the conviction and evidence that the copies of the fingerprints exhibited to the certificate are copies of the fingerprints of the person convicted.

(4) A certificate-

(a) purporting to be signed by or on behalf of the superintendent of a prison in which any person has been detained in connection with any criminal proceedings or by a police officer who has had custody of any person charged with an offence in connection with any such proceedings; and

[L.N. 6 of 1955.]

(b) certifying that the fingerprints exhibited thereto were taken from such person while he was so detained or was in such custody as aforesaid,

shall be evidence in those proceedings that the fingerprints exhibited to the certificate are the fingerprints of that person.

(5) A certificate-

(a) purporting to be signed by or on behalf of the central registrar; and

[L.N. 6 of 1955.]

(b) certifying that-

(i) the fingerprints, copies of which are certified as aforesaid by or on behalf of the central registrar to be copies of the fingerprints of a person previously convicted; and

(ii) the fingerprints certified by or on behalf of the superintendent of the prison or the police officer as aforesaid, or otherwise shown, to be the fingerprints of the person against whom the previous conviction is sought to be proved, are the fingerprints of the same person,

shall be evidence of the matter so certified.

(6) The method of proving a previous conviction authorised by this section shall be in addition to any other method authorised by law for proving such conviction.

PART XII

Wrongful admission and rejection of evidence

227. Wrongful admission or exclusion of evidence

(1) The wrongful admission of evidence shall not of itself be a ground for the reversal of any decision in any case where it shall appear to the court on appeal that the evidence so admitted cannot reasonably be held to have affected the decision and that such decision would have been the same if such evidence had not been admitted.

(2) The wrongful exclusion of evidence shall not of itself be a ground for the reversal of any decision in any case if it shall appear to the court on appeal that had the evidence so excluded been admitted it may reasonably be held that the decision would have been the same.

(3) In this section the term **"decision"** includes a judgment, order, finding or verdict.

PART XIII

Service and execution throughout Nigeria of process to compel the attendance of witnesses before courts of the States and the Federal Capital Territory, Abuja and the Federal High Court

228. Interpretation

In this Part-

"court" means a High Court or a magistrate's court.

229. Subpoena or witness summons may be served in another State

(1) When a subpoena or summons has been issued by any court in any State or in the Federal Capital Territory, Abuja or by the Federal High Court in the exercise of its civil jurisdiction in accordance with any power conferred by law, requiring any person to appear and give evidence or to produce books or documents in any proceeding, such subpoena or summons may upon proof that the testimony of such person or the production of such books or documents is necessary in the interests of justice, by leave of such court on such terms as the court may impose, be served on such person in any other State or Federal Capital Territory, Abuja.

[L.N. 47 of 1955.]

(2) If a person upon whom a subpoena or summons has been served in accordance with subsection (1), fails to attend at the time and place mentioned in such subpoena or summons such court may on proof that the subpoena or summons, was duly served on such person and that the sum prescribed by law was tendered to him for his expenses, issue such warrant for the apprehension of such person as such court might have issued if the subpoena or summons had been served in the State or Federal Capital Territory, Abuja in which it was issued.

[L.N. 47 of 1955.]

(3) Such warrant may be executed in such other State or the Federal Capital Territory, Abuja in the manner provided in Chapter 12 of the Criminal Procedure Act in the case of warrants issued for the apprehension of persons charged with an offence.

[Cap. C41.]

230. Orders for production of prisoners

(1) Where it appears to any court of a State or Federal Capital Territory, Abuja that the attendance before the court of a person who is undergoing sentence in any State or Federal Capital Territory, Abuja is necessary for the purpose of obtaining evidence in any proceeding before the court, the court may issue an order directed to the superintendent or officer in charge of the prison or place where the person is undergoing sentence requiring him to produce the person at the time and place specified in the order.

[L.N. 47 of 1955.]

(2) Any order made under this section may be served upon the superintendent or officer to whom it is directed in whatever State or the Federal Capital Territory, Abuja, he may be and he shall thereupon produce in such custody as he thinks fit the person referred to in the order at the time and place specified therein.

(3) The court before which any person is produced in accordance with an order issued under this section may make such order as to the costs of compliance with this order as to the court may seem just.

EVIDENCE ACT

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

1. Criminal Proceedings (Authority to Sign Certain Certificates) Notice, 1990.

2. Criminal Proceedings (Authority to Sign Certain Certificates) Notice, 1994.

CRIMINAL PROCEEDINGS (AUTHORITY TO SIGN CERTAIN CERTIFICATES) NOTICE

[S.I. 17 of 1990.]

under section 42 (2)

[24th September, 1990]

[Commencement.]

1. Power to sign certain certificates

The officers whose names and designations are listed in columns 1 and 2 respectively of the Schedule to this Notice, being officers in the civil service of the Federation employed in the Forensic Science Laboratory, are hereby empowered to sign certificates on matters relating to the subject matter specified in each case in column 3 of the Schedule.

2. Citation

This Notice may be cited as the Criminal Proceedings (Authority to sign Certain Certificates) Notice.

SCHEDULE

Column 1	Column2	Column3
Name	Designation	Subject Matter
Mr Duro Olaniyan	Principal scientific officer	Narcotic drugs and psychotropic substances, cocaine, LSD, heroin or any other similar drugs
Anthony Anyakoha Theophilus Oyebunle	Senior scientific officer	Narcotic drugs and psychotropic substances, cocaine, LSD, heroin or any other similar drugs
	Scientific officer	Narcotic drugs and psychotropic substances, cocaine, LSD, heroine or

Gloria Effiom Bassey	Grade 1	any other similar drugs

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CRIMINAL PROCEEDINGS (AUTHORITY TO SIGN CERTAIN CERTIFICATES) NOTICE

[S.1. 18 of 1994.]

under section 42 (2)

[12th December, 1994]

[Comencement.]

1. The officers whose names and designations are listed in columns 1 and 2 respectively of the Schedule to this Notice, being officers in the civil service of the Federation employed in the National Drug Law Enforcement Agency Drug Laboratory, are hereby empowered to sign certificates on matters relating to the subject matters specified in each case in column 3 of the Schedule.

2. This Notice may be cited as the Criminal Proceedings (Authority to Sign Certain Certificates) Notice.

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SCHEDULE

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Column 1	*Column2*	*Column3*
Name	Designation	*Subject Matter*
Mr.Paul Ngere	Principal scientific officer	Narcotic drugs, psychotropic and other controlled substances
Dr.L.U.Opara	Principal scientific officer	Narcotic drugs, psychotropic and other controlled substances
Mr.R.E. Akhimien	Principal scientific officer	Narcotic drugs, psychotropic and other controlled substances