CHAPTER 1: GENERAL INTRODUCTION

- Hypothetical cases(Tell the facts, evidences and possible applicable laws)
- Evidence vs Information

1.1. MEANING

I. EVIDENCE:

Literally: one or more reasons to believe something is true or not true

Etymologically: it comes from the term “evidentia” which means to prove something/ascertain something

Technically/Legally: something that is presented before a court to prove or disprove an issue/s

DER: read how the rule defines ‘evidence’

II. EVIDENCE LAW: (Scholarly)

Literally: collection of evidence rules

Mc. Cormick: “the system of rules and standards by which the admission of proof at the trial of a lawsuit is regulated”- not inclusive

Robert Arthur Melin: Rules enacted to govern

1. Facts to be considered (fact in issue, relevant facts) eg. Robbery vs. theft
2. Methods of securing consideration of those facts(By proof, without need to establish proof)
3. The party who should secure consideration of those facts(burden and degree of proof)

GENERALLY

Evidence law is a law that deals about:

- relevancy and irrelevancy of facts
- Way of proving facts- through evidences or not
- Standard and degree of proof

PURPOSES OF EVIDENE LAW

- ✓ Regulates the collection/acquiring of evidences
- ✓ Regulates the process of proof(from identifying admissible evidences up to examining evidences)

- ✓ Helps accelerated and fair justice(extension of the above)
- ✓ Protects the accused’s right to fair trial(eg. an evidence acquired through coercion is inadmissible, previous conviction isn’t admissible- art. 138 of crpc)

Audi alteram partem

- ✓ Helps for searching a truth lawfully
- ✓ Maintains the rights of parties--- ‘you have the evidence, you can change the law or at least gain your right back’

NATURE OF EVIDENCE LAW

Activity:

- What are types of laws?
- On what category would evidence law be categorized?

Hint: Substantive and procedural/adjective laws

ASSIGNMENT:

- go through the civil and criminal procedure codes of ethiopia and identify evidence rules(individual)

1.2. DEVELOPMENT OF EVIDENCE LAW

- It is one of the ancient laws
- Anciently there was a need of resolving disputes before elders across cultures

ANCIENTLY: Two ways of proof

1. Proof by Ordeals:

Subjecting someone to a painful experience, determines innocence or guilty

😎Proof by battle: the winner is innocent

😳Walking on fire

😑putting hand in a boiling water

Goes with the belief “ innocence makes you stronger”

2. PROOF BY OATH

Taking an individual under oath so that the defendant’s saying will be considered true or false

ETHIOPIA

- Do you know any traditional way of proof in Ethiopia?

1. Leba shai: intoxicating an individual with a herbal solution and make him show/implicate the wrong doer from a crowed.
2. Afrsata or awuchachign

1.3. CLASSIFICATION OF EVIDENCE

Activity

Many ways of categorizing evidences:

1. Based on the way they are presented
   - Oral: witnesses including hearsay
   - Real: Really examined by the court

Documentary: documents

Demonstrative: exhibits, audiovisual(video, photo)

2. BASED ON THE RELATIONSHIP BETWEEN THE EVIDENCE AND THE FACT

- Direct: Establishes facts directly

Documents, photos, witnesses, admissions

- INDIRECT/CIRCUMSTANCIAL: Establishes fact by inference/ indirectly

CHAPTER 2: PROOF WITHOUT NEED TO ESTABLISH EVIDENCE

INTRODUCTION

- PRINCIPLE: If a party alleges something, he has to prove that thing with evidence except:

1. Admission
2. Presumption
3. Judicial notice

2.1. ADMISSION

- Is a fact accepted by the opposing party as true(admission and confession)

- The court should give decisions if there is admission(art. 242 clpc, 134crpc)

2.1.1. CLASSIFICATION

Two ways of classifying admission: Formality and Condition and time

- Formality: Admission can be formal or Informal

- Condition and place: admission can be Judicial and Extrajudicial

A. JUDICIAL: CIVIL

- an admission in front of a live court in the following ways:

1. Express admission
2. Implied admission
3. During trial different from what he said in the pleading
4. During testification
5. By agreement of the parties after the trial is started

A. JUDICIAL: CRIMINAL

- It is an admission by an accused against a charge
- A confession should be specific to be admitted by a court

WAYS OF CRIMINAL ADMISSION

1. Admission with reservation

- Admitting the charge by denying some facts
- There will be examination of evidences for the whole charge
- Eg. theft and robbery

2. Admission without reservation

- Admission of all the facts he’s charged with
- The court should enter plea of guilty

3. Plea Bargaining

- Is bargaining on the facts of the charge between the accused and a prosecutor
- Admission and the reward is mitigation of punishment
- not allowed in ethiopia

