

**EXAMINING THE EFFICACY AND ADMISSIBILITY OF BAD  
CHARACTER EVIDENCE IN NIGERIA CRIMINAL TRIALS**

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## **DEDICATION**

I dedicate this work to God Almighty who firmly held my hand and guided me during the course of my LL.B journey.

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1. Universal Declaration of Human Rights (UDHR) 1948
2. European Convention on Human Rights (ECHR) 1950
3. International Convention on Civil and Political Rights (ICCPR) 1966

## **ABSTRACT**

This study undertakes a comprehensive examination of the Nigerian legal framework governing bad character evidence, with a specific focus on its judicial application and implications for the presumption of innocence and right to a fair trial. Employing a doctrinal approach, this research conducts a comparative and critical analysis of relevant statutes, case laws, and international instruments, including the Evidence Act (Amendment Act) 2023, the Universal Declaration of Human Rights (1948), and the International Convention on Human and People's Rights (1966).

The study reveals inconsistencies in the application of bad character evidence by Nigerian courts, inadequate protection of the accused's presumption of innocence, and potential prejudice against the accused. The research also identifies gaps in the existing legal framework, including the lack of clear guidelines for the admissibility of bad character evidence and inadequate safeguards for accused persons.

To address these issues, this study proposes reforms aimed at clarifying the admissibility criteria for bad character evidence, enhancing judicial training on the subject matter, introducing additional safeguards for accused persons, and aligning the Nigerian framework with international best practices. The study concludes by emphasizing the need for a balanced approach that takes into account the interests of justice, the rights of the accused, and the integrity of the criminal justice system.

## **CHAPTER ONE**

## INTRODUCTION

### 1.1 BACKGROUND TO THE STUDY

It is beyond doubt that the Nigerian Criminal Justice system is saddled with the duty of administering justice. Justice itself is the hope of the common man, and there is no law without justice. It is the cynosure or fulcrum of every administration of justice.<sup>1</sup> This is the reason why the law should be tailored to pursue justice and achieve justice for every member of the society.

In the interpretation and invigoration of the tenets of the law, the courts have the mandate to suppress crime and this is done by the conviction of offenders and meting out the appropriate punishment at the right situations to offenders of the law. However, the point at which a line is drawn between appropriate conviction of offenders and upholding of human rights has always been a perennial issue. This is because, every human is entitled to rights and this includes right to fair hearing, dignity and self- respect.<sup>2</sup> Since man by nature is entitled to these inherent rights, at what point can the line be drawn between administering of justice by appropriate punishment and upholding or respecting the rights of individuals in the society. When can or should the court strike a balance between uncovering the truth as regards the accused on whether or not he or she has committed an offence and respecting the innate right such individual possesses? Will the courts be just in engaging all resources available at its disposal in order to lay out the truth, even if this involves interference with the right to fair hearing, dignity and the presumption of innocence of the accused?

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<sup>1</sup> *Jos Metropolitan Development Board v Moulds (Nig) ltd* [2020] 5NWLR (Pt 1717CA 243) 267

<sup>2</sup> United Nations General Assembly, The Universal Declaration of Human Rights (UDHR), New York: United Nations General Assembly, 194 <[https:// www.refworld.org/legal/resolution/unga/1948/en/11563](https://www.refworld.org/legal/resolution/unga/1948/en/11563)> accessed 26 October 2024, art 1,10,12,22,35

Some scholars have proposed that if common sense were to be given free reign, it would be proper to take the good or bad character of a party into consideration in a suit, in deciding whether he is liable in a civil wrong or for committing an offence. An example is the case of a murder where the accused is a member of a dreaded notorious gang, but one of the purposes of the law is to prevent common sense from having a free reign so as not to lead to an unjust result and to strike a balance between propagating justice and safeguarding human rights.<sup>3</sup>, The importance of this balance during investigation and trial cases is very crucial, and it is a complex and nuanced issue as the pursuit of justice should not come at the expense of violating individual rights.

Evidence is the cornerstone of justice, it is used to establish truth, prove guilt beyond reasonable doubt, and ensure that justice is served while protecting human rights. It prevents miscarriages of justice, wrongful convictions, and acquittals, and promotes transparency and accountability. After the arrest of an individual and subsequent prosecution for an offence, he or she is made to face the law and be given the right to a fair trial while laying down evidence to refute the claims of the prosecution. It is a recognizable principle in the Grund norm of Nigeria, that every man is entitled to fair hearing and the presumption of innocence before proven guilty.<sup>4</sup> This go hand in hand and are pivotal to the sustenance of justice in the Nigeria legal system, and it is firmly rooted in solid key considerations which are; the rule of law, fair trial, presumption of innocence

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<sup>3</sup> *Lawal v The State* [1946]ANLR 107

<sup>4</sup> The Constitution of the Federal Republic of Nigeria 1999 (as amended), (Act No 24) 5 May 1999, s 36(4), (5)

and the protection of human rights. This is because the system's primary objective is to dispense justice in a fair, impartial and transparent manner while maintaining public trust and confidence.<sup>5</sup>

The purpose of this research is to analyze what character evidence is, the meaning of bad character evidence, rationale for its admissibility in criminal trials and the extent to which evidence may be adduced on the bad character of a party in criminal cases. It also seeks to examine the fairness of its admission by the courts, with particular focus on Nigeria criminal cases and statutory provisions. Nevertheless, it considers foreign jurisdictions as regard the subject matter and propose necessary reforms on how to maintain proportion between prosecuting and punishing offenders as well as safeguarding human right.

The word 'character' a complex and multifaceted concept may have variety of meaning depending on the context in which it is used. It has been defined as evidence regarding someone's general personality traits or propensities, of a praise worthy or blame worthy nature, evidence of a person's moral standing in a community.<sup>6</sup> According to the Black's Law Dictionary, 5th Edition, character evidence refers to the evidence of a person's moral standing in community based on reputation. Character evidence connotes evidence regarding someone's personality traits; evidence of a person's moral standing in a community based on reputation or opinion. It refers to one's reputation – the esteem or otherwise, in which a person is held; the conviction based upon the person's behaviour. It is a term used in the law of evidence to describe any testimony or document submitted for the purpose of proving that a person acted in a particular

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<sup>5</sup> Tosin T Olonisakin, Adedeji J Ogunleye, and Sulaimon O Adebayo 'The Nigerian Criminal Justice System and its Effectiveness in Criminal Behaviour Control: A Socio-Psychological Analysis' *Journal of Humanities and Social Sciences* [2017] 22(2) <<https://www.researchgate.net/publication-Justice-System-And-Its-Effectiveness-In-Criminal-Behaviour-Control-A-Social-Psychological-Analysis>> accessed 9 January 2018

<sup>6</sup> Evidence Act (Amendment Act) 2023, s 77

way on a particular occasion based on the character or disposition of that person. Section 77 of the Evidence Act 2023 defines it as reputation as distinguished from disposition. This is unlike the English Criminal Evidence Act 1898 where character has been established to mean both reputation and disposition<sup>7</sup>. Disposition according to Oxford Advanced Learner's Dictionary, is a person's natural qualities of mind and character. It is the natural way of behaviour towards others. The Black's Law Dictionary, 5th Edition in consideration of it with respect to mental state defines it as an attitude, prevailing tendency, or inclination. One may be of an evil disposition and yet be of good reputation. The converse is equally true. There would have been fundamental dichotomy between our law and the English law on this matter and also the relevance of English cases on this subject in Nigeria if not for the exception provided in the act as follows; and except as mentioned in these sections, evidence may be given only of general reputation , and not of particular acts by which reputation or disposition is shown.<sup>8</sup>

What this means is that there are certain provisions in the Act which permits evidence of disposition or particular acts to be given even when they do not technically amount to evidence of character. Therefore both evidence of reputation and disposition can be adduced wherever they are declared to be relevant under the Act.

Bad character evidence is defined as evidence of a person's misconduct or of a disposition towards misconduct on his part, other than evidence that has to do with the alleged facts of the offence with which the defendant is charged; or is evidence of misconduct in connection with the

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<sup>7</sup> *Selvey v DPP* (1968) 2 ALL ER 497, 1970 AC 304

<sup>8</sup> Evidence Act 2023 (n 6)

investigation or prosecution of that offence.<sup>9</sup> In simple terms, ‘bad character’ means evidence of misconduct, and/or evidence of a disposition towards misconduct, and/or evidence of a reputation for misconduct. Section 98 of the Criminal Justice Act 2003 provides that evidence of a person’s ‘bad character’ are to mean evidence of, or of a disposition towards, misconduct on his part.<sup>10</sup> The key consideration when determining bad character is ‘misconduct’ which can be defined as the commission of an offence or other reprehensible behaviour. The other component of bad character evidence is ‘a disposition toward misconduct’. There is no clear definition of what exactly this means, however, it is clear that this broadens the scope of what can be considered as bad character evidence.

The admissibility of evidence of the previous misconduct of the defendant in a criminal trial has for over a hundred years been governed by a complex yarn of statute and common law. The general rule in criminal proceedings in Nigeria is that evidence of bad character is irrelevant and inadmissible. This is provided for under section 82(1) of the Act that except as provided in this section, evidence of the fact that a defendant is of bad character is inadmissible in criminal proceedings. However the exceptions for its admissibility are provided under sub section (2) \_ (6) of section 82 of the Act which states below;

(2) The fact that a defendant is of bad character is admissible\_

(a) When the bad character of the defendants is a fact in issue; Bad character here mostly relates to previous conviction of the accused, for it is the previous conviction that is generally an ingredient of another offence. For example on a charge of being a rogue and a vagabond under

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<sup>9</sup> Olliers Solicitors ‘Bad Character Evidence’ < <https://www.olliers.com/criminal-investigations/chsrging/bad-character-evidence/> accessed 26 October 2024

<sup>10</sup> Criminal Justice Act (UK Public General Acts) 2003, (c 44)

section 250(1) of the criminal code, proof of previous conviction of being an idle and disorderly person is admissible.

(b) When the defendant has given evidence of his good character. When therefore will a defendant be said to have given evidence of his good character? Must a defendant give evidence himself of his good character or can it be said that if he calls witness to testify of his good character, rebuttal evidence can be brought before the court on his bad character? A literal interpretation of this section explains that a defendant is required to give evidence himself of his good character. In *Din v African Newspaper Limited*, the Supreme Court held that, were in a proceeding, the plaintiff puts his character in issue, and claims to be of good reputation, evidence of his previous conviction would be relevant.<sup>11</sup>

(3) A defendant may be asked questions to show that he is of bad character in the circumstances mentioned in paragraph (g) of the proviso to section 180.

Section 180(g) provides that a person charged and called as a witness in pursuance of this section shall not be asked, and if asked, shall not be required to answer, any question tending to show that he has committed or been convicted of or been charged with any offence other than that with which he is then charged, or is of bad character unless;

1. Where the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence with which he is then charged, or
2. He has personally or by his legal practitioner asked questions of the witnesses for the prosecution with a view to establish his own good character or has given evidence if his

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<sup>11</sup> [1990] 3 NWLR (Pt 139) 392

good character, or the nature or conduct of the defence is such as to involve imputations on the prosecutor or the witness for the prosecutor, or

3. He has given evidence against any other person charged with the same offence.

It is noteworthy that section 180(g) of the Act was copied from section 1(1) of the English Criminal Evidence Act 1898. In the case of *Jones v. DPP*, the House of Lords had to determine the meaning of the words "tending to show" which appears under section 180(g) of the Evidence Act. In this case, appellant was charged for the murder of a young girl. Three months before his trial on the charge of murder, he had been convicted of raping a different girl. The two cases had similar facts. The main issue before the court of Criminal Appeal and the House of Lords was whether it had been proper to cross examine appellant in the murder trial about the two similar explanations which he had given concerning his movements on the respective evenings. Majority of House of Lords held that the cross examination had not "tended to show" the jury anything new thus it was not forbidden under the Criminal Evidence Act. However Lord Denning dissenting along with Lord Devlin held that the questions tended to show that Jones had previously been charged in a court of law with another offence. Although it is true that they did not directly point definitely to that conclusion, but they conveyed that impression, and that is enough. Counsel may not have intended it but that does not matter, what matters is the impression the questions will have on the jury.<sup>12</sup>

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<sup>12</sup> [1962] AC 645, [1962] IALL ER 569

In *Stirland v DPP*, the House of Lords was called to consider the meaning of the word "charged" as used in section 1(f) of the English Criminal Evidence Act, court held it means "charged to court."<sup>13</sup>

4. Whenever evidence of bad character is admissible, evidence of a previous conviction is also admissible.
5. In cases where subsection (4) of this section applies, the court shall only admit evidence of previous convictions which are related in substance to the offence charged.
6. Evidence of a previous conviction shall be proved in accordance with part XIII.

In these exceptional circumstances, it has long been established that exclusion of evidence when its probative value is exceeded by the risk of creating unfair prejudice or unfairly determining the outcome of the case of the accused is a fundamental safeguard against unfair trials and wrongful convictions. The adage "give a dog a bad name and hang him" is a timely reminder of the danger of admitting bad character evidence by the court in criminal cases as this may operate unfairly against the accused person.

Admitting bad character evidence in proof of other offences risks unfair prejudice and overshadows the current charge, and past convictions do not necessarily prove guilt in current cases hence relevant evidence should focus on the current offence and not past mistakes. Admission of bad character evidence to counter good character claims can lead to character assassination and shift the focus to misconduct of an individual rather than the case at hand, it may lead to unfair trials because defendant's may not have equal opportunity to present evidence of good character evidence. Also, permitting bad character evidence pursuant to questions of the

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<sup>13</sup> [1944]AC 135

defense towards the prosecution opens the door to irrelevant and prejudicial evidence and can compromise the defendant's right to confront witnesses, it may also discourage or intimidate the defendant's from exercising their rights and being free to question witnesses of the prosecution.

