

INTRODUCTION

TOPIC ONE

HISTORICAL DEVT

- One can trace the evolution of the law of evidence in Tanzania from pre-colonial societies.
- These used traditional forms/modes of dispute settlement characterized by;
 - Lack of clear distinction between executive and judiciary
 - Centralization of a system of dispute settlement
 - Lack of clear demarcation of law between substantive and procedural laws
 - Lack of clear distinction between law and morality
 - Lack of formal procedures of arriving to decision

PRE-COLONIAL METHODS OF DISPUTE RESOLUTION

- These were largely associated with the nature of the society and its level of development.
- Some of these methods were;
 - very cruel,
 - harsh and
 - inhumane
- Nevertheless, were accepted within the particular society as a way of deterring atrocities in their societies.

CONTINUE

- Some of these methods;
 - Trial by moot
 - It was a method of providing disputants an opportunity for each one to make their defence after administration of oath. There was no formal procedures as such of providing proof rather parties were made to have strong beliefs on whatever will be decided by their clan leaders.

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- They were made to adduce their evidence in fear of God, fear of death, fear of being thrown out of the society. Beliefs on superstition dominated nature of proceedings.
- Trial by battle
 - Under this method, a person who had a claim against another person had to get into battle with another person until the winner is found. In modern law of evidence, this could be termed as adversarial system of dispute resolution.

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- Trial by oath
 - Commonly used with trial by moot. It was a way of forcing disputants to attest that what they are speaking is true to the best of their knowledge and that if a person making an oath gives a false information, then that there is likelihood that that person is going to die as a result of God's punishment.
- Trial by ordeal
 - This was a method of collecting evidence through torture or mutilation. It was also a means of punishing an accused person. In some tribes they used local poisonous herbs called "MWAVI".

MODERN LAW OF EVIDENCE

- ▢ The Modern law of evidence, particularly in Tanzania, came as a result of colonialism which introduced the modern legal system which is still used till now that include
 - ▢ Modern methods of dispute settlement
 - ▢ Modern methods of acquiring, adducing and admissibility of evidence, etc.

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- During British colonial rule, the law which was applied in relation to evidence was the Indian Evidence Act of 1872.
- After independence Tanzania enacted its own law which was more less similar to the Indian Evidence Act, that law was named as the Evidence Act, 1967
- Several amendments have been effected to this law and those have to be read together with the principal legislation.

MEANING OF TERMS

- Evidence is said to be the information that provides for belief that a particular fact or set of facts is true.
- The term evidence may also mean any matter of fact from which another matter of fact can be drawn. The former fact is known as evidential fact and the latter is the main or principle fact.
- Evidential facts are facts related to all facts in issue.

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- ▣ In terms of section 3 of the Evidence Act, Cap 6 R.E 2002
 - ▣ "evidence" denotes the means by which an alleged matter of fact, the truth of which if submitted to investigation, is proved or disproved; and without prejudice to the preceding generality, includes statements and admissions by accused persons;

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- The law of evidence therefore means legal means, exclusive of mere arguments, which tend to prove or disapprove any matter of fact the truth of which is submitted to judicial investigation.
- The law of evidence covers aspects on:
 - Who should adduce evidence before the court
 - How to obtain such evidence
 - Procedures of adducing evidence
 - Admissibility & Evaluation of evidence
 - Application of the evidence to render final verdict

SIGNIFICANCE OF EVIDENCE

- The question of evidence is important in adjudication for the purpose of;
 - Establishing the truth of the matter in dispute
 - The need to ensure fairness in decision making
 - The need to avoid errors
 - The need of clearly setting moral values by properly identifying values of the case
 - Updating the knowledge of the court on the fact which relates to the fact in issue-e.g expert evidence