B. EXTRAJUDICIAL(EVIDENTIAL)

- An admission outside a court orally or in written form
- It has evidential value when taken to a court

CIVIL ADMISSION

- It is taken by court automatically as an evidence

CRIMINAL ADMISSION

- A court accepts extrajudicial confession if

1. The means of admissions are just/voluntary
2. A proof for its voluntariness should be presented

2.1.2 LIMITATIONS OF ADMISSIONS

- All admissions are not admissible in front of a court

CIVIL ADMISSION

Limitations include:

- If conditions shows that it is untrue
- If one of the indispensable parties(joined plf. or def.) admits , it is not applicable to the other

CRIMINAL/ CONFESSION

Limitations include:

- Generally on the ground of operation(how it is acquired) and unfairness(against the principle of presumption of innocence and self-incrimination)

Specifically:

- If the confession is acquired with illicit operation(involuntarily, fraud, mistake, without knowledge of the consequence)
- If the confession is made with reservation
- If only one of the accomplices confesses it does not apply to the other(s)

QUIZ

- Define evidence law
- What are limitations of admissibility of admissions? Explain.

2.2. PRESUMPTION

- An inference made about one fact based on another basic fact

eg. Presumption of paternity

- ✓ Presumed fact: A is the child of H
- ✓ Basic fact: H and W are husband and wife

ACTIVITY:

- Identify presumptions in crpc and clpc and sort out the presumed fact and the basic fact

TYPES

1. Presumption of fact: logical inference that can be made from a given fact

Eg. A judge is presumed to be biased handling the case of his own interest

2. Presumption of Law: is a presumption made by the law

Eg. Presumption of paternity

Presumption of innocence

A. REBUTTABLE

- A presumption that can be reversed with evidence

Presumption of paternity

B. IRREBUTTABLE/IRREFUTABLE

- A presumption that cannot be reversed with another evidence

Presumption of innocence

C. PERMISSIVE:

- Are presumptions in which a court may or may not take

Eg. A court MAY presume a suspect of rape who refused for a test is contracted with HIV.

2.3. JUDICIAL NOTICE

- A fact already noticed by a court
- A fact (part of a common knowledge) the judicial system assumes to be true without any proof

Eg. Sunday is a holiday

Ethiopia is a country in Africa

Addis is 342 kms from Jimma

ACTIVITY:

Tell facts which are part of a common knowledge

FORMS

I. In common law

- Judicial notice without inquiry and with inquiry

1. JN without inquiry:

- Facts which are part of a common knowledge and do not need a proof
- The court doesn’t inquire anyone for a proof
- It is irrebuttable

Eg. Sunday is a holiday

2. JN with inquiry:

- Facts which are not notorious and taken as a JN after inquiries(certificates from government, text books, experts)
- Can be rebutted with further evidences

Eg. All process of digestion needs 36 hours

II. In Ethiopian legal system

- JN of adjudicative facts and JN of law

1.JN of adjudicative facts

- Considered by a court as indisputable(beyond reasonable dispute)
- Part of common knowledge or verifiable facts

A. Facts of common knowledge:

- generally known to be true by the ordinary intelligence of people
- Beyond dispute

Eg. Name of places, custom of the society,

B. Verifiable facts

- Facts that are not part of the common knowledge
- Can be verified by unquestionable authority

Eg. Science, history, art

2. Assignment on JN OF LAW

Quiz:

1. Define evidence law

2. What are limitations of admissibility of admissions? Explain.

CHAPTER 3: RELEVANCY AND ADMISSIBILITY OF EVIDENCES

Preliminary:

- Relevancy: Important or not?

  Admissibility: acceptable or not?

- Evidence is all about proof of facts.

  - Evidence Vs **Fact**

FACTS:

- Transactions which give rise to a litigation,

- Anything or relations of things capable of being perceived by the human senses and any mental conditions of which a person is conscious about

✔Based on the definition Facts are classified into Internal and External facts

1. INTERNAL/PSYCHOLOGICAL FACTS

- Facts related to INTENTION, NEGLIGENCE, GOODFAITH and BADFAITH.

How do we know the mental status of an individual?

- By taking circumstances cumulatively

Eg. Buying a gun, Breaking a house, threatening someone, selling a thing knowing the expired date is due

2. EXTERNAL/PHYSICAL FACTS

- Facts which can be proved or disproved by evidences

Eg. Existence of contract: by written contract

Existence of bodily injury: by witnesses

✔Based on relevancy, facts can be relevant and irrelevant facts

1. RELEVANT FACTS

- Directly or Indirectly(inferentially) prove the fact in issue.