It should be noted that unless any of the exclusionary rules supra applies, reception of evidence of bad character is wrong and a conviction may be quashed on that ground unless there is other evidence which should have sustained conviction or no injustice is thereby occasioned.<sup>14</sup>

Where evidence of bad character of an accused is relevant, the rule is that such evidence need not be restricted to those types of offences that the accused is charged with. In *R v Winfred*, an accused was charged with indecent assault, evidence of his previous dishonest dealings with other person's property in the past was admitted. In his defence, he called a witness to give evidence on his exemplary behaviour towards women and thereby put his character in issue. The prosecution did not hesitate to cross-examine him on a prior conviction for theft and the Court of Appeal seems to have endorsed the cross-examination because the conviction was quashed on the basis of the inadequacy of corroborative evidence and not for the improper admission of evidence relating to the previous conviction for theft.<sup>15</sup> It is obvious from the above analysis that the limitless nature of the evidence that the prosecution could elicit once the accused had put his character in issue could prejudice the defendant's fair trial. The decision in this case has been criticized by some including Naokes, as permitting evidence that is irrelevant and can have no purpose but prejudice to be adduced. Researcher identifies with the above view. It is highly illogical and prejudicial to allow the prosecution to adduce evidence of bad character which has no bearing with the element of the offence or any of the issues in question. To say that evidence

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<sup>14</sup> *Lawal v The State* (n 3) 107

<sup>15</sup> [1939] CAR 139

of bad character is admissible under certain circumstances should not open the floodgates for misdemeanors and frailties that have no bearing to the charge. This was the approach adopted in *Oduade v The police* where appellant was charged with stealing, receiving stolen property and for being a rogue and vagabond. Evidence of his previous conviction for over ten years was given and admitted. However, upon appeal, the prosecution argued that evidence of previous conviction was put in for the purpose of proving the vagrancy charge. Court ruled that such evidence should not have been admitted because the whole purpose of the charge of being a rogue and vagabond was clearly to unfairly prejudice the defendant trial.<sup>16</sup>

Many have proposed that the courts have to meticulously balance the probative value of the bad character evidence against its prejudicial effect to ensure fairness in the administration of justice to individuals, hence the birth of this study.<sup>17</sup> The probative value of evidence in essence is the weight or relevance of a particular evidence in proving or disproving a particular fact in issue. It is the probability of evidence to reach its proof purpose of a relevant fact in issue. This involves how relevant the evidence is, how credible it is, its materiality and reliability in relation to the case at hand. However, Its prejudicial effect refers to how the evidence may influence the judge, jury or decision makers unfairly or bias the outcome of a particular case .If the probative value of evidence is substantially outweighed by the dangers of unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence then this evidence need be excluded.<sup>18</sup>

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<sup>16</sup> [1952] NLR (Pt 20) 81

<sup>17</sup> Cornell Law School 'Probative' <<https://www.law.cornell.edu/wex/probative-value>> accessed 20 October 2024

<sup>18</sup> Ibid

Also, the admissibility of evidence should be clearly distinguished from the weight of evidence: whereas admissibility involves the question of whether a piece of evidence should be considered at all, the probative value of evidence refers to the question of whether the evidence to be considered provides sufficient proof of the alleged facts.

There is no gainsaying the fact that the importance of balancing the probative value of the evidence with the prejudicial effect of such evidence by the courts on the scale of justice cannot be overstated, this is because on one hand, admitting bad character evidence can lead to unfair influence of the judge's decision and undermining the presumption of innocence. On the other hand excluding its admissibility can hinder the pursuit of justice or lead to injustice, and this is not the goal of our legal system. Unarguably, admitting bad character evidence provides contextual information, and can help the judges understand the pattern of the defendant and his or her motive, it also helps in providing background information about the defendant's immediate circumstances which are relevant in helping the judge understand defendant's patterns and establish guilt. Refining our focus to Nigeria criminal trials, it enables the judge to have proper background information and aids him or her in understanding the immediate circumstances of the defendant and determining his or her guilt. For instance, when a defendant is being tried for an offence of robbery and the prosecution renders evidence of his previous conviction, this shows a pattern of criminal behaviour and demonstrates the probability of defendant committing further violent crime. However, admission of this evidence leads to too much emphasis on past mistakes, and has the potential of misleading the judge into believing he or she is guilty, it can also result in unfair reliance on previous guilt rather than determining current charge. In order to navigate this narrow line, courts must consider factors such as the probative value of the

evidence; the prejudicial value and the relevance of the evidence to the fact in issue, before admitting it.

Furthermore, utilizing as a source International instruments such as the United Declaration on Human Rights, the African charter, the International covenant on civil and political rights which provides for a fair trial and for the presumption of innocence until proven guilty, one can see the importance of these principles to the attainment of justice and safeguarding of the rights of individuals. Article 10 of the (UDHR) provides that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. Article 11(1) provides that everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence. Article 14(1) of the (ICCPR) provides that everyone shall be equal before the courts and tribunals, and (2) states that everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law. Also, Article 7 of the African Charter on Human and people's rights (ACHPR) provides for an analogous protection of the rights of accused and presumption of innocence until proven guilty. The above provisions illustrate the need to protect human dignity, prevent abuse of power and promote fairness and justice in criminal justice system.

A comparative analysis of the Nigerian law on admissibility of bad character evidence with that of the United Kingdom and Canadian jurisdiction, demonstrates that in order for a better and more reformed system, Nigeria evidence law needs to clarify the exceptions for admissibility of bad character evidence, introduce a probative value \_ prejudicial balancing test, provide clearer guidelines for judges to exercise discretion in order to avoid over emphasis on misconduct of

defendant and deviation from case at hand, implement stricter rules for admitting evidence of previous convictions and enhance training for judges, prosecutors and defense counsel.

In conclusion it is crystal clear that achieving justice is the courts primary mandate and necessitating an equilibrium between ascertaining guilt and upholding the fundamental rights of individuals is key in the admissibility of bad character evidence in Nigeria criminal trials.

## **1.2 STATEMENT OF PROBLEM**

Although bad character evidence can be effective in establishing guilt in Nigeria criminal cases especially with regard to cases involving similar fact evidence and evidence of previous convictions. This can be used to decipher the presence or absence of knowledge, mensrea and whether or not an act was committed by the accused especially in cases of denial. Its efficacy depends on the relevance, reliability and probative value of the evidence to the case at hand. Challenges have arisen from ensuring relevance, managing prejudice and addressing hearsay evidence, and this has raised serious concerns on the admissibility of bad character evidence in criminal trials. Protection of human rights is paramount as bad character evidence can undermine the presumption of innocence. It can increase the rate of unfair conviction, influence the mind of the judges and lead to bias judgements. It can also compromise the accused right to a fair trial and lead to unjust convictions. There has been a solid provision for the right to a fair trial and presumption of innocence by our Nigerian law.<sup>19</sup> Even Internationally, The United Declaration of Human Rights and the African charter to which Nigeria is a signatory provides for the protection and upholding of the right to a fair trial, fair hearing and presumption of innocence until proven guilty. This study is necessary to address the challenges faced by Nigerian courts in

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<sup>19</sup> CFRN 1999, s 36(4),(5),(6)

admitting bad character evidence in criminal trials, seek to examine how effective bad character evidence is in securing convictions, and how it impacts trial outcomes and rights of the accused. It also addresses whether or not the current legal framework on admissibility of bad character evidence is sufficient in safeguarding individual rights and what reforms are necessary to improve the use of bad character evidence.

The following are research questions of this study:

1. What is the efficacy of bad character evidence in establishing guilt in Nigerian criminal trials?
2. What are the challenges associated with the admissibility of bad character evidence in Nigeria criminal trials?
3. How does bad character evidence impact the outcome of criminal cases?
4. What are the implications of admitting bad character evidence on the rights of the accused?
5. How does Nigerian law compare to international standards on bad character evidence?
6. What are necessary proposed reforms to improve the use of bad character evidence in Nigeria criminal Trials?

### **1.3 AIM AND OBJECTIVES OF THE STUDY**

The aim of this study is to examine the efficacy and admissibility of bad character evidence in Nigeria criminal trials with a view to evaluating its impact on the administration of justice and the protection of human rights.

The objectives of this study are:

1. To analyze the efficacy of bad character evidence in establishing guilt in Nigerian criminal trials.
2. To identify challenges associated with the admissibility of bad character evidence in Nigerian criminal trials.
3. To evaluate the impact of bad character evidence on the outcome of criminal cases.
4. To assess the implications of admitting bad character evidence on the rights of the accused.
5. To compare Nigerian law with international standards on bad character evidence.
6. To propose necessary reforms to improve the use of bad character evidence in Nigerian criminal trials.

#### **1.4 SCOPE AND LIMITATIONS OF THE STUDY**

This study delves into the complex dynamics of Nigeria criminal trials with a specific focus on the efficacy and fairness of bad character evidence. The study focuses on Nigeria criminal trials as it explores the application of bad character evidence within the country's judicial system including the federal high court, State high courts, appeal court and the supreme court. It investigate the concept of bad character evidence, it's types, admissibility criteria, impact on trial outcomes and implications for human rights.

However despite the importance of this research, there are significant limitations. For instance time constraint poses a notable challenge because this research requires meticulous, diligent and in depth analysis of various court decisions, legislative framework and expert opinion within a restricted time frame. Specifically, researcher experienced the challenge of restricted access to essential materials for instance the problem of in outdated Nigeria law reports, and lack of access

to readily available materials online. There is also the problem of over reliance of the Nigerian legal system on physical records and limited digitalization. Also, subscription-based online data bases and academic journals often require institutional access, creating barriers for independent researchers. These constraints limit the study's ability to incorporate the most recent development and data. In addition, the geographical scope focusing on Nigeria alone leads to lack of generalizability to other jurisdictions.

### **1.5 SIGNIFICANCE OF THE STUDY**

This study contributes significantly to the existing literature on evidence law particularly in the context of Nigeria Criminal Trials. By examining the efficacy and admissibility of bad character evidence in Nigeria criminal trials, this research fills a critical gap in the understanding of this complex issue. This finding provides valuable insights for scholars, law makers, judges, legal practitioners, students and even the common man. Specifically it clarifies questions as regarding the concept of bad character evidence, types, its admissibility criteria and informs the development of a more effective and fair framework. Furthermore, this study engages international jurisdictions, providing for a fair analysis and comparison with Nigeria framework as well as the proposing of potential methods that can be adopted and applied by the Nigeria legal system. It also engages with international standard and comparative Jurisprudence, facilitating a better understanding of the best practices in evidence law.

In addition to the above, it is notable that the practical significance of this study has far\_ reaching effects. The importance of this study is more than theoretical as legal practitioners and judges will benefit from guidance on navigating and balancing the admissibility as well as the fair application of bad character evidence in criminal trials. Policy makers will be informed on

potential reforms to improve administration of justice, aligning Nigerian evidence law with international best practices as a whole, the Nigeria criminal justice system stands to benefit significantly as this research has the potential to reduce miscarriage of justice, promote fairness and encourage public trust in the judicial system. The potential impact of this study includes; influencing policy and legislative reforms, contributing to a balance approach to bad character evidence and optimally striking a balance between public interest and individual rights.

In all, by promoting administration of justice, protection of human rights and upholding of the rule of law, this study aim to enhance a fair and effective Nigeria Criminal Justice system ultimately contributing to the country's social and legal development as well as the global standing of the Nation.

## **1.6 RESEARCH METHODOLOGY**

This study employs an analytical and doctrinal research design by combining critical and comparative study methods to examine the efficacy and admissibility of bad character evidence in Nigeria criminal trials. The research makes use of primary sources which includes relevant statute and case laws in line with the subject matter as well as secondary sources like textbooks, journals, academic writings and online articles. Research adopts a critical and comparative methodology by evaluating the strength and weaknesses of current approach of bad character evidence being admissible in criminal trials in Nigeria and assesses best international standards and practices in line with the subject matter.

## **1.7 CHAPTER ANALYSIS**

This study contains five chapters. Chapter one contains a background overview of the topic as it explains the importance of achieving justice in the Nigeria criminal justice system and the

significance of evidence in piloting it. It explains the meaning of character, and bad character evidence with relevant references. It also provides the exceptional situations where evidence of bad character is admissible by the Nigerian court in criminal trials, and provides the pros and cons of admitting bad character evidence in such situations. It also differentiates the prejudicial effect of admitting bad character evidence from the probative value while proposing reforms on how Nigerian courts can balance or draw a line between both to achieve justice. It also draws reference from international instruments like the United Declaration on Human Rights, the African charter and the International covenant on civil and political rights which provides for a right to a fair trial and presumption of innocence until proven guilty in emphasizing the importance of those principles in the proper attainment of justice . The background of the work provides a brief comparison of the Nigerian jurisdiction with that of UK and Canada in providing reforms for law that recognizes the admissibility of bad character evidence in exceptional situations. Chapter one also contains the statement of Research problem with specific research questions that the study aims to address. Chapter one incorporates the aim and objectives of the study, significance of the study, scope of the study and limitations of the researcher when embarking on the research as well as the research methodology employed in the research work.

Chapter two encompasses the conceptual and theoretical framework and literature review of the subject matter. It incorporates conceptual clarifications on significant terms such as; bad character, bad character evidence, its admissibility and relevance in Nigeria criminal trials, as well as definition of key concepts like propensity evidence, bad character evidence and similar fact evidence. Chapter two digs into the theoretical and historical foundation of bad character evidence in Nigeria criminal trials as it takes into cognizance common law and statutory influences. It also contains jurisprudential basis; the theories of justice and fairness in Nigeria

criminal trials, and the principles of evidence law in Nigeria criminal trials. Chapter two also includes a literature review of the subject matter that encapsulates the admissibility of bad character evidence in Nigeria criminal trials examining the Evidence Act 2023, and other relevant statutory provisions, the impact of bad character evidence in trial outcomes in Nigeria and a comparative analysis of bad character evidence specifically considering the UK and Canadian jurisdiction.

Chapter three examines the institutional and legal framework for bad character evidence in Nigeria criminal trials, taking into cognizance the Evidence Act, Penal Code , Criminal Code, Administration of Criminal Justice Act, and the Constitution of the Federal Republic of Nigeria. It also provides for relevant international instruments to the subject matter e.g Universal Declaration on Human Rights, African Charter on Human and People's Rights, European Convention on Human Rights e.t.c, and the institutional frameworks i.e the Nigerian criminal justice institutions, law enforcement agencies (police, EFCC), court structure and jurisdiction and a comparative analysis of bad character evidence admissibility with UK and Canadian jurisdiction. It also provides for judicial guidelines and precedents and regulatory bodies and oversight.

Chapter four examines the efficacy and admissibility of bad character evidence in Nigeria criminal trials, paying particular attention to the challenges and controversies surrounding the subject matter. It examines judicial application and interpretation of bad character evidence in Nigeria criminal trials, for instance analyzing the supreme court and court of appeal decisions and the impact of admitting bad character evidence on defendant's rights and outcome of trial. It also proposes recommendations which include legislative reforms, judicial training and

guidelines, alternative form of evidence and prejudicial and probative balance. It also contains future research directions.

Chapter five is the conclusive chapter, it incorporates summary of key findings from the research; the efficacy and admissibility of bad Character evidence in Nigerian criminal trials, challenges and controversies surrounding it's application, judicial interpretation and application of relevant laws and statutes, impact on trial outcomes and defendant's rights, also recommendations for reforms as well as contributions to knowledge.

## **1.8 CONCLUSION**

In conclusion, this chapter has laid the foundation for a comprehensive examination of bad character evidence in Nigerian criminal trials. The subsequent chapters will delve into the conceptual framework, admissibility criteria and implications of bad character evidence, culminating in recommendations for reform and improvement. Through this study, researcher aims to contribute meaningfully to the discourse on evidence law and enhance the efficacy and fairness of the Nigerian criminal justice system.

## **CHAPTER TWO**

### **CONCEPTUAL AND THEORETICAL FRAMEWORK AND LITERATURE REVIEW**

#### **2.1 CONCEPTUAL CLARIFICATION**

##### **2.1.1 Bad Character Evidence**

The word Character is a complex and multifaceted concept, which may have variety of meaning depending on the context in which it is used. It has been defined as evidence regarding someone's general personality traits or propensities, of a praise worthy or blame worthy nature, evidence of a person's moral standing in a community.<sup>20</sup>It is the combination of traits and qualities that distinguish an individual or makes him/or her stand out. They are unique qualities and attributes that helps in the identification of living beings.

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<sup>20</sup> Garner, A Bryan, Black,H Campbell, *Blacks Law Dictionary* (9th edn,St. Paul, MN: West,2009)

However, bad character is a person's consistent pattern of unfavourable qualities and traits that are disadvantageous to the person and to others. It is a person's consistent and harmful behaviour that hurts himself/or herself and hurts others. In simple terms, It is the totality of evidence of a defendant's prior misconduct which suggests that he/or she has the tendency to commit similar crime or to be untruthful.<sup>21</sup>

### **2.1.2 Bad Character as a Fact in Issue**

In certain situations, a person's bad character can be directly relevant to the facts of a case making it a fact in issue. What this means is that the character trait is directly linked to the alleged offense. Bad character can become a fact in issue where it is directly relevant to the outcome of a particular case and is contested by one or more of the parties to the case. Bad character as a fact in issue mostly relates to previous conviction of the accused, because it is the previous conviction that is generally an ingredient of another offence. A compelling instance is the offence of being a rogue and vagabond under section 250(1) of the Criminal code where proof of previous conviction for being an idle and disorderly person under section 249 of the code is necessary to establish the offence.<sup>22</sup> Another notable illustration is the charge of receiving stolen property, evidence of the accused previous conviction of any offence involving fraud and dishonesty within five years preceding date of current charge will be adduced because it is a necessary ingredient for establishing the facts in issue. Also reference can be made to section

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<sup>21</sup> Lexis Nexis 'Bad character definition' <<https://www.lexisnexis.co.uk/legal/glossary/bad-character>> accessed 1 November 2024

<sup>22</sup> Criminal Code Act (1916) Cap C. 38, Laws of the Federation of Nigeria, 2004

405(2) of the Penal code which requires (in a charge of being an incorrigible vagabond) the prosecution to show that the accused had previously been convicted for being a vagabond.<sup>23</sup>

### **2.1.3 Admissibility**

Admissibility of evidence is generally governed by the principal Act; The Evidence Act 2023.<sup>24</sup> Generally, the basic principle governing the realm of evidence in Nigeria is that only evidence which is relevant to the fact in issue or some other facts which are relevant to the facts in issue can be admissible before the court. Cambridge dictionary defines admissibility as the fact of being satisfactory and acceptable in a law court.<sup>25</sup> According to Cross and Tarper, the main general rule governing the entire subject is that all evidence which is sufficiently relevant to an issue before the court is admissible and all that is irrelevant, or insufficiently relevant, should be excluded.<sup>26</sup>

From the above it is clear, that the courts are only permitted to admit evidence which is relevant to the case at hand and all other evidence that is irrelevant is inadmissible. However, not every relevant fact is admissible. For instance, section 1 of the Act provides that evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and to no others:

Provided that\_

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<sup>23</sup> Penal Code Act: Federal Republic of Nigeria, Cap 53 LFN 2004

<sup>24</sup> Evidence Act(Amendment Act) 2023, s 1

<sup>25</sup> Cambridge Dictionary, 'Admissibility' < <https://dictionary.cambridge.org/us/dictionary/english/admissibility> > accessed 1 November 2024

<sup>26</sup>R Cross and C Tarper, On Evidence (London: 9th edn, London: Butterworths, 1999)55

- a) The court may exclude evidence of facts which though relevant or deemed to be relevant to the issue, appears to it to be too remote to be material in all the circumstances of the case; and
- b) This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force.<sup>27</sup>

This section stipulates the exclusionary rules of evidence, and it is to the effect that where evidence rendered before the court appears to be too remote even though it is relevant to the fact in issue, it should not be admitted. What this means is that, the court is of the discretion to discard any evidence which in its opinion is too remote to a particular fact in issue. In as much as, no definition of "remote" is given by the statute. It has been explained to mean where an evidence lacks a direct connection to the fact in issue, is overly speculative or indirect or doesn't provide sufficient relevance or probative value.<sup>28</sup>

#### **2.1.4 Relevance of Bad Character Evidence in Nigeria Criminal Trials**

Bad character evidence plays a remarkable role in Nigeria criminal trials but its admissibility and relevance are strictly regulated. Generally, character evidence of either party is irrelevant and inadmissible in criminal trials. For over a century, the courts have attempted to resolve the conflict between proof and prejudice by laying down rules on admissibility for evidence of accused bad character and other misconduct. Two things at least are agreed, one is that the decision on admissibility is a question of law for the trial judge, even though the decision itself may involve the judge on estimation of degrees of relevancy and cogency of such evidence. The

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<sup>27</sup> Evidence Act, 2023

<sup>28</sup> A Babalola, 'Relevance and Admissibility' in Afe Babalola (ed) *Law and Practice of Evidence in Nigeria*, (1st edn, Ibadan: Sibon Books, 2001) 15

other is that, although the rules of admissibility are relatively easy to state, their generality makes them difficult to apply in the perpetually varying circumstance in which the issue of admissibility may arise.

There are particular assumptions that underlie the treatment of evidence of character. In very simple terms, it is assumed that such evidence is relevant to propensity as well as to credit. Thus evidence that a person is of good character is considered relevant to her propensity to act in a manner consistent with that good character, and relevant to her credibility. Conversely, evidence of a person's bad character is considered relevant to her propensity to act in a manner consistent with that bad character as well as relevant to her lack of credit.

Drawing reference from the English case of *R v Vye*, the court held that character evidence is relevant to both credit and propensity (or, more specifically the lack of propensity).<sup>29</sup> Thus the fact that the defendant is of good character is thought to indicate that he or she is a person worthy of belief, and a person unlikely to have committed the offense with which he or she is charged. In criminal cases, character evidence is generally thought to have probative value on the issue of guilt and innocence. In Nigeria, the evidence of character of either party to a judicial proceeding is irrelevant and inadmissible and in a criminal proceeding the evidence of bad character (reputation) of the accused, or his previous conviction or previous acquittal is also irrelevant and inadmissible unless the Evidence Act or other statute so permits. In this regard admissibility of the evidence system in a criminal trial would be determined by asking, in each case, whether the probative value of each evidence outweighs the prejudicial effect.<sup>30</sup>

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<sup>29</sup> [1993] 1WLR 471,[1993] 3 ALL ER 241

<sup>30</sup> *DPP V P* [1991] 2 AC 447

## 2.2 KEY CONCEPTS

### 2.2.1 Propensity Evidence

Propensity refers to a person's inclination or tendency to behave in a certain way which is often influenced by their character, past traits or experiences and personality. It is a natural tendency that you have to behave or act in a certain way.<sup>31</sup> Propensity evidence refers to evidence that is presented before the court in order to establish a person's tendency to act in a certain way or behave in a certain manner which is relevant in proof of the offence charged.<sup>32</sup> The evidence is thought to threaten factual accuracy, efficacy and liberal values. Propensity evidence is also referred to as disposition evidence or character evidence and it denotes evidence which shows that a person or thing has a continuing propensity to behave in a particular manner or act with a particular state of mind.

### 2.2.2 Similar fact evidence

Similar fact rule is that rule which prevents a party, usually the prosecutor from leading evidence showing the discreditable disposition of the other, usually the accused, as derived from his discreditable acts.<sup>33</sup> Generally, similar fact evidence is inadmissible. It is one of the exclusionary rules in the law of evidence, along with character evidence. Prior to the advent of the Evidence Act in Nigeria, the common law rule of similar evidence was upheld in the case of *Makin v Attorney General of New south Wales* per Lord Herschell as follows:

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<sup>31</sup> Collins Dictionary, 'Propensity' <<https://www.collinsdictionary.com/dictionary/english/propensity>> accessed 1 November 2024

<sup>32</sup> Armstrong Legal, 'Propensity Evidence and Relationship Evidence' <<https://www.armstronglegal.com.au/criminal-law/wa/evidence/propensity-relationship-evidence/>> accessed 1 November 2024

<sup>33</sup> Cross and Tarper (n 7) 333

It is undoubtedly not competent for the prosecution to adduce evidence tending to share that the accused had been guilty of criminal acts other than those covered by the indictment, for the purpose of leading to the conclusion that he is a person likely from his criminal conduct or character to have committed the offense for which he is being tried.<sup>34</sup>

The general rule for inadmissibility of similar fact evidence has been applied in a number of cases. For example in *Noor Mohammed v R*, the accused was charged with the murder of his mistress who had died from cyanide poisoning. The accused who was a goldsmith and was on bad terms with her had access to cyanide. There was no evidence that the accused had administered poison to her. The prosecution however sought to adduce evidence of the death from cyanide poison of the accused former wife, with whom he had been on bad terms with before her death. The accused had never been charged with causing her death. The privy council held, quashing the conviction of the appellant that the evidence that the appellant's former wife had died of similar poisoning two years back was inadmissible and that reception of such evidence was likely to lead to unfair prejudice of accused trial.<sup>35</sup>

The exceptions to the rule against the admissibility of similar fact evidence are stated under the Evidence Act 2023 by the provisions of section 12, section 35 and section 36.

Section 12 provides that when there is a question whether an act was accidental or intentional, or done with a particular knowledge or intention or to rebut any defense that may otherwise be open

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<sup>34</sup> [1893]UKPC 56, [1894] AC 57

<sup>35</sup> [1949] AC 182, [1949]1 ALL ER 365(PC)

to the defendant, the fact that such act formed part of a series of similar occurrences in each if which the person doing the act was concerned, is relevant.<sup>36</sup>

Section 35 allows admissibility of similar fact evidence where the subject matter has a common origin. It provides that acts of possession and enjoyment of land may be evidence of ownership or of a right of occupancy not only of the particular piece of land with reference to which such acts are done, but also of other land so situated or connected with it by similarity that what is true as to one piece of land may likely be true of the other.<sup>37</sup>

Section 36 of the Act provides that whenever any person is being proceeded against for receiving any property, knowing it to have been stolen, or for having in his possession stolen property, for the purpose of proving guilty knowledge there may be given in evidence at any stage of the proceedings\_

(1). (a) The fact that the property stolen within the period of 12 months preceding the date of the offence charged was found or has been in his possession.

(b) The fact that within the 5 years preceding the date of the offence charged he was convicted of any offence involving fraud or dishonesty.

(2) The fact mentioned in subsection (1)(b) of this section may not be proved unless\_

(a) 7 days- notice in writing has been given to the offender that proof of such previous conviction is intended to be given, and

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<sup>36</sup> Evidence Act, 2023

<sup>37</sup> Ibid

(b) Evidence had been given that the property in respect of which the offender is being tried was found or had been in possession.<sup>38</sup>

### **2.2.3 Character Evidence**

Character evidence is a term used in the law of evidence to describe any testimony or document submitted for the purpose of proving that a person acted in a particular way on a particular occasion based on the character or disposition of that person. It is evidence on an individual's personality traits, propensities or moral standing. The Evidence Act defines character as reputation as distinguished from disposition.<sup>39</sup> Under section 78 of the Act, in civil cases, the fact that the character of a person is such as to render probable or improbable any conduct, imputed to him is inadmissible except in so far as such character appears from facts otherwise relevant. In other words, evidence of character in civil cases is only admissible if it is relevant in order to determine the matter in issue provided it is not oppressive or unfair to the other party. In civil cases, the fact that the character of a person is such as to affect the amount of damages which he ought to receive may be given in evidence.

Generally in criminal cases, evidence of bad character is irrelevant. However, evidence of good character in criminal proceedings is admissible.<sup>40</sup> Section 82(1) of the Evidence Act provides that except as provided in the section, evidence of the fact that a defendant is of bad character is inadmissible in criminal proceedings. The exceptions to this general rule are in section 82(2) of

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<sup>38</sup> Ibid

<sup>39</sup> Evidence Act 2023, s 77

<sup>40</sup> Evidence Act 2023, s 81

the Act. Also, whenever evidence of bad character is admissible, evidence of previous conviction is also admissible.<sup>41</sup>

## **2.3 THEORETICAL AND HISTORICAL FOUNDATION**

### **2.3.1 Historical Development**

#### **Evolution of Bad Character Evidence in Nigerian Law**

The principle of character evidence draws strength from English Common law. The rationale behind this principle is that the past character of an accused should not be used to judge an instant case. Using history to determine an instant case may result in substantial injustice and prejudice to the ongoing proceeding. However reliance is placed on character evidence primarily to estimate the commission or non-commission of an act. The celebrated case of *R v Rodley* illustrates clearly the rationale behind this principle. Here, the accused had an history of promiscuity but was charged with house breaking and intent to commit rape. Evidence of the accused promiscuous character was raised, the court of Appeal held that such evidence was irrelevant and inadmissible. The rationale for this decision was based on the premise that each case should be judged on its own merit and the history of an accused should not be used to determine outcome of an instant proceeding as this may lead to prejudice to trial of accused.<sup>42</sup>

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<sup>41</sup> *Maxwell v DPP* [1934] UKHL J0601\_1, [1935] AC 309

<sup>42</sup> [1913] 3KB 468

Narrowing this down to Nigeria jurisdiction, there is no doubt that the principle of character evidence is in operation in Nigeria criminal trials. As a general rule, bad character evidence is inadmissible. However this rule is subject to exceptions provided by the statutes.<sup>43</sup>

### **Common Law and Statutory Influences:**

In Nigeria, the admissibility of bad character evidence in criminal trials is influenced by both common law and statutory provisions. At common law, the rule against hearsay and the principle of relevance govern the admissibility of bad character evidence. Generally, under the common law, character evidence is inadmissible in criminal cases unless the defendant raises the issue first. While common law principles initially governed its admissibility, the Evidence Act 2023 provides clearer guidelines, emphasizing that relevance is the hallmark of admissibility. Under our Nigeria statute, the fact that a person is of bad character is irrelevant and Inadmissible in Criminal trials.<sup>44</sup> However there are few exceptions to this general provision under the Act;

- a) When the bad character of an accused is in issue.
- b) When the defendant has given evidence of his good character.
- c) A defendant may be asked questions to show that he is of bad character in the circumstances mentioned in paragraph (g) of the proviso to section 180.

Unless any of these exceptions apply, reception of bad character evidence is wrong and a conviction may be quashed on that ground unless there is other evidence to sustain the conviction or no injustice is thereby occasioned.<sup>45</sup>

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<sup>43</sup> Evidence Act 2023, s 82(1-5),s 180g

<sup>44</sup> Evidence Act 2023, s 82(1)

<sup>45</sup> Evidence Act 2023, s 82(2)

The intricate dance between common law and statutory provisions in Nigeria's criminal justice system ensures that bad character evidence is handled with precision. As the principal Act and landmark cases demonstrate, the exceptions to admissibility have been crafted carefully to balance fairness and justice.

### **2.3.2 Jurisprudential Basis**

The jurisprudential basis for admitting bad character evidence in Nigeria criminal trials is hinged on an intricate interplay between the principles of justice, fairness and the rule of law.

There is no gainsaying the fact that no man is ever happy where and when he is treated unfairly, and the desire for equality and fair treatment of all is a universally shared trait. Fair hearing is a fundamental principle in any justice or legal system that guarantees that individuals get a chance to present their case and defend themselves.<sup>46</sup> A fair trial is a means of separating the guilty from the innocent and protecting the human person against the infraction of the judicial process. Without this right, the rule of law and public faith in the justice system could wither away. It is considered the 'birth right of every citizen'.<sup>47</sup>

The right to a fair trial otherwise referred to as "fair administration of justice" is one of the cornerstones of a democratic society which invariably involves abiding by the rule of law. The right to a fair trial in Africa is enshrined in Articles 3, 7 and 26 of the African Charter on Human

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<sup>46</sup> Nnamdi Ezekwem ' Understanding the concept of Fair Hearing in Nigeria' <<https://topeadebayolp.com/understanding-the-concept-of-fair-hearing-in-nigeria/>> accessed 31 October 2024

<sup>47</sup> Rule of Law Education Centre 'Fair and Prompt Trials' <<https://www.ruleoflaw.org.au/principles/fair-and-prompt-trial/>> accessed 31 October 2024

and people's rights.<sup>48</sup>In Nigeria, this right is enshrined in chapter four of the Nigerian constitution of 1999 as amended, and its provisions are specifically under section 36(1).<sup>49</sup>

The rule of law itself is a concept that determines the supreme authority of the law over governmental action and individual behaviour. It is the supremacy of the law over all individuals and institutions in the state, both the government and the governed, and the concept of fair hearing and the rule of law are both drawn from the principle of natural justice.<sup>50</sup>

When we speak of natural justice we simply mean doing what is right and fair in all circumstances. It is the foundation of a just society where everyone is treated with dignity and respect. The principles of natural justice were accepted as early as in the days of Adam and Eve the first human beings that lived in the earth. Later on, it was adopted by English jurists to be so fundamental as to override all laws and Lord Evershed in *Vionet v Barrett* remarked 'Natural justice is the sense of what is right and wrong'.<sup>51</sup>

The significance of the principle of natural law has been expounded upon by various authorities and legal systems. St Augustine once stated 'That which is not just seems to be no law at all.'<sup>52</sup>Consequently, every human law has just so much of the nature of law and it is derived from

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<sup>48</sup> United Nations General Assembly, The Universal Declaration of Human Rights (UDHR), New York: United Nations General Assembly, 1948 <<https://www.refworld.org/legal/resolution/unga/1948/en/11563>> accessed 26 October 2024

<sup>49</sup> The Constitution of the Federal Republic of Nigeria 1999 (as amended), (Act No 24) 5 May 1999,

<sup>50</sup> Anthony Valcke, 'The Rule of Law: Its Origins and Meanings (A short guide for practitioners)'

<[https://www.researchgate.net/publication/255726723\\_The\\_Rule\\_of\\_Law\\_Its\\_Origins\\_and\\_Meanings\\_A\\_Short\\_Guide\\_for\\_Practitioners](https://www.researchgate.net/publication/255726723_The_Rule_of_Law_Its_Origins_and_Meanings_A_Short_Guide_for_Practitioners)> accessed 2 November 2024

<sup>51</sup> [1985]55 LJQB 39, 45

<sup>52</sup> Wikipedia, 'An unjust law is no law at all' <[https://en.m.wikipedia.org/wiki/An\\_unjust\\_law\\_is\\_no\\_law\\_at\\_all](https://en.m.wikipedia.org/wiki/An_unjust_law_is_no_law_at_all)> accessed 1 October 2024

the law of nature. But if at any point it deflects from the law of nature it is no longer law but a perversion of the law. According to Rawls, the intuitive notion of justice is that individuals are equals in a society that itself is a system of fair cooperation.<sup>53</sup> Thus, he thinks that, at a minimum, justice will mean a certain kind of equality that fosters cooperation among members of society. Betham's definition of justice hinged on the utilitarian theory sees justice as that whose aim maximises the general welfare or happiness.<sup>54</sup>

From a legal positivist stand point, the Nigerian Evidence Act 2023 provides the statutory backbone for understanding the rules governing bad character evidence in Nigeria criminal trials. However this must be balanced against justice theory considerations, ensuring fairness and impartiality in trial proceedings. On one hand the principle of relevance as enshrined under section 1 of the Evidence Act 2023 necessitates the consideration of bad character evidence to establish guilt. Conversely, the right to a fair trial and protection against self-incrimination as guaranteed by section 36(1) and section 36(5) of the 1999 constitution of the Federal Republic of Nigeria, caution against admitting evidence that may prejudice the defendant. In the old case of *Mohammed Oladapo Ojengbede v M. O.Esan (Loja\_Oke)*, the supreme court held as follows:

There can be no doubt that fair hearing is in most cases synonymous with natural justice, an issue which clearly is at the threshold of our legal system. Once there had been a denial of fair hearing as guaranteed under section 33(1) of the constitution of the Federal

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<sup>53</sup> Daniel Cole and Christine Serva, 'A Theory of Justice by John Rawls: Summary, Analysis and Quotes' <[https://study.com/learn/lesson/theory-of-justice-john-rawls-summary-analysis-quotes.html?srltid=AfmBOoqQ1IEaqvsXnomBtC3QEC-0MyoPjzLV1holVWYoM\\_DP6s2XKHih](https://study.com/learn/lesson/theory-of-justice-john-rawls-summary-analysis-quotes.html?srltid=AfmBOoqQ1IEaqvsXnomBtC3QEC-0MyoPjzLV1holVWYoM_DP6s2XKHih)> accessed 1 November 2024

<sup>54</sup> Aditya Negi, 'Theory of Bentham: Utilitarian Principle' *International Journal of Novel Research and Development (IJNRD)* [2023] (8)(5)3 <<https://www.studocu.com/in/document/university-of-allahabad/political-science/ijnrd-2305631/87920267>> accessed 2 November 2024

Republic of Nigeria, 1979 as amended, the whole proceedings automatically became vitiated with a basic and fundamental irregularity which renders them null and void.<sup>55</sup>

Similarly in *Ezechukwu v Onwuka*, the Court of Appeal stated that 'Fair hearing is a hearing which is fair to all parties to the suit, whether the plaintiff, defendant, prosecutor or the defence.'<sup>56</sup>

In all, the efficacy and admissibility of bad character evidence in Nigerian criminal trials hinge on the delicate balance between justice, fairness, and the rule of law. The sacrosanct right to a fair trial, enshrined in the African Charter and Nigerian Constitution, is paramount. The Nigerian Evidence Act 2023 navigates this complex landscape, establishing guidelines for evidence admissibility and protecting against self-incrimination. The exclusion of character evidence by the Act and provision of exceptions, ensures fairness and prevents prejudice. By balancing probative value and prejudice, courts can safeguard the accused's rights. Ultimately, adherence to natural justice principles and the Evidence Act guarantees that justice is served, upholding the integrity of Nigeria's criminal justice system.

## **2.4 LITERATURE REVIEW**

### **2.4.1 Admissibility of Bad Character Evidence in Nigeria Criminal Trials**

In criminal proceedings, evidence of the fact that a defendant is of good character is admissible. The character of a witness in criminal proceedings is always relevant to his or her credit to show that he or she is a person of good character and worthy to be believed. Such evidence of good

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<sup>55</sup> [2001]NGSC 3

<sup>56</sup> [2005] ALL FWLR (Pt 280) 1514

character can be rebutted by the prosecution especially where such rebutting evidence is clear and compelling. In *Haruna and others v Police*, the applicant was charged with abatement of robbery. He called as a witness, a bank manager who provided evidence of the defendant's good character and financial background. This was held admissible as evidence of good character.<sup>57</sup>

Generally, evidence of the fact that a defendant is of bad character is inadmissible in criminal proceedings except as provided under the Evidence Act.<sup>58</sup> The rationale for this is that evidence of bad character, if admitted, can prejudice an ongoing trial, resulting in substantial injustice on the part of the accused. Similarly, evidence of bad character if admitted may impugn the mind of the court, creating an impression that the accused is guilty. Also, the mere fact that a defendant has been charged with an offence is no proof that he committed the offence. In the case of *Maxwell v DPP*, Maxwell was convicted of manslaughter for attempting to procure an abortion, resulting in a woman's death. Upon appeal, Maxwell challenged the admissibility of evidence regarding a previous, similar charge for which he was acquitted. The House of Lords ruled that, generally, questions about prior acquittals or charges should not be asked unless they directly clarify a specific issue for the jury or relate to the defendant's credibility.<sup>59</sup> In *R v Cokar*, the appellant, a man of poor intelligence, was convicted of entering a dwelling house with intent to steal, despite not taking anything. He claimed he went to sleep, feeling unwell. The prosecution introduced evidence of a previous, similar charge for which he was acquitted. The Court of Criminal Appeal overturned the conviction, ruling that this evidence was inadmissible under Section 1(f) of the Criminal Evidence Act 1898. The court held that the exception only permits

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<sup>57</sup> [1967] NMLR 145

<sup>58</sup> Evidence Act 2023, s 82

<sup>59</sup> *Maxwell v DPP* (n19) 309

evidence of prior convictions or commissions, not charges, and that admitting such evidence was prejudicial. The judges found that the prohibition on referencing prior charges or acquittals is only lifted when proving a prior conviction or commission is relevant to the current case.<sup>60</sup>

#### **2.4.2 Impact of Bad Character Evidence on Trial Outcomes in Nigeria**

This section investigates the impact of bad character evidence on trial outcomes in Nigeria. Through a critical analysis of decided cases, it provides valuable insights into the practical implications of bad character evidence in Nigeria criminal trials. In *Noor Mohammed v R*, The privy council deemed evidence of the defendant's former wife's death inadmissible, leading to quashing of the conviction. The court recognized that admitting such evidence would lead to unfair prejudice, highlighting the significance of balancing probative value against potential prejudice.<sup>61</sup>

In the case of *Din v African Newspaper Limited* the decision of the court illustrated that previous conviction can be relevant if the plaintiff claims good reputation potentially reducing damages.<sup>62</sup>

In *Haruna and others v the Police*, The bank manager's testimony about the accused's good financial background and lack of involvement in any trouble was admitted as evidence of good character. This decision emphasizes that character evidence must be of specific type to the offense. For instance if the offense involves dishonest behavior, the focus should be on the

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<sup>60</sup> [1960] 2 QB 207, [1960] 2 ALL ER 175

<sup>61</sup> *Mohammed v R* (n 16) 182

<sup>62</sup> [1990] NGSC 39

defendant's dishonesty and not the other aspects of the defendant's character.<sup>63</sup> This case illustrates how character evidence can influence trial outcome and how good character evidence may contribute to acquittal or lenient sentencing. The criminal case of *Audi Maizanko and Another v superintendent of police* demonstrates how allegations against prosecution or witnesses can lead to cross examination about the defendant's bad character. The court allowed questions about the defendant's previous conviction citing section 180(g) of the Evidence Act. This exception enables the prosecution to challenge the defendant's character if their defence involves imputations on the prosecutor or witness character.<sup>64</sup> It is noteworthy from the above that the admission of a defendant's previous conviction during cross examination likely undermines their credibility in the eyes of the court and revelation of past offenses may strengthen the prosecution case, increasing the likelihood of conviction.

