

WITNESSES

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A Project Paper submitted in partial
fulfilment of the requirements for
the Diploma in Law

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NOVEMBER 1986.

TABLE OF CONTENTS

	Page
PREFACE	i
ACKNOWLEDGEMENTS	iii
TABLE OF CASES	iv
CHAPTER I	
A WITNESSES IN GENERAL	1
B WHO CAN BE A WITNESS	3
C COMPETENCY AND INCOMPETENCY OF A WITNESS	4
D SPECIAL FOCUS ON CHILD WITNESS	8
CHAPTER II	
EXPERT WITNESS	11
CHAPTER III	
A PRIVILEGE	20
B COMMUNICATION BETWEEN SPOUSES IN CRIMINAL CASES	21
C AFFAIRS OF STATE	25
D LEGAL PROFESSIONAL PRIVILEGE	30
E PRIVILEGE AGAINST SELF INCRIMINATION	33
CHAPTER IV	
EXAMINATION OF WITNESS	37
A GENERAL PRINCIPAL REGARDING EXAMINATION OF WITNESS	37
B EXAMINATION -IN-CHIEF	39
C CROSS-EXAMINATION	41
D RE-EXAMINATION	42
E ART OF EXAMINATION	42
F LEADING QUESTION	45
G IMPEACHING CREDIT	49
CHAPTER V	
CONCLUSION	51

PREFACE

It has been said that the role of witnesses in open court is vital during the trial. As this juncture the writer tries to point out the duties of witnesses, their privileges and also their role during examinations.

Chapter I serve as an introductory chapter under which the writer set out the defination of witness. The main point in this chapter is the discussion of the witnesses with regard to their competency. Without fail the writer also include special focus on Expert witnesses and child witnesses. The writer also dealt with Section 118 of the Evidence Act, 1950.

Under chapter two the writer deals with privileges of the witnesses. There are four (4) topics this Chapter that is, communication between spouses in criminal cases, affairs of state, legal professional privilege and also privilege against self incrimination.

Chapter three will be last major topic in this Project Paper. Under this topic the writer tries to write regarding examination of witnesses. It is in this topic that the writer explaine what is examination-in-chief, cross-examination and re-examination.

CHAPTER IA. WITNESSES IN GENERAL

The universal principle of criminal trial, the court should not proceed *exparte* against the accused person.¹ This has been embodied in Section 264 of Criminal Procedure Code which provides:-

"Except as otherwise expressly provides all evidences taken under Chapters XVII, XIX, XX, XXI and XXII² shall be taken in the presence of the accused or, when his personal attendance is dispensed with in the presence of his advocate."

Therefore it is mandatory that all evidences whether for the prosecution or the defence should be taken in the presence of the accused person or in the absence of the accused person, his counsel. This only applies where the accused person or in the absence of the accused person, his counsel. This only applies where the accused has absconded and there is no

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1. *Bosil Ranger Lawrence V Emperor*, (1933) P.C. 218.
 2. That is preliminary inquiries, summary trials by magistrate trials, in the High Ct. with assessors, with out assessor and by jury.

immediate prospect of arresting him.³

By virtue of Sections 137 and 138 of the Evidence Act 1950 the accused person is given opportunity to defend himself but are exposed to the process of being examined. He will first be examined by his own counsel and cross examined by the adverse party too. After this, should there be any damage while being cross examined, he can then be re-examined again.

In the absence of the accused the proceedings become hinted with an element of illegality and to conviction of the accused is bad. In other words this will amount to a fundamental defect in the proceedings and the conviction of the person accused would be set a side.⁴

A witness may attend voluntarily but in most cases it is necessary that his attendance is assured. Witnesses may be served with a subpoena or by Summons and either of these may be expressed to be for the witness to attend and give evidence

3. F.M.S. Chapter 6, Sec. 401.

4. Ng Kim Yeow & Anor V Reg. (1960) 26 MLJ 91.