





Law of Evidence

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Introduction

Review of the First Chapter

Introductory Points

❖ What is evidence?

- Evidence is anything with which the existence and non-existence of a disputed fact is proved.
 - The term 'evidence' may refer to the facts that are adduced as relevant and admissible to prove the disputed fact; or it may refer to the means/methods of presentation of the relevant facts such as oral testimonies, documents evidences, experiments, electronic data (audio, video, pictures, texts) etc.
- The law that governs the relevancy, admissibility, production and related matters in a court or tribunal is referred to as evidence law.
- In common law legal system, evidence law is a more organized discipline of law because the system involves jurors who are not legal professionals having no legal and analytical skill of evaluating evidences presented by opposing parties in a court litigation; hence they need to be assisted and guided by a comprehensive code of evidence.
 - But as a late development, civil law countries are also adopting a separate evidence code in order to assist and guide the proof process in adjudication.

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❖ Evidence law in civil law and common law legal systems

- The purpose of the comparative analysis is to identify the strength and weakness of each system and get a lesson.
- The common law trial is characterized by adversarial system in which the opposing parties play a primary role in examining the witnesses; and the role of the judge is minimal as opposed to inquisitorial system. Does this traditional distinction affect the system of evidence?
 - The distinction does not seem to be valid anymore as most systems practice a blend of the two.
- What are the other differences between the two legal systems in terms of evidence?
 - Oral Vs documentary evidence; which should obtain high evidentiary value? Do you agree with the difference of emphasis between civil and common law traditions?

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- How do we see the debatable issue of being a witness to one's own case and taking testimony from those who are closely related to parties?
 - The general trend is that in common law systems, parties themselves can be competent witnesses; whereas in civil law, it is not allowed
 - This seems to be highly dependent upon the criminal justice administration in ensuring the deliberate prejudices and lies (perjury) during oral testimonies. But how far this ensures the high possibility of bias of witnesses in favor of their case or their relatives?
 - The Ethiopian perspective is that it can be understood from the reading of the Civil Procedure, Criminal Procedure and the FDRE Constitution that parties and their relatives can adduce oral testimony after giving oath, which follows the general tradition of common law evidentiary practice.

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- Hearsay evidence
 - Testimony of a witness who has no direct knowledge of what he tells about (hearsay) is not admissible in common law legal systems.
 - In civil legal systems, the discretion to admit hearsay evidence is left to the judge
 - How hearsay is looked at under the Ethiopian evidence law?

Ethiopian Evidence Law: A Preview

- ❖ There is no separate code of evidence law in Ethiopia.
 - The evidence law of Ethiopia shares the features of the civil and common law evidence systems.
 - Emphasis to documentary evidence and the admissibility of hearsay evidence based on the discretion of the judge characterizes Ethiopian evidence law taking the feature of civil law.
 - What commonalty could you mention between Ethiopian evidence rules and the common law evidence system?
- ❖ Sources of Ethiopian Evidence Law
 - Evidence rules are to be found scattered through substantive and procedural laws of the country.

Sources ... Cont'd

- Cassation decisions on basic errors of evidence law.
 - Even though there is no full-fledged precedent system in Ethiopia, the cassation review of the Federal Supreme Court on fundamental interpretational errors of the lower courts is a binding interpretation; hence decisions related to evidence matters are another source of law for Ethiopian evidence law.
- Internationally accepted principles and rules of evidence
 - Besides the scattered rules across various laws of the country under titles such as “proof of marriage”, proof of ...” and many legal presumptions and other evidence related provisions, internationally accepted principles of evidence law are also another sources that have been used to fill the existing gaps of Ethiopian evidence rules.

Evidence in Criminal and Civil Cases

- ❖ The purpose of evidence law in criminal and civil cases
 - Evidence law has the same purpose both in criminal and civil proceeding which is to guide and assist the court to establish the truth; but the difference lies in the strict rules in criminal evidence to ensure fair trial to the accused.
 - criminal evidence contains many rules excluding relevant evidences such as bad character or previous conviction.
- ❖ The standard of proof
 - The standard of persuasion required in civil and criminal cases is different, owing to the serious consequences of criminal conviction to life and liberty of the accused; and the obvious imbalance of the parties in criminal litigation which may unfairly lead to wrong decision.
 - Accordingly, the standard of proof for criminal case is 'beyond reasonable doubt'
 - The underlying assumption is that it is preferable to acquit a criminal than to punish an innocent.
 - The standard of proof for civil cases is preponderance/balance of evidence

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❖ The Burden of Proof

- The burden of in criminal and civil disputes lies upon the one who claims.
- In criminal matters, it is the public prosecutor that has to prove the elements of the crime as defined in the substantive criminal law.
 - This burden of proof has got its basis from the principle of the presumption of innocence.
- In civil cases, the well known rule that the one who asserts will bear a burden of proof.



Chapter Two

- ° **Facts Which May Be Proved
Other Than By Evidence**

Facts That Need No Proof

- ❖ As a general rule, every claim of the parties in the litigation must be supported by evidence. Exceptionally, however, there are three types of facts that do not necessarily need proof; these are:
 1. Admitted facts
 2. Presumptions & inferences
 3. Judicial notice
- ❖ Lets discuss each of these exceptions one by one

I. Admissions

- ❖ Admission is to concede to the fact asserted by the opponent.
- ❖ If a fact alleged by the one is admitted to be true by the other party, it doesn't have to be proved by the claiming party; because a party is not expected to make himself liable through admission; he is expected to know better about himself than anybody else.

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❖ Admission can either be formal or informal

- Formal admissions are those that are made before a body authorize to receive admission such as courts, investigating officer, commissioner delegated to conduct trial proceedings.
- Informal admissions refer to those admissions that are made in civil dealings and everyday relationships.
 - Ex: an admission made to a friend orally, in a letter or email.
- It is obvious that the ones that are given before the authorized organ have high evidentiary weight (probative value) than informal admissions.

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- ❖ Again, formal admissions may further be classified as judicial and extra-judicial (out of court) admissions.
 - Judicial admissions: are those admissions made before a court entertaining a case or a commissioner delegated for by a court having a jurisdiction on the case.
 - Regarding the conclusiveness of judicial admissions, they are conclusive for civil cases unless the admission is vague and doubtful in which case the court may require the other party to substantiate his claim with evidence.
 - Admission in civil cases can be made in pleadings, during hearing. Or through mutual agreement of the parties.
 - Evasive (general) denial of the a claim constitutes admission by necessary implication.

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❖ Judicial admissions in criminal cases

- As a rule, a plea of guilty before court is conclusive and the court shall give verdict forthwith.
- But if a court believe that the confession is made for other reasons such as to cover someone's crimes or for fame, he may require the prosecutor to continue producing evidences in accordance with the elements of the charge.
- The law clearly provides that if the confession is made with reservation, a plea of not guilty shall be entered.

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❖ Extra-judicial admissions

- These are out of court formal admissions made before an authority.
- In criminal cases, confessions made before a police officer is not conclusive, and in most cases it is subject to rejection by criminal benches, taking the brutality and illegal method police investigation.



END OF SESSION