Conclusively, the courts delicate balance between probative value and potential prejudice underscores the need for cautious consideration. As a whole, it is noteworthy that good character evidence may mitigate sentences or aid acquittal while bad character evidence can increase the likelihood of conviction. The Nigerian judiciary multifaceted approach highlights the importance of relevance, specificity, and fairness. Hence the need for legal practitioners and judges alike to carefully navigate character evidence, ensuring that its admission or exclusion aligns with the principles of justice and fairness, ultimately promoting the integrity of Nigeria criminal trials.

### **2.4.3 Comparative Analysis of Admissibility of bad character evidence with Nigeria and United Kingdom jurisdiction**

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<sup>63</sup> *Haruna and others v the Police* (n 38) 145

<sup>64</sup> [1960] WNLR 188

The admissibility of bad character evidence varies significantly across jurisdictions. This analysis compares the approach of Nigeria and the United Kingdom, examining the similarities and differences in admitting bad character evidence in criminal trials.

Character evidence in the United Kingdom is governed by the Criminal Justice Act 2003.<sup>65</sup>

The definition of bad character evidence is provided under section 98 of the Act as follows;

References in this chapter to evidence of a person's 'bad character' are to evidence of, or of a disposition towards, misconduct on his part, other than evidence which \_

- (a) has to do with alleged facts of the offence with which the defendant is charged; or
- (b) is evidence of misconduct in connection with the investigation or prosecution of that offence.

The term "misconduct" is further defined in section 112 of the Act as the commission of an offence or other reprehensible conduct.<sup>66</sup> The definition is intended to include evidence such as previous convictions, as well as evidence on charges being tried concurrently, and evidence relating to offences for which a person has been charged, where the charge is not prosecuted, or for which the person was subsequently acquitted. This reflects the state of the current law and even if past criminal charges are minor in nature, they will still constitute misconduct under section 112 of the Act.

On a literal reading, the phrase "other reprehensible behaviour" is probably wide enough to cover a wide range of conduct including that which is not criminal. However some of the early

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<sup>65</sup> Criminal Justice Act (UK Public General Acts) 2003,(c 44)

<sup>66</sup> Ibid

decisions seem to suggest that the courts are reluctant to interpret the provision in such a broad manner. For instance in *R v Renda*, The defendant's unfitness to plead was considered by the court as not to constitute "misconduct" for the purposes of the act.<sup>67</sup>

Section 100 of the Act sets out the circumstances in which, outside the alleged facts of the offense and its investigation and prosecution, evidence can be given of the previous misconduct of a person other than a defendant in the proceedings.<sup>68</sup> This might be a witness in the case of a victim but extends to any other person as well. Section 100(4) provides that evidence of their bad character is not to be given without the permission of the court and can only be given if it meets one of three conditions. These are:

- a) It is important explanatory evidence,
- b) It is of substantial probative value to a matter in issue and that issue is one of substantial importance in the case, or
- c) The prosecution and defence agree that the evidence should be admitted.

In several cases, the court has had to consider whether evidence had to do with the alleged facts of the offense. In *R v Machado*, The defendant was charged with robbery, he wanted to adduce evidence that during his encounter with the complainant, the latter offered to supply drugs to him and told him that the complainant had taken an ecstasy tablet. The prosecution argued that such evidence should not be admitted as it was evidence of character and was excluded by section 100 Criminal Justice Act 2003. Trial judge excluded evidence on this ground but the court of appeal held that he had been wrong to do so. The evidence related to the very circumstances in which

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<sup>67</sup> [2005] EWCA Crim 2826

<sup>68</sup> Criminal Justice Act 2003 (n 44)

the offense was alleged to have occurred.<sup>69</sup> For the defendant himself, section 101(1) of the Act provides that evidence of a defendant's bad character is admissible in the following circumstances:

- a) All the parties agree to it being given;
- b) The defendant introduces the evidence himself or it is given in response to a question put by the defendant (or his counsel) that is intended to elicit it;
- c) It is important explanatory evidence;
- d) It is relevant to an important issue between the defendant and prosecution;
- e) It has substantial probative value in relation to an important issue between the defendant and a co-defendant;
- f) It corrects a false impression given by the defendant about himself;
- g) The defendant has attacked the character of another person.

However, this is subject to an application by the defendant to have the evidence excluded if admitting it would have such an adverse effect on the fairness of the trial that it ought to be excluded.<sup>70</sup> The circumstances in which such an application can be made are where the evidence is relevant to an issue in the case between the defendant and prosecution or has become admissible because of the defendant's attack on another person. The above provided gateways has relaxed the common law's striking similarity (or enhanced relevance) requirement, and in this way it has signified completion of the transition to a strict regime of probative value. According to section 103(1)(a), matters in issue between the defendant and the prosecution include, among other things, 'the question whether the defendant has a propensity to commit

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<sup>69</sup> [2006] EWCA Crim 837

<sup>70</sup> Criminal Justice Act 2003 (n 44), s 103

offences of the kind with which he is charged, except where his having such a propensity makes it no more likely that he is guilty of the offence.’ Section 103(2) further mentions one way of proving propensity, namely by introducing evidence of previous convictions of an offence of the same description or category as the offence he is accused of. Admission is subject to section 101(3) that requires exclusion where the evidence would have an adverse effect on the fairness of the proceedings.

The court must not adduce evidence of the defendant’s bad character admitted under gateways (d) and (g) where it appears that the admission of it would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.<sup>71</sup>

Character evidence under the Nigeria jurisdiction is governed primarily by the Evidence Act 2023. Section 77 of the Act defines it as ‘reputation as distinguished from disposition, evidence of general reputation and not of particular acts’. Character may be used to buttress or cast doubt on the credibility of a person. Under section 78 of the Act, in civil cases, the fact that the character of a person is such as to render probable or improbable any conduct, imputed to him is inadmissible except in so far as such character appears from facts otherwise relevant i.e. Character becomes relevant where it is in issue. In civil proceedings, character is also Relevant in the following situations;

- a) Calculation of Damages; Section 79 provides to the effect that the fact that the character of any person is such as to affect the amount of damages which he ought to receive may be given in evidence.

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<sup>71</sup> Criminal Justice Act 2003 (n 44) s 101(3)

- b) Breach of promise to marry; In these cases, the character of the parties will be accessed. If the fiancée is a run girl, the court may hold that the man was right in refusing to marry her.<sup>31</sup>
- c) Reckless and Negligent Driving.
- d) In cases of defamation.

However, under criminal trials, evidence of the fact that a defendant is of bad character is inadmissible except in the following circumstances;

- a) When the bad character of the defendant is a fact in issue
- b) When the defendant has given evidence of his good character.

The third exception is contained under section 82(4) of the Evidence Act which provides that whenever evidence of bad character is admissible, evidence of a previous conviction is also admissible. Note also sub section (5) which provides that the court shall only admit evidence of previous convictions which are related in substance to the offence charged. These sections should be read together with section 180(g) of the Evidence Act that immunises the accused against incriminating questions that tend to show the accused's commission of other offences unless in circumstances stipulated by the Act.

A comparison of both jurisdictions reveals the presence of some similarities. For instance both jurisdictions recognize the relevance of bad character evidence in certain circumstances, both also have statutory provisions governing the admissibility of bad character evidence in criminal trials. For instance the Criminal Justice Act 2003 in the UK and the Evidence Act 2023 in Nigeria.

Another remarkable concordance is the fact that they both consider the probative value and prejudicial effect of bad character evidence in criminal trials. However, the definition of bad character evidence is broader in scope in the Criminal Justice Act than the Evidence Act.<sup>72</sup>The Criminal Justice Act also allows evidence of previous convictions even though not directly related to the charge. In addition, under the Criminal Justice Act, prosecution can adduce evidence of defendant bad character without consent of the defendant. This is unlike the Evidence Act, where there is a narrower definition of bad character evidence. It focuses on the reputation of the individual as distinguished from disposition. It also requires bad character to be a fact in issue or defendant to have given evidence of his good character before bad character evidence is admitted and under the Evidence Act, evidence of previous convictions are only admissible where they are related to the offence charged. One would notice that the Criminal Justice act provides for more relaxed rules for Admissibility unlike the Evidence Act that has stricter rules.<sup>73</sup>

To enhance the effectiveness and fairness of bad character evidence in criminal trials in Nigeria, drawing reference from the UK law, researcher suggests that there should be a clear definition of bad character evidence to include disposition towards misconduct aligning with international standards. Also the Evidence Act should adopt a more nuanced approach to admitting previous convictions considering its probative value and relevance to the charge.

Additionally, effective application of bad character evidence also requires recognizing judicial discretion's significance. Judges must carefully weigh the benefits against potential prejudice, considering factors like fairness, vulnerable witnesses, and public trust. Furthermore, clarity on

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<sup>72</sup> Criminal Justice Act 2003(n 44) s 98, Evidence Act 2023 s 77, s 82

<sup>73</sup> Criminal Justice Act 2003 (n 44) s 100\_112; Evidence Act 2023 s 82

gateway criteria, enhanced judicial guidance, and robust safeguards against prejudice are essential. Supplementally, Nigerian judges should be provided regular training on bad character evidence laws and best practices aligning it with international standards on the subject. They should be trained to ensure consistent application of bad character evidence laws and there should be periodic review and reform of these laws by the legislature to reflect emerging issues and best practices. The Evidence Act should emphasize the importance of probative value in determining admissibility as in the Criminal Justice Act 2003 and there should be clearer guidelines for judicial discretion in admitting bad character evidence similar to the United Kingdom. By embracing these learning points, the Evidence Act can refine its approach to admitting bad character evidence, promoting more informed and just decision-making in criminal proceedings.

## **2.5 CONCLUSION**

This chapter has provided a thorough examination of the conceptual, theoretical, and literary foundations of bad character evidence in Nigerian criminal trials. By elucidating key concepts, tracing historical developments, and reviewing pertinent literature, this analysis has established a robust framework for investigating the complexities surrounding bad character evidence paving the way for a critical examination of its admissibility, implications and role in the Nigerian criminal justice system.

## **CHAPTER THREE**

### **LEGAL AND INSTITUTIONAL FRAMEWORK FOR BAD CHARACTER EVIDENCE IN NIGERIA CRIMINAL TRIALS**

## 3.1 INTRODUCTION

### 3.1.1 Overview of the Nigerian Legal system and Conceptualization of Bad Character Evidence

Nigeria's legal system, a blend of common law, customary law, and Islamic law, provides a unique framework for the admission of bad character evidence in criminal trials. The country's criminal justice system is primarily governed by the Constitution of the Federal Republic of Nigeria 1999 as (amended), the Evidence Act (2023), the Criminal Code Act (2004) and the Penal Code Act (2004).<sup>74</sup> Within this framework, bad character evidence is conceptualised as information pertaining to a defendant's previous misconduct, disposition, or propensity to commit crimes. Section 82(1) of the Evidence Act provides that except as provided in this section, evidence of the fact that a defendant is of bad character is inadmissible in criminal proceedings.<sup>75</sup> This is the general rule as regards to the admission of bad character evidence in Nigeria criminal trials. This rule covers evidence of previous convictions also. There are three exceptions to the rule under the Act.<sup>76</sup> The fact that an accused is of bad character is admissible:

- a) When the bad character of the accused is a fact in issue; and
- b) when the accused person has given evidence of his good character. Furthermore, an accused person may be asked questions to show that he is of bad character in the circumstances mentioned in paragraph (c)

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<sup>74</sup> The Constitution of the Federal Republic of Nigeria 1999 (as amended), (Act No 24) 5 May 1999; Evidence Act (Amendment Act) 2023; Criminal Code Act (1916) Cap C. 38, Laws of the Federation of Nigeria, 2004;

Penal Code Act: Federal Republic of Nigeria, Cap 53 LFN 2004

<sup>75</sup> Evidence Act(Amendment Act)2023

<sup>76</sup> Evidence Act 2023, s 82(2)

c) of the proviso to section 180(g) of the Act.<sup>77</sup>

For the most part, as far as its usage within the law of evidence is concerned, ‘character’ refers to the tendency of a person to act, think or feel in a particular way.<sup>78</sup> ‘Disposition’ and ‘Propensity’ are alternative terms with the same meaning, and they are widely used in case law and academic commentary on the subject.<sup>79</sup> Disposition means the tendency to act, feel or think in a particular way.<sup>80</sup> It is common knowledge that a person who has an evil disposition may nevertheless have a good reputation, depending on how far the society is aware of his evil disposition.

In criminal proceedings, the accused's good character is a relevant factor.<sup>81</sup> Although the Act does not specify the purpose of this evidence, it is clear that good character alone cannot rebut a convincingly proven offence against the accused. In discussing character evidence, Foster stresses its purpose and states that to justify the admissibility of evidence in a criminal trial, fairness demands that it must have some relevance to an issue that concerns the offence alleged and that the probative value of such evidence must outweigh any potential prejudice against the defendant should it be admitted.<sup>82</sup>

## **3.2 LEGAL FRAMEWORK**

### **3.2.1 Evidence Act (Amendment Act) 2023**

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<sup>77</sup> Evidence Act 2023

<sup>78</sup> The Britannica Dictionary, ‘Character’ < <https://www.britannica.com/dictionary/character> > accessed 14 November 2024

<sup>79</sup> D Jonathan, MG Claire and T Marks, *Evidence in Context*’ (3rd edn, Routledge, 2012)

<sup>80</sup> Britannica Dictionary, ‘Disposition’, < <https://www.britannica.com/dictionary/disposition> > accessed 14 November 2024

<sup>81</sup> Evidence Act 2023, s 81

<sup>82</sup> S Foster, *Criminal Law and Practice* (1st edn, London : Sweet and Maxwell, 2008) 591

The Evidence Act (Amendment Act) 2023, an amendment of the principal Act provides a comprehensive legal framework for the admissibility and treatment of bad character evidence in Nigerian criminal trials.<sup>83</sup> This landmark legislation establishes clear guidelines and safeguards and aims to strike a delicate balance between the prosecution's need to present relevant evidence and the accused's right to a fair trial.