FACT IN ISSSUE: is a fact under dispute by the parties which can be resolved through evidences.

Class Activity

Relevant Facts can be Major facts or Minor Facts:

A. MAJOR RELEVANT FACTS

- Facts which are directly relevant to the outcome of the case

Examples:

X is dead from a case of Homicide

X breaks Y’s house in a case of Robbery

X has sexual intercourse with Y in a case of Rape

X says you bastard in a case of insult

 The following are considered as major relevant facts:

I. RES-GESTAE

- Things DONE or SAID in a course of a transaction
- Facts forming part of the same transaction

Example:

In a case of murder

- Firing a gun by the accused(done)
- I will teach you a lesson(said)
- Please save me(said)
- Oh the man is dead(said)

II. CAUSE OR EFFECT OF FACT IN ISSUE

- Occasion: time, place, condition of an act
- Cause and effect: refers to logical connection between the act and the fact in issue

Examples:

- Death of a person
- Lost of a property

III. STATE OF THINGS

- Something that can be understood when you compare facts the way they were before and after an act

Example:

- Destruction of a fence after robbery(if it was home it would be a cause and effect or res-gestea)

IV. CONDUCT

- The previous or subsequent conduct of a person

Eg.

- Unlawful enrichment
- Running away when police officers are around

B. MINOR RELEVANT FACTS

- Collateral or subordinate facts
- Facts which have indirect relevance to the outcome of the case

Example:

- Facts about the evidences like the witness is incapable or serial liar
- Facts about the investigator say ‘S/he has personal interest to the whole issue’

2. IRRELEVANT FACTS

- Facts which do not have impact to the outcome of the case

Relevancy of facts determines relevancy of evidences. Relevant evidences are evidences that proves those relevant(Major or minor) facts.

3.1. RELEVANCY OF EVIDENCES

- Important or not
- Direct or indirectly proves or disproves a fact in issue

❖Relevancy in detail

1. RELEVANCY OF CONFESSION

- Acceptance or acknowledgement of a wrong
- Any confession to be relevant the following should be fulfilled

A. It should be made voluntarily and should be true

✓ Should be made without violence(Art. 19(5) of constitution)

✓ Should be reliable(without a secret motive, to avoid embarrassment, to be called a hero), if not, the court can exclude confession on the ground of unreliability(Art. 134(2)Crpc)

B. It should be made without violating rules of procedure

Rules of procedure:

- ✓ Should be made in front of authority like a police, pp or a judge
- ✓ Voluntarily
- ✓ Should be obtained through formal/face to face interrogation
- No unauthorized surveillance or wire taping

C. The suspect confessing should be sane at the time of confession

D. If the confession is out of court, the police should tell the rights of the suspect during interrogation(Art. 27 Crpc)

Rights: Miranda requirements

- ❑ Right to be silent
- ❑ Right to a lawyer
- ❑ The effect of his statement(any statement s/he make will be used against him)

2. RELEVANCY OF CIRCUMSTANTIAL EVIDENCE

- Evidence that proves alleged facts indirectly
- Circumstantial evidences can be classified into three(based on timing)

I. PROSPECTANT: when the existence of a fact is at issue, the existence of previous thing is relevant

EXAMPLES:

- At 6:00 there was a rain- so one can infer “there was cloudy in the morning”
- Buying a gun yesterday can be an evidence to the Killing of X today

II. CONCOMITANT EVIDENCE

- The happening of facts at the alleged time

Example:

X is charged with robbery in Jimma on Monday @4:00 night, his presence elsewhere at the alleged time is relevant

III. RETROSPECTANT

- The existence of the later fact refers to the existence of the former fact

Example:

Someone is running in front of the crowed carrying a woman’s bag, so what do you infer?

Robbery? Isn't it?

3.2. ADMISSIBILITY

- A rule that determines exclusion or inclusion(acceptance or non acceptance) of an evidence to a case
- Admissibility goes with relevancy

PRINCIPLE: All irrelevant evidences are inadmissible and relevant evidences are admissible.

EXCEPTION: Some relevant evidences are inadmissible due to the following reasons:

I. WASTE OF TIME

- Court may exclude evidences on the ground that the presentation of the evidence is a wastage of time.

if there are many witnesses who testifies on the same issue

“How long it will take to present the evidence?”

II. UNDUE DELAY

- Every evidence should be presented with pleadings, if not, the evidence will be rejected

“ How long the trial should await the evidences?”

