

**BOWEN UNIVERSITY, IWO
(OF THE NIGERIAN BAPTIST CONVENTION)
SECOND SEMESTER 2024/2025 ACADEMIC SESSION EXAMINATION
COLLEGE OF LAW
COURSE TITLE: LAW OF EVIDENCE II
COURSE CODE: (PIL 402)**

INSTRUCTION: ANSWER TWO QUESTIONS FROM EACH SECTION AND EACH QUESTION CARRIES 17.5 MARKS

SECTION A

1. (i) Akpana Ade and Akpanke Adi are facing two count charge of stealing and conspiracy at Bowen Quarters, Iwo, Osun State which occurred on the 13th of May, 2025. After their arraignment, Akpana Ade entered his defence but Akpanke Adi refused to defend the charge and kept mute. Without adducing any evidence, the prosecution urged the court to convict Akpanke Adi arguing that his silence is admission of guilt wherein he was pronounced guilty as charged on both counts.

(ii) Meanwhile Akpana Ade in defence of the charges, while testifying in-chief, stated that on the day of the alleged theft, he had travelled to Ibadan, Oyo State and only returned on the 14th of May, 2025. At the end of the trial, the trial court convicted him on both counts and was sentenced appropriately.

(iii) Ama and Eng. Nig. Ltd. entered into a contract for the supply of cement. It was agreed that Ama will make a 50% deposit of the contract sum thereafter, Eng. Nig. Ltd. will supply the 500 bags of cement and the balance will be paid immediately after the supply. Ama made the payment as stipulated, but Eng. Nig. Ltd., despite repeated demands, failed to supply the consignment as agreed. In order for Ama to complete the project he had won from Agabi State, he sourced the cement from another supplier at a higher cost. Ama has sued Eng. Nig. Ltd for breach of contract and has claimed general and special damages without giving particulars of the special damages since according to him, it is uncontested that Eng. Nig. Ltd. breached the contract. The trial court awarded in his favour both general and special damages as claimed.

(iv) Meanwhile, around Eta Agbor junction, Calabar, Atim was accosted by Police Officers on patrol with fentanyl a variant of opioids, a poisonous pharmaceutical substance. He was arraigned at the Magistrate Court, Watt Market for being in possession of poisonous substance. He informed the court that he is a pharmacist but did not present any documentary evidence in proof of his claim. He was convicted accordingly and sentenced to five years imprisonment without an option of fine.

With the aid of statutory and judicial authorities, with your knowledge of law of Evidence, identify and exhaustively address all the issues involved in the question. 17.5marks.

2. Atanda went to Spark Shop at Ring Road, Ibadan for shopping. He met Sharon, they talked and exchanged phone number. Two months down, they started dating. Unknown to Sharon, Atanda is an internet fraudster. Atanda was arrested by the Police while trying to defraud a Lebanese. He was

arraigned at the Magistrate Court, Iyaganku and was remanded by the Chief Magistrate at the Iyakangu Police Station to enable the police investigate the matter. While in custody, his friend, J-Black visited and he sent a note through him to Sharon informing her where his laptop is and directing her to destroy it to frustrate the investigation as it contains incriminating information on internet fraud activities. As J-Black was about to exit the Police Station, a Police Officer accosted him and searched him. The note sent to Sharon was discovered and the prosecution has now tendered in court during the trial. Counsel to J-Black has objected to the admissibility of the note. Meanwhile, Janet and JaneJulie Nig. Ltd. entered into a contract wherein JaneJulie was expected to supply twenty tons of sharp sand within two week after Janet makes a 60% deposit of the contract sum. Jane did as expected but JaneJulie failed to supply the sand. In order to execute the contract which the sharp sand is required, Janet sourced the same from another supplier at the rate of two Hundred and Fifty Thousand Naira per ton as opposed to One Hundred and Fifty Thousand Naira per ton as contracted with JaneJulie. Jane wrote a Notice of Demand requesting JaneJulie to indemnify her. In response, JaneJulie wrote back apologizing for the hassle but made a lesser offer while admitting wrongdoing. Jane has now sued JaneJulie for breach of contract and seeks to tender the letter written by JaneJulie in evidence in proof of his claim for damages.