The general rule is that evidence of bad character of the accused is inadmissible in criminal trials.<sup>84</sup> If a prosecution witness were allowed to testify to the accused reputation as a man likely to have committed the offence, the purpose of the evidence could only be to support an argument that he is probably guilty because of his bad character. There are few exceptions to this general rule under the Act;<sup>85</sup>

- a) When the bad character of the accused is a fact in issue; In *R v Samuel*, the Court of Criminal Appeal held that, a person who was charged for the offence of larceny, put his character in issue when he gave evidence with regard to previous occasions on which he had returned lost property to its owner.<sup>86</sup>
- b) When the accused has given evidence of his good character and
- c) Circumstances where the accused may be cross examined to show that he is of bad character pursuant to the provision of section 180(g) of the Act.<sup>87</sup>

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<sup>83</sup> Evidence Act,(2011) 3 June 2011, <<https://www.refworld.org/legal/legislation/natlegbod/2011/en/104226>> (accessed 14 November 2024)

<sup>84</sup> Evidence Act 2023, s 82

<sup>85</sup> Evidence Act 2023, s 82 (2)

<sup>86</sup> [1956] 40 Cr App Rep 8

<sup>87</sup> Evidence Act 2023

Section 180(g) provides as follows;

(g) A person charged and called as a witness in pursuance of this section shall not be asked, and if asked, shall not be required to answer, any question tending to show that he has committed or been convicted of or been charged with any offence other than that which he is then charged, or is of bad character unless-

- i. the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence with which he is then charged, or
- ii. he has personally or by his legal practitioner asked questions of the witnesses for the prosecution with a view to establish his own good character or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the prosecutor or the witnesses for the prosecutor, or
- iii. he has given evidence against any other person charged with the same offence.

In *Audu Maizoko and another v Superintendent General of police*, the first appellant made allegations against the police and one of the witnesses for the prosecution. Consequently, the prosecution asked him questions about his previous conviction of some offences. The court held that the questions about his previous convictions were properly admitted under section 180(g)(ii).<sup>88</sup>

However in *R v Rouse*, the accused said in his evidence that the prosecutor was a liar. The court held that this did not amount to imputations on the character of the prosecutor.<sup>89</sup>

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<sup>88</sup> [1960] WNLR 188

<sup>89</sup> [1904] 1KB 184

In all, the Evidence Act (Amendment Act) 2023 is the primary legislative framework governing the admission of bad character evidence in Nigeria criminal trials, and it provides a comprehensive scope by stipulating general rules for admissibility, relevance, and weight of evidence.

### **3.2.2 Criminal Code Act (2004)**

This is an act to establish a code of criminal law applicable in southern states in Nigeria.<sup>90</sup> The Criminal Code Act is a codification of the common law with few amendments, and it is the apex codified law in Nigeria for criminal investigation, trial and punishment of criminals. It is a trite principle of law that to constitute a criminal offence, there must be the presence of the actus reus and the mens rea or guilty mind. Cockburn CJ in *R v Sleep* held that 'it is a principle of our law that to constitute an offence, there must be a guilty mind and that the principles must be imported into our statute.'<sup>91</sup>

As a general rule, a person cannot be convicted of a crime, unless it is proved that he or she has a guilty intent. This is enshrined in the principle 'Actus reus non facit reum nisi mens it rea.' In *R v Hibbert*, It was held that knowledge that a girl seduced was in possession of her parents was one of the conditions precedent to liability.<sup>92</sup>

Section 2 of the Act defines offence as an act or omission which renders the person doing the act or making the omission liable to punishment under this Code, or under any Act, or law, is called

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<sup>90</sup> Criminal Code Act (1916) Cap C. 38, Laws of the Federation of Nigeria, 2004

<sup>91</sup> [1861] 169 ER 1296

<sup>92</sup> [1995] 2 SCR 973

an offence.<sup>93</sup> In criminal trials, where an accused person is faced with charges, he is of the liberty to rely on the defence of mistake or lack of intent, as provided under Section 24 of the Criminal Code Act.<sup>94</sup> The first paragraph of this section provides that; subject to the express provisions of this Code relating to negligent acts and omissions, a person is not criminally responsible for an act or omission which occurs independently of the exercise of his will, or for an event which occurs by accident.

Consequently, the prosecution may seek to establish intent by introducing evidence of similar facts, previous convictions, or character, demonstrating the accused's disposition in society, because without intent a person will not be held liable for the commission of that offence. In *R v Cocker*, the appellant, a man of poor intelligence, was charged to court with entering the dwelling house of one Mr James Ballantyne with intent to steal. The evidence before the court was that he climbed through the open window of the house into a room in which Mr Ballantyne was sleeping. When Mr Ballantyne woke up, he found the appellant asleep in an armchair. The appellant did not steal anything including the money in the room which had not been touched. It was argued on behalf of the appellant that he had entered the room to sleep because he was not feeling well, and had not intended to steal anything. The prosecution sought tender evidence to prove the appellant's knowledge of the offence and intent (*mens rea*).<sup>95</sup>

The court in spite of objection from appellant's counsel, allowed questions to be put to the appellant in cross examination as to a previous occasion when he had been found on a private premises and charged with entering the premises with intent. On that occasion however, he had

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<sup>93</sup> Criminal Code Act (1916) (n 17)

<sup>94</sup> Criminal Code Act (1916) (n 17)

<sup>95</sup> [1960] 2 QB 207, [1960] 2 ALL ER 175

been acquitted. Nevertheless, the appellant was convicted, and his appeal against the conviction succeeded on the grounds of his acquittal in previous trial and that it was prejudicial and contrary to section 1(f) of the Criminal Evidence Act 1898.<sup>96</sup>

### **3.2.3 Penal Code (2004)**

The Penal Code also known as the Nigerian Penal Code Act (Chapter 53 Laws of the Federation of Nigeria 2004),<sup>97</sup> applies to the Northern states of Nigeria. Its key features are the clear definition of offences, punishments and defences. It also focuses on criminal liability, intention and consequences and covers offences such as homicide, theft, fraud and adultery. It is applied strictly to the Northern region of Nigeria and contains more severe punishment for certain offences e.g homicide. It also adopts a more nuanced approach to sentencing. Although the Nigerian Penal code does not explicitly provide guidelines for the admissibility of bad character evidence in Nigeria criminal trials, its provisions remain pivotal in defining offences and determining criminal liability in Northern Nigeria.<sup>98</sup>

### **3.2.4 Administration of Criminal Justice Act (2015)**

The Administration of Criminal Justice Act, 2015 (ACJA) which was signed into law in May 2015 is one of Nigeria's newest legislations that has introduced new mechanisms in Nigeria's criminal justice framework.<sup>99</sup> Essentially, Section 1 of the ACJA explains the purpose of the Act thus: The purpose of this Act is to ensure that the system of administration of criminal justice in

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<sup>96</sup> The Code of Criminal Procedure, 1898 (Act No. V of 1898)

<sup>97</sup> Penal Code Act: Federal Republic of Nigeria, Cap 53 LFN 2004

<sup>98</sup> Ibid

<sup>99</sup> Administration of Criminal Justice Act, 2015

Nigeria promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of the rights and interests of the suspect, the defendant, and the victim.<sup>100</sup>

This Act provides for the administration of Criminal justice system which is geared towards curing most of the lacuna and anomalies in the existing criminal laws. With the ACJA Nigeria now has a unique and unified law applicable in all federal courts and with respect to offences contained in Federal legislations.<sup>101</sup> Most Acts of the National Assembly establishing offences vests exclusive jurisdiction over such offences on the Federal High Court. Although offences created by the Robbery and Firearms(special Provisions Act)<sup>102</sup> are triable in the High Court of the state concerned, this Act of the National Assembly is only an exception and not the general rule. It is submitted that section 2(1) of the ACJA limits the application of the act to criminal trials for offences established by an Act of the National Assembly and other offences punishable in the Federal Capital Territory, Abuja.<sup>103</sup>

### **3.2.5 The Constitution of the Federal Republic of Nigeria (1999) As Amended**

The major statute guide for constitutional law in Nigeria is the Constitution of the Federal Republic of Nigeria, 1999<sup>104</sup>. According to former Justice of the Nigerian Supreme Court, Justice Nikki Tobi in the well celebrated case of *Abia state v Attorney General of the Federation*; ‘The constitution of a nation is the Fons et origo, not only of jurisprudence but also the legal system of

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<sup>100</sup> Ibid

<sup>101</sup> Ibid

<sup>102</sup> Robbery and Firearms (special Provisions Act) 1984 (No 5, 1986 No 28)

<sup>103</sup> ACJA (n 26)

<sup>104</sup> The Constitution of the Federal Republic of Nigeria 1999 (as amended), (Act No 24) 5 May 1999

the nation, it is the beginning and end of the legal system. In Greek language, it is the alpha and the omega.<sup>105</sup>

Specifically, section 4(2) of the Nigerian Constitution empowers the federal legislature to make laws for the Nigerian federation or any part thereof with respect to any matter included in the Exclusive legislative list set out in Part 1 of the second schedule to the constitution.<sup>106</sup> Subsection 3 of the same section of the Constitution does make the powers of the federal legislature to enact laws in connection with the items in the said Exclusive legislative list 'exclusive' to the federal legislature<sup>107</sup>.

Just like many other democratic democracies of the world that have adopted the supremacy of the constitution and have gone ahead to codify it, the constitution of Nigeria is not different in this respect. Section 1(1) of the CFRN 1999<sup>108</sup> as amended provides that the constitution is supreme and its provisions shall have binding force on all authorities and person's throughout the Federal Republic in Nigeria . In *Inakoju v Adeleke*, It was held that the removal of a former Governor of Oyo state by the House of Assembly of the State was null and void for failure to follow the laid down constitutional provisions under section 188 of the 1999 constitution.<sup>109</sup> Also in *A G Bendel v A G Federation*, the court held that section 2(1) and (2) of the Allocation of Revenue (Federation etc . Account Act) of 1981 which empowered the Federal Government to administer the share of state government from the Federation account without the latter's

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<sup>105</sup> [2001] 11 NWLR (Pt 725) 689 at 728

<sup>106</sup> CFRN 1999 (n 31)

<sup>107</sup> CFRN 1999 (n 31)

<sup>108</sup> CFRN 1999(n 31)

<sup>109</sup> [2007] 4 NWLR(Pt 1025) 423 at 588

authorisation was null and void by reason of its inconsistency with the provisions of the 1979 constitution.<sup>110</sup>

From the above decisions of the courts, it is crystal clear that the Constitution enshrines the supremacy clause. This is an irresistible mathematical conclusion about the fact that all act of government and the governed must mirror the provisions of the constitution otherwise, such acts will suffer the fate offered by section 1(3) of the 1999 constitution.<sup>111</sup>

### **3.2.6 Judicial Precedents and Case Laws**

In the case of *Din v African Newspaper Limited*, the appellant himself put his character in issue by claiming that he retired voluntarily from the Nigerian Army as a Captain after serving meritoriously for nine years, the fact of his previous conviction, sentence and subsequent dismissal from the Nigerian Army became critical in rebuttal of his claim for good reputation. The Supreme Court held that, were in a proceeding, the plaintiff puts his character in issue, and claims to be of good reputation, evidence of his previous conviction would be relevant.<sup>112</sup>

In *Maxwell v DPP*, the appellant was convicted of the manslaughter of a woman by using on her an instrument with intent to procure miscarriage. His appeal to the Court of Criminal Appeal was dismissed. From this decision he appealed to the House of Lords. The questions their Lordships had to consider was whether it was permissible in the particular facts of the case under the Criminal Evidence Act 1898, section 1 proviso (f), for the prosecution to ask the prisoner whether on a previous occasion he had been charged with a similar offence, the charge having

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<sup>110</sup> (SC. 17/1981) [1981] NGSC 5 (2 October 1981)

<sup>111</sup> CFRN 1999 (n 31)

<sup>112</sup> [1990] 3 NWLR, Pt 139,392

been tried and having resulted in an acquittal. The House of Lords held that the questions and answers were wrongly admitted.<sup>113</sup> Also in *Audu Maizako and Another v Superintendent General of Police*, the first appellant made allegations against the police and one of the witnesses for the prosecution. Consequently, the prosecution asked him questions about his previous conviction of some offences. The court held that the questions about his previous convictions were properly admitted.<sup>114</sup> This decision is in accordance with the provisions of section 180(g) (ii) of the Evidence Act 2023.<sup>115</sup>

Also in *R v Samuel*, The Court of Criminal Appeal held that, a person charged for the offence of larceny, put his character in issue when he gave evidence with regard to previous occasions on which he had returned lost property to its owner.<sup>116</sup> In *R v Rouse*, the accused said in his evidence that the prosecutor was a liar. The court however held that this did not amount to imputations on the character of the prosecutor.<sup>117</sup> According to Cross and Tarper, it is not possible to lay down any clear definition of what amounts to an imputation since so much necessarily depends upon the detailed facts of particular cases.<sup>118</sup>

These landmark cases illustrate the general rule on admissibility of bad character evidence in Criminal trials in Nigeria and the exceptions for its admissibility; when the defendant puts his character in issue, evidence of previous conviction to rebut claims of good reputation of the

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<sup>113</sup> [1935] AC 309

<sup>114</sup> *Audu Maizako and Another v Superintendent General of Police* (n 15) 188

<sup>115</sup> Evidence Act (Amendment Act) 2023

<sup>116</sup> *R v Samuel* (n 13)

<sup>117</sup> *R v Rouse* (n 16) 184

<sup>118</sup> Cross R and Tarper C, *On Evidence* (London: 9th edn, London: Butterworths, 1999) 401

defendant or to prove intent. However such evidence must be relevant and strictly necessary. The courts have consistently emphasised the importance of protecting the defendant's rights while ensuring fairness and justice .

### **3.2.7 Analysis of Relevant Provisions of the Various Statutes**

The Evidence Act (2023) is the principal Act governing evidence in civil and criminal proceedings.<sup>119</sup> It defines admissibility, relevance, weight of evidence, and regulates burden of proof and presumptions.

Section 77 \_ 82 of the Evidence Act regulates the rules governing the admissibility of character evidence in Nigeria ( both civil and criminal trials).<sup>120</sup>

Character is properly defined in section 77 to mean reputation as distinguished from disposition.<sup>121</sup> Section 78 provides for the general rule of inadmissibility of character evidence in civil cases. However section 79 and 80 of the Act is a caveat to the general rule.<sup>122</sup>

Section 81 provides that in criminal proceedings, evidence of the fact that a defendant is of good character is admissible.<sup>123</sup> This is the general rule as provided for by the Act. However section 82(2) provides exceptions which include;

(2) The fact that a defendant is of bad character is admissible\_

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<sup>119</sup> Evidence Act (Amendment Act) 2023

<sup>120</sup> Ibid

<sup>121</sup>Ibid

<sup>122</sup>Ibid

<sup>123</sup> Ibid

- a) When the bad character of the defendants is a fact in issue; or
- b) When the defendant has given evidence of his good character.

(3) A defendant may be asked questions to show that he is of bad character in the circumstances mentioned in paragraph (g) of the proviso to section 180.

(4) Whenever evidence of bad character is admissible, evidence of a previous conviction is also admissible.

(5) In cases where subsection (4) of this section applies, the court shall only admit evidence of previous convictions which are related in substance to the offence charged.<sup>124</sup>

(6) Evidence of a previous conviction shall be proved in accordance with Part XIII.

Section 180 paragraph (g) provides that;

A person charged and called as a witness in pursuance of this section shall not be asked, and if asked, shall not be required to answer, any question tending to show that he has committed or been convicted of or been charged with any offence other than that with which he is then charged, or is of bad character unless\_

- i. The proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence with which he is then charged, or
- ii. He has personally or by his legal practitioner asked questions of the witnesses for the prosecution with a view to establish his own good character or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the prosecutor or the witnesses for the prosecutor, or

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<sup>124</sup> Ibid

iii. He has given evidence against any other person charged with the same offence.<sup>125</sup>

As identified earlier, the Constitution of the Federal Republic of Nigeria 1999 (as amended) is also a relevant statute to this subject matter, because it is the Grundnorm from which other laws derive their validity.<sup>126</sup> So any law which is inconsistent with the provisions of the constitution is invalid.

### **3.3 INTERNATIONAL INSTRUMENTS**

#### **3.3.1 Universal Declaration of Human Rights (UDHR) 1948**

The Universal Declaration of Human Rights (UDHR) was adopted on the 10th of December 1948.<sup>127</sup> The UDHR is widely recognized as having inspired, and paved the way for the adoption of more than seventy human right treaties, applied today on a permanent basis at global and regional levels. It has profoundly shaped international human rights law and criminal justice standards. As a foundational instrument, the UDHR particularly Articles 6,7,8,9 and 11 have significantly influenced the development of fair trial norms globally.<sup>128</sup> In the context of Nigerian criminal trials, the UDHR's emphasis on the right to a fair hearing , freedom from arbitrary detention and protection against torture and cruel treatment has critical implications for the admissibility and treatment of bad character evidence. The presumption of innocence represents a political and moral consensus that criminal defendants should not be subject to

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<sup>125</sup> Ibid

<sup>126</sup> CFRN 1999 (n 31)

<sup>127</sup> United Nations General Assembly, The Universal Declaration of Human Rights (UDHR), New York: United Nations General Assembly,1948 < [https:// www.refworld.org/legal/resolution/unga/1948/en/11563](https://www.refworld.org/legal/resolution/unga/1948/en/11563) > accessed 26 October 2024

<sup>128</sup> Ibid

punishment until adjudicated guilty under a strict standard of proof. Many international instruments including the UDHR proclaim that those who face criminal prosecution ought to be afforded a ‘presumption of innocence’, and the importance and central role of this presumption is recognized by legal systems throughout the world.<sup>129</sup> For instance it is contained in section 36(5) of the CFRN 1999 as amended.<sup>130</sup> Also, section 36(1) of the Constitution provides for the right of the defendant to a fair trial in the determination of his civil rights and obligations including any question or determination by or against any government or authority.<sup>131</sup> Also the right to privacy as provided for under Article 12 of the UDHR has also been replicated or reflected by our Grundnorm under section 37<sup>132</sup>.

In all, the significance of the UDHR as being instrumental towards the regulation of fair trials of accused persons in Nigeria and protection against prejudice cannot be overemphasised because its principles have shaped Nigeria's constitutional provisions on human rights as previously noted.

### **3.3.2 African Charter on Human and People's Rights (ACHPR) 1981**

Human rights have always been in peril in Africa. Individual freedoms were under intense and sophisticated threats during the dying days of the military dictatorships in many countries. Securing these rights and ensuring their enjoyment in Africa had been one of the major concerns, almost a crusade of the African Commission on Human and People's Rights (African

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<sup>129</sup> Ibid

<sup>130</sup> CFRN 1999 (n 31)

<sup>131</sup> Ibid

<sup>132</sup> CFRN 1999 (n 31)

Commission), the implementing institution of the African Charter on Human and People's Rights (ACHPR).<sup>133</sup>

The right to a fair trial is a vital aspect of the 'due process of law' principle, embodying the idea of fair play and substantial justice. Article 7(1) of the Charter relates directly to the right of fair trial.<sup>134</sup> It stipulates that "Every individual shall have the right to have his cause heard." Article 7(1)b provides for the presumption of innocence that every individual has the right to be presumed innocent until proven guilty by a competent court or tribunal.<sup>135</sup>

The right to a fair trial and presumption of innocence, as enshrined in Article 7(1) and 7(1)b of the ACHPR, significantly influence Nigerian law on Evidence. In criminal trials, the Evidence Act 2023 generally prohibits the admissibility of bad character evidence to safeguard the accused's right to a fair trial. This exclusionary rule aims to prevent prejudice and ensure the presumption of innocence.<sup>136</sup> However, exceptions apply under the Act, allowing bad character evidence in specific circumstances.<sup>137</sup> By aligning with ACHPR principles, Nigerian law protects the accused's fundamental rights and upholds the integrity of the justice system.

### **3.3.3 European Convention on Human Rights (ECHR) 1950**

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<sup>133</sup> Organization of African Unity (OAU), African Charter on Human and Peoples' Rights ("Banjul Charter"), CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), 27 June 1981, <<https://www.refworld.org/legal/agreements/oau/1981/en/17306>> accessed 15 November 2024

<sup>134</sup> Ibid

<sup>135</sup> Ibid

<sup>136</sup> Evidence Act(Amendment Act) 2023, s 82

<sup>137</sup> Evidence Act (Amendment Act) 2023, s 82(2\_6)

The European Convention on Human and People's Rights(ECHR) enacted on November 4, 1950 is a pivotal instrument safeguarding human rights and fundamental freedoms.<sup>138</sup> Pertinent to examining the efficacy and admissibility of bad character evidence in Nigeria criminal trials, Article 6 of the ECHR guarantees the right to a fair trial, ensuring that defendants are presumed innocent until proven guilty.<sup>139</sup> This provision has been interpreted by the European Court to prohibit the use of prejudicial evidence, including bad character evidence unless strictly necessary. For instance in the case of *Salabiaku v France*, the European Court of Human Rights ruled that the detention of an individual for the purpose of securing his testimony in criminal proceedings, without charging him with a criminal offence, violated the presumption of innocence as guaranteed by Article 6(2) of the European Convention on Human Rights.<sup>140</sup> This case established that the presumption of innocence applies not only to those who have been formally charged with a criminal offence, but also to individuals who are detained for the purpose of obtaining their testimony. The court emphasised the importance of respecting the rights of individuals involved in criminal proceedings, even if they have not been formally charged with an offence.

### **3.3.4 International Convention on Civil and Political Rights (ICCPR) 1966**

The International Covenant on Civil and Political Rights (ICCPR) adopted by the United Nations General Assembly on December 16, 1966, and entered into force on March 23, 1976, is a

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<sup>138</sup> Council of Europe, European Convention on Human Rights, as amended by Protocols Nos. 11, 14 and 15, ETS No. 005, 4 November 1950, < <https://www.refworld.org/legal/agreements/coe/1950/en/18688> > accessed 15 November 2024

<sup>139</sup> Ibid

<sup>140</sup> [1988] ECHR 19, [1991] 13 EHRR 379, [1988] ECHR IHRL 180

cornerstone international human rights instrument.<sup>141</sup> The ICCPR sets forth a comprehensive framework for protecting civil and political rights, including the right to life, freedom from torture, freedom of speech, and the right to a fair trial.

Article 7 of the Convention protects individuals from unlawful interference with their privacy, family, home or correspondence.<sup>142</sup> Article 14 guarantees the right to a fair and public trial including Article 14(2) which provides that any one charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law.<sup>143</sup> The significance of these Articles in criminal justice systems cannot be over emphasised. They ensure the safeguard of individual rights, ensure fair trial standards and reduce miscarriage of justice. It also fosters transparency and accountability within the justice system. The provisions of the ICCPR has made far reaching implications in Nigeria. For instance, Nigeria's 1999 constitution as amended embeds ICCPR principles in Chapter IV.<sup>144</sup> Also the Evidence Act 2023 reflects (ICCPR) principles through its exclusionary rules.<sup>145</sup> For instance, by excluding bad character evidence from being admitted under criminal trials except in certain circumstances, recognizes the potential of such evidence to unfairly prejudice the defendant's trial and serve as an obstacle against the attainment of true justice.

### **3.4 INSTITUTIONAL FRAMEWORK**

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<sup>141</sup> UN General Assembly, International Covenant on Civil and Political Rights, United Nations, Treaty Series, vol. 999, p. 171, 16 December 1966, <<https://www.refworld.org/legal/agreements/unga/1966/en/17703> > accessed 15 November 2024

<sup>142</sup> Ibid

<sup>143</sup> Ibid

<sup>144</sup> CFRN 1999 (n 31)

<sup>145</sup> Evidence Act (Ammendment Act) 2023, s 82(2\_6)

### 3.4.1 Nigerian Criminal Justice Institutions

The Criminal Justice System is an essential part of any civilised nation to ensure justice, fairness, the practice of the rule of law and the institutionalisation of a democratic society.<sup>146</sup> The Criminal Justice System of a nation represents a system or structure through which the laws guiding the existence and order of such a society are applied and the rights of the citizens are upheld. Some actors of the Nigerian Criminal Justice System include;

### 3.4.2 The Nigerian Police

This is a paramilitary federal institution whose operation is under the control of the president of the country. The Nigerian Police Force holds a pivotal role in upholding law and order throughout Nigeria. One of the key functions of the Nigerian Police Force is to maintain law and order within the country. Within the Criminal Justice System, the police is referred to as the "gatekeeper", because they set in motion a criminal case.<sup>147</sup> The primary functions of the Police Force in Nigeria are governed by the Nigerian Police Act, (2020) and apart from the preservation of law and order, the Police Force are also vested with the duties of; preserving life and property, traffic management and enforcement, maintenance of public order and safety, protection of human rights and others.<sup>148</sup>

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<sup>146</sup> Tosin T Olonisakin, Adedeji J Ogunleye, and Sulaimon O Adebayo 'The Nigerian Criminal Justice System and its Effectiveness in Criminal Behaviour Control: A Socio-Psychological Analysis' *Journal of Humanities and Social Sciences* [2017] 22(2) <<https://www.researchgate.net/publication-Justice-System-And-Its-Effectiveness-In-Criminal-Behaviour-Control-A-Social-Psychological-Analysis> > accessed 12 November 2018

<sup>147</sup> Idowu Oluwafemi Amos, 'Police As A Gate\_keeper, And The Use of Discretionary Power in The Criminal Justice System' <[https://www.researchgate.net/publication/345863452\\_POLICE\\_AS\\_A\\_GATE\\_-\\_KEEPER\\_AND\\_THE\\_USE\\_OF\\_DISCRETIONARY\\_POWER\\_IN\\_CRIMINAL\\_JUSTICE\\_SYSTEM\\_IN\\_NIGERIA](https://www.researchgate.net/publication/345863452_POLICE_AS_A_GATE_-_KEEPER_AND_THE_USE_OF_DISCRETIONARY_POWER_IN_CRIMINAL_JUSTICE_SYSTEM_IN_NIGERIA)> accessed November 14 2024

<sup>148</sup> Ahmadu Bello University, 'The Role of Nigeria Police Force in the Administration of Justice: Issues and Challenges' <<https://kubanni.abu.edu.ng/items/3f2ff2ab-9b88-4cfa-9ca3-7aa38ba91fd0> > accessed 14 November 2024

### **3.4.3 The Nigerian Prison Service**

The Nigerian Prison Service, now called The Nigerian Correctional Service is a government agency of Nigeria which operates prisons. With headquarters in Abuja, it is under the supervision of the Ministry of the Interior and the Civil Defence Immigration and Correctional Service. The Nigerian Correctional Service is statutorily expected to take into lawful custody all those duly certified to be so kept by courts of competent jurisdiction, produce suspects and other prisoners in courts as and when due, Identify the causes of their anti-social disposition, set in motion mechanisms for their training and reform, so as to return them to the society as law abiding citizens at discharge and administer Prisons Farms and Industries for this purpose and in the process generate revenue for the government.<sup>149</sup>

### **3.4.4 State Security Service (SSS)**

The State Security Service (SSS) is also known as the Department of State Services (DSS). It is the primary domestic intelligence agency of Nigeria. The SSS is primarily responsible for domestic security and intelligence gathering, investigation of crimes against national security and the protection and defence of the Federal Republic of Nigeria against domestic threats. It is in charge of upholding and enforcing the criminal laws of Nigeria, and to provide leadership and Criminal justice services to both federal and state law-enforcement organs.<sup>150</sup>

### **3.4.5 The Courts**

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<sup>149</sup> Wikipedia, 'Nigeria Correctional Service' < [https://en.m.wikipedia.org/wiki/Nigerian\\_Correctional\\_Service](https://en.m.wikipedia.org/wiki/Nigerian_Correctional_Service) > accessed 15 November 2024

<sup>150</sup> Wikipedia, 'State Security Service' < [https://en.m.wikipedia.org/wiki/State\\_Security\\_Service\\_\(Nigeria\)](https://en.m.wikipedia.org/wiki/State_Security_Service_(Nigeria)) > accessed 15 November 2024

The Nigerian government has a proud and strong judicial system. While the police initiate the process of a criminal proceeding, the courts are there to ensure that all due processes are explored in the dispensation of Justice.

Nigeria's court system begins with various local and district courts; continues with appellate and high courts; and culminates with the Supreme Court of Nigeria. All other courts must adhere to the rulings that are administered by the Nigerian Supreme Court, and no other judicial body has the power to overturn their decisions. In order of hierarchy, the Nigerian Judiciary comprises of the magistrate/ district courts, the high court/sharia/customary court of appeal, court of appeal and the Supreme Court. The function of the Judiciary as an interpreter of the law is enshrined under section 6 of the CFRN as amended.<sup>151</sup> Besides interpreting the law, the courts have the function of adjudication and judicial review; and at a more general level, it resolves disputes and enforces the law.

### **3.5 JUDICIAL GUIDELINES AND PRECEDENTS**

These are rules or principles established by the courts to guide decision-making in future cases. They are prior court decisions that serve as examples or authority for deciding similar cases; in this context as regards the admissibility of bad character evidence in Nigeria criminal trials. In *Maxwell v DPP*, Viscount Sankey LC stated that if the accused or his witness gave evidence of his own good character, for the purpose of showing that it is unlikely that he committed the offence charged, he raised by way of defence an issue to his good character so that he may fairly be cross-examined to show the contrary.<sup>152</sup> In *Din v African Newspaper Limited*, the Supreme

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<sup>151</sup> CFRN 1999(n 31)

<sup>152</sup> [1935] AC 309

Court held that, were in a proceeding, the plaintiff puts his character in issue, and claims to be of good reputation, evidence of his previous conviction would be relevant. In the instant case, as the appellant himself put his character in issue by claiming that he retired voluntarily from the Nigerian Army as a Captain after serving meritoriously for nine years, the fact of his previous conviction, sentence and subsequent dismissal from the Nigerian Army became critical in rebuttal of his claim for good reputation.<sup>153</sup>

Also, in *R V Samuel*, the Court of Criminal Appeal held that, a person who was charged for the offence of larceny, put his character in issue when he gave evidence with regard to previous convictions on which he had returned his lost property to its owner.<sup>154</sup> In *R v Rodley*, the appellant was indicted for having broken into a dwelling house at night with the intent to ravish a woman.<sup>155</sup> The evidence of the prosecution was to the effect that the appellant broke into the house and seized her, he pulled down her clothes and upon the woman's father coming downstairs, the appellant went away. The evidence at trial was that the evidence of the prosecution was not true, since the appellant went to the house for the purpose of courting the complainant with her consent and he did not intend to lavish her. Prosecution gave evidence that the appellant at about 2:00a.m on the same morning went to the house of another woman about three houses from the complainant's house, gained access to her bedroom and had a connection with her. It was contended that this evidence was admissible to show the state of the appellant's mind and body at the time when he broke into the complainant's home and coupled with the evidence of what happened when he was in the house was admissible to show the appellant's

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<sup>153</sup> *Din v African Newspaper Limited* (n 40), 392

<sup>154</sup> *R v Samuel* (n 13)

<sup>155</sup> [1913] 3KB 468

intent. The court held that this evidence was not relevant to any of the issues in the case and therefore not admissible and citing the case of *R V Fisher*, the court held that the principle that the prosecutors are not allowed to prove that the accused had committed the offence with which he is charged by giving evidence that he is a person of bad character who is in the habit of committing crimes, for that is equivalent to asking the court to say that because an accused has committed other offences, he must therefore be guilty of the particular offence with which he is charged by giving evidence that he is a person of bad character, for that is equivalent to asking the court to say that because an accused has committed other offences, he must be therefore guilty of the particular offence with which he is being tried, but if the evidence of other offences does go to prove that he did commit the offence charged, it is admissible because it is relevant in issue and goes forth to prove that the accused committed another offence.<sup>156</sup> The court finally said that the governing rule must always be that any evidence to be admissible must be relevant to the issue.

The judicial guidelines and precedents cited above establish clear principles for admitting bad character evidence in Nigerian criminal trials. To be admissible, evidence must be relevant to the issue at hand, and if the accused claims good character, they may be cross-examined on prior convictions.

Previous convictions are also admissible if the accused puts their character in issue as seen in *Din v African Newspaper Limited* and evidence of other offences may be considered to prove intent or state of mind. The prosecution cannot rely solely on bad character evidence to prove guilt, evidence must be relevant to the specific offence charged, and the accused's character can

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<sup>156</sup> [1910] 1KB 149

be scrutinised if they claim good character.<sup>157</sup> These guidelines balance the accused's right to a fair trial with the need to consider relevant evidence, implying that defendants should be cautious when claiming good character, prosecutors must ensure evidence is relevant and non-prejudicial, and courts will carefully evaluate admissibility.

### **3.6 REGULATORY BODIES AND OVERSIGHT**

In Nigeria, the legal profession is regulated by various bodies that ensure compliance with ethical standards and legal principles. The admissibility and efficacy of bad character evidence in Nigeria Criminal trials are critical issues that require effective regulation. Generally, the Nigerian Bar Association (NBA) and the Legal Practitioners Committee (LPPC) play pivotal roles in ensuring legal Practitioners comply with ethical standards and legal principles, including those principles regarding evidence presentation and protection of human rights.

#### **3.6.1 Nigeria Bar Association (NBA)**

The Nigerian Bar Association (NBA) is a non-profit, umbrella professional association of lawyers admitted to the Bar by the Council of Legal Education in Nigeria.<sup>158</sup> It was established in 1960 and held its first annual conference that same year. The NBA is made up of 129 branches, three professional sections, two specialised institutes, and six practice-cadre forums. The NBA promotes and protects principles of the Rule of Law and respect for Fundamental Human Rights.

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<sup>157</sup> *Din v African Newspaper Limited* (n 40) 392

<sup>158</sup> Nigerian Bar Association, 'The Nigerian Bar Association' < <https://www.nigerianbar.org.ng/about> > accessed 15 November 2024

It also promotes pro bono services to the indigents of the society.<sup>159</sup> It has an observer status with the African Commission on Human and People's Rights, and a working partnership with many national and international governmental and non-governmental organisations concerned with human rights, the rule of law and good governance in Nigeria and across the world. The NBA provides a singular, nationwide forum unparalleled among civil and professional organisations in Nigeria.

### **3.6.2 Legal Practitioners Privileges Committee (LPPC)**

The Legal Practitioners Privileges Committee (LPPC) was established under section 5(3) of the Legal Practitioners Act (As Amended).<sup>160</sup> It is a statutory body in Nigeria responsible for conferring the prestigious title of Senior Advocate of Nigeria (SAN). The LPPC plays a vital role in upholding the standards of the legal profession, serving both as a gatekeeper and a regulator of the profession. The LPPC performs regulatory roles which includes; the investigation of allegations of professional misconduct by legal practitioners, discipline of erring legal practitioners, ensuring compliance with the Legal Practitioners Act and Rules of Professional Conduct.

The LPPC comprises the Chief Justice on legal practice matters, top judicial officers, and Nigeria Bar Association representatives. It has power to summon witnesses , impose sanctions and review professional conduct rules.

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<sup>159</sup> Wikipedia, 'Nigerian Bar Association' < [https://en.m.wikipedia.org/wiki/Nigerian\\_Bar\\_Association](https://en.m.wikipedia.org/wiki/Nigerian_Bar_Association) > accessed 15 November 2024

<sup>160</sup> Legal Practitioners Act, 2021

In all, The Nigerian Bar Association (NBA) and Legal Practitioners' Privileges Committee (LPPC) oversee Nigeria's legal profession, ensuring accountability, transparency, and professionalism. The NBA regulates legal practitioners and enforces standards, while the LPPC grants and withdraws privileges, investigates misconduct, and disciplines erring practitioners.

To improve effectiveness, the NBA should enhance continuing education, strengthen discipline, and collaborate with regulatory bodies. The LPPC should establish clear guidelines, increase transparency, and review conduct rules regularly. Implementing these measures will foster a robust and ethical legal community in Nigeria.

### **3.7 CONCLUSION**

This chapter examined Nigeria's legal and institutional frameworks governing bad character evidence. The analysis reveals a complex interplay of statutory provisions (Evidence Act 2023, Criminal Code Act 2004, Penal Code 2004, and Administration of Criminal Justice Act 2015), judicial precedents, and international instruments (UDHR, ACHPR, ECHR, ICCPR).

Nigeria's institutional framework, comprising law enforcement agencies, courts, and regulatory bodies (Nigerian Bar Association, Legal Practitioners' Privileges Committee), enforces these laws.

The chapter demonstrates that Nigeria's legal system balances admitting relevant bad character evidence with protecting the accused's rights. Effective implementation, judicial discretion, and ongoing regulatory oversight are crucial to prevent abuse.

## CHAPTER FOUR

### EXAMINING THE EFFICACY AND ADMISSIBILITY OF BAD CHARACTER

#### EVIDENCE IN NIGERIAN CRIMINAL TRIALS

#### 4.1 EFFICACY OF BAD CHARACTER EVIDENCE IN NIGERIA CRIMINAL TRIALS

##### 4.1.1 Effectiveness in Establishing Guilt

There is no doubt that the effectiveness of bad character evidence in establishing guilt is a complex and debated topic. While some have argued as to its significance in terms of the relevance of such evidence in displaying a pattern of behaviour or a propensity to commit similar offences and its probative value as well as its deterrent effect on individuals. Others claim that bad character evidence can be highly prejudicial and can be unreliable as it may be based on hearsay, rumour or unproven allegations.<sup>161</sup>

Kumbah has suggested that evidence of bad character by its very nature is of a kind that projects the accused in bad light, reprehensible to the conscience of the judge/jurors.<sup>162</sup> Consequently, introduction of bad character of the accused as evidence carries the undeniable threat of conviction, based purely on a tendency of misconduct. Alternatively, conviction may be an act of vindication, wherein punishment is afflicted in the case at hand, rooted in the belief that the accused would have escaped punishment on a previous occasion. Consensus against the

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<sup>161</sup> Hillel J Balvi\_SMU, Dedman School of Law, 'Character Evidence as a Conduit for Implicit Bias', *UC Davis Law Review*, [2023],(56) 3 < <https://lawreview.law.ucdavis.edu/archives/56/3/character-evidence-conduit-implicit-bias>> accessed 17 December 2024; Dennis IH, 'The law of Evidence' (3rd edn,Thomson, Sweet and Maxwell,2002) 619; Enoch Alabi, 'Character Evidence: A Double Edged Sword', <[https://www.researchgate.net/publication/384017054\\_CHARACTER\\_EVIDENCE\\_A\\_DOUBLE\\_EDGED\\_SWO](https://www.researchgate.net/publication/384017054_CHARACTER_EVIDENCE_A_DOUBLE_EDGED_SWO)> accessed 17 December 2024

<sup>162</sup> Avilash Kumbah,'A Project Report on Bad Character of the Accused', [2012] (BBA LLB),5 < [https://www.academia.edu/8132651/Evidence\\_of\\_Bad\\_Character\\_of\\_the\\_Accused](https://www.academia.edu/8132651/Evidence_of_Bad_Character_of_the_Accused)> accessed 4 Decembbber 2024

admission of bad character evidence is based on the hypothesis that “the business of the court is to try the case and not the man, and a very bad man may have a very righteous case.”<sup>163</sup> The conflict is between the probative value for the offence charged of evidence that tends to show the accused's bad character or other misconduct and the tendency of that evidence to prejudice the fact finder against the accused. The common law has attempted to resolve the conflict by establishing a general rule that the prosecution may not adduce evidence for the purpose of proving the accused's bad character and/or other misconduct on other occasions unless such evidence has sufficient degree or relevance to the issues in the case, to make it just to admit it, notwithstanding its prejudicial effect. As far as the rule generally excludes such evidence at trial, it is peculiar to common law systems. It has no counterpart in continental criminal procedure because various jurisdictions within these systems provide exceptions that permit the ready admissibility of bad character evidence by the court, rendering a blanket exclusionary rule unnecessary.<sup>164</sup>

Proponents of bad character evidence argue that it can establish a pattern of behavior or propensity to commit similar offenses, while opponents claim that it can be highly prejudicial and unreliable.<sup>165</sup> Ultimately, the common law has established a general rule that excludes bad character evidence unless it has sufficient relevance to the issues in the case, and it is just to admit it despite its prejudicial effect. This delicate balance between probative value and

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<sup>163</sup>Atty. Eduardo Reyes III, ‘Character Evidence’ <<https://etriiilaw.com/free-lectures/character-evidence/>> accessed 1 December 2024

<sup>164</sup> Evidence Act (Amendment Act) 2023, s 82(2)\_ (6); Criminal Justice Act (UK Public General Acts) 2003,(c 44), s 101 \_ 104

<sup>165</sup> Mike Redmayne, ‘Character and Prejudice’ <<https://academic.oup.com/book/7385/chapter-abstract/152207771?redirectedFrom=fulltext>> accessed 1 December 2024

prejudice must be carefully maintained to ensure that justice is served while protecting the rights of the accused.

#### **4.1.2 Impact on Trial Outcomes**

Certain assumptions underpin the treatment of character evidence. Simply put, it is presumed that this type of evidence is relevant to two key aspects: a person's propensity to behave in a certain way, and their credibility as a witness. Evidence of good character is seen as relevant because it suggests a person is likely to act consistently with that good character, and makes them more credible. Conversely, evidence of bad character implies a person is more likely to act in ways consistent with that bad character, which in turn undermines their credibility.<sup>166</sup>

The question of whether or not evidence of bad character negatively or positively affects the outcome of an accused's trial is a topic of ongoing debate among legal scholars, with some arguing that it can unfairly prejudice the jury against the accused, while others contend that it can provide relevant context and insight into the accused's propensity for committing crimes.

Some suggest that bad character evidence is prejudicial to the trial of an accused, in the sense that it may influence the judge or jurors negatively based on incomplete or inaccurate information.<sup>167</sup> The effect of bad character evidence can manifest either through reasoning or moral prejudice. Reasoning prejudice refers to a flaw in the reasoning process that leads to an unjustified or incorrect conclusion. Moral prejudice is a preconceived opinion or attitude that influences one's moral judgments or decisions often in an unfair or discriminatory way. Reasoning prejudice may occur in a variety of ways. According to The Law Commission,

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<sup>166</sup> A LT Choo, *Evidence* (4th edn, Oxford University Press, 2015) 246

<sup>167</sup> I H Dennis, *