III. THE DANGER OF UNDUE PREJUDICE

- If presentation of evidence do have a danger of undue prejudice to a party, such kind of evidence is not admissible

Example

Evidence about previous conviction(Prohibited under art. 138 Crpc)

IV. PUBLIC POLICY

Some evidences are inadmissible if they are about facts that endanger

- National interest
- Governmental secrecy
- Administration of judicial process

Examples:

✔Evidence about affairs of state like military secrets

✔about detection of crime and the whistle blowers

✔Judicial disclosure of a case or judgment before it is public

V. PRIVILEGE

- Some people are not compelled to disclose information due to reason of social interest

✓ Spouses

✓ Client-advocate

✓ Patient-physician

✓ Preist-son

VI. PAROLE EVIDENCE RULE(COMMON LAW)

- A rule that restricts the use of extrinsic evidence(oral or written) and requires the party proves his case exclusively by the contents of a writing only.

Eg. Contract on immovable properties

VII. ADMISSION ACQUIRED IMPROPERLY

- Refer rules of the procedure

CHAPTER 4: ORAL EVIDENCE

4.1. Definition

Literally: an evidence communicated through mouth

Technically: Oral testimony by a witness

- Oral testimony: a statement made by a competent witness under oath

- Witness: an evidence(person) who has first hand knowledge about a dramatic event through their senses: seeing, hearing, smelling, touching

4.2. IMPORTANCE

Generally: is important for fair adjudication and specifically the following…

A. Correctness of Decision making

- Highly credential because it has a direct relationship with the event

B. In case of absence of DOCUMENTARY evidences

- It is hard to get documents for everything especially criminal cases

C. Being commonly accessible

- Oral evidence is handy
- For most of the events there are human beings around

4.3. COMPETENCE OF WITNESSES

❖ Principle: All persons are capable of testifying before a court

EXCEPT

- Incapacity and
- Interest of outcome of a case

I. Incapacity: mental, physical and legal incapacities are causes of incompetency to be a witness

A. Mental Incapacity

- Insanity
- intoxication

B. Physical Incapacity

- Visual, hearing and speaking deficiencies and those can be causes of incapacity for those specific incapacities

C. Legal Interdiction

- A criminal especially who is in a maximum security prison

2. Interest in the Outcome of the case

- Consaguinal, affinal or economical interest towards the case could be a cause for a doubt for Credibility of a witness
- Strictly speaking not a reason for incompetence currently

4.4. EXAMINATION OF WITNESSES

There are three/four stages of Examination of witnesses:

1. Chief examination
2. Cross examination
3. Re-examination
4. Examination by a court

Rules:

- Leading question is not allowed(Examination by the party to his witnesses)
- Only related questions can be raised(after the chief examination)
- Objection overruled or sustained(when a party objects)

❖Read about HEARSAY EVIDENCE

CHAPTER 5: REAL EVIDENCE

- It is a type of evidence for which the court can personally inspect and make inferences and conclusions on the existence or non existence of a fact.
- The evidence is real and the judges inspect it themselves.
- Two types: Documentary and Demonstrative/physical real evidences

1. DOCUMENTARY EVIDENCE

A. DEFINITION

- ❖ Literally: A document presented for the inspection of a court
- ❖ DER: Document is any matter expressed on any substance by different means intended to be used for the purpose of recording that matter.
- ✓ Any substance: soft copy or hard copy, paper or any other material
- ✓ Different means: letters, figures, marks, arts and similar means

- Technically: it is a type of written proof that is offered at a trial to establish existence or non-existence of a fact.

Examples:

Letters

Contract

Deeds

Licenses

Certificate

Ticket

B. AUTHENTICATION

- Is a mechanism of ascertaining authorship(who the author is) and genuineness(reliable or not) of a document that should be introduced
- Any DE to be admitted, it should be authenticated.

METHODS:

1. Admission of authorship by the writer himself

   Articles 2007 and 2008 of civil code

2. Proof of signature or hand writing through:

- ✓ Forensic investigation- taking samples and matching scientifically
- ✓ By witnesses- attest whose signature or handwriting is that
- ✓ Opinion of experts-opinion of a person who has a specialty on identifying the writing of persons or forgery of documents

2. DEMONSTRATIVE /PHYSICAL

- Any evidence introduced in a trial in the form of physical object intended to prove a fact in issue based on its demonstrative physical characteristics.
- It is an evidence in the form of representation of an object

Examples:

Objects like knife, gun, clothes

Photos Video tapes

X-rays Recordings

Diagrams Maps

Drawings graphs

GENERAL RULES:

- ✓ Demonstrative evidences doesn’t stand by themselves. They should be adjunt to other evidences like documents, witnesses etc
- ✓ Authentication is a requirement like by a photographer, related expert
- ✓ The representation should be accurate
- ✓ Should be admissible
  - o Relevant to the issue(relevancy)
  - o Easy to understand by the court(Materiality)
  - o Should help the justice process(competency)