With the aid of statutory and judicial authorities, identify and exhaustively address ALL the legal issues involved in the question. 12.5marks.

- 2b. Espouse the province of Section 188 of the Evidence Act, 2011. **5marks.**
3. On the 13th day of March, 2024, Adana, a 14year of girl, came home crying and bleeding. Her Mum, examined her and found out that she was bleeding from her vagina and her dress was dirty. She asked her what happened, Adana informed her mother that on her way from the stream, James Fond who was seated under an Iroko tree on the bush path, saw her and asked her to come. She obliged, he then grabbed her and had carnal knowledge of her. Her mum made a complaint at the police station. James Fond was arrested and charged to court for rape. During the trial, only Adana testified and the prosecution closed it case. James Fond was found guilty and convicted of rape by the trial court. Meanwhile, Alaka and Alade were arrested after robbing the home of Mrs. Bide with guns and cutlasses. After the operation, Alaka and Alade kept the stolen properties with Jason. Who was also arrested during investigation. During their trial for conspiracy and arm robbery, Jason who was called a prosecution witness, gave evidence that implicated Alade. The trial judge, based on the evidence of Jason, convicted Alade without any formalities.

With the aid of statutory and judicial authorities, identify and address ALL the legal issues involved in the hypothetical fact situation. 12.5 marks

3b. Expatriate on the principle of law enunciated in the case of *Nwambe v. The State* [1995] 3 SCNJ 77

5marks.

4. AdeMuse is facing trial for the offence of killing Bintu, a 16 year old secondary school student. His lawyer, The Law Esq. has assured him that he knows how to let him off the hook. He brings a forensic psychologist to give evidence that AdeMuse suffers from a peculiar dissociative disorder which permanently deprives him of forming the requisite mens rea for the offence charged. The prosecutor, Mr Kogberegbe Esq from the Ministry of Justice vehemently opposed taking the testimony of the forensic psychologist, stating that he is aware that The Law Esq has promised to let his client off the hook by all means.
- Is the prosecution right to oppose the presentation of the evidence of the forensic psychologist on this basis? (1.5 marks)
 - Fully justify your position in (a) above (4 marks)
 - What procedure will the court follow in either admitting or rejecting the evidence of the forensic psychologist? (7 marks)
 - Once an expert is properly before the court, the law requires the court to admit his evidence in the interest of justice. Discuss. (5 marks) Total 17.5 marks
5. In a celebrated rape case, the prosecution seeks to tender evidence to the effect that the accused person is a person of bad character, haven been convicted of sexual assault of an underaged girl many years ago. The defence however objects, stating that under the Nigerian Law, it would be prejudicial to admit evidence of a person's past conviction, thereby rendering the evidence inadmissible.
- With reference to specific provision(s) of the Evidence Act and relevant case law, argue for the propriety or otherwise of the position of the defence counsel. (10 marks)
 - Would your position have been different if the charge had been different? Justify your position. (2 marks)
 - What will be your position if the accused person himself gives evidence of his good character? (2.5 marks)
 - Comment on the position of the Court on evidence given by spouses and co-accused. (3 marks)
- Total 17.5 marks
- 6a. The purpose for which a statement made by a person to the witness is tendered in Court determines its admissibility since if the intention of introducing the evidence is to establish the truth of the statement/evidence it would be hearsay and inadmissible but would be admissible if the purpose or intention is to establish the fact that the statement was made by the person concerned'. Per *Onnoghen, J.S.C (2009) LPELR-559(SC) in Arogundade v. The State.*

With the aid of statutory provisions and decided cases, fully discuss the Nigerian principles guiding Hearsay Evidence. (10 marks)

- 6b. Father Dunkan had been stabbed to death on his way to the Convent two years ago. During the course of investigation, several persons were arrested. One of those arrested was an old farmer who stated that he heard the deceased crying 'They are trying to kill me' as he approached him on the fateful day. You are the Prosecuting Counsel, and are urging the court to admit the testimony of the old farmer. The Defence Counsel insists that the evidence is inadmissible, being hearsay. How will you convince the court to admit the testimony of the witness you are presenting? (7.5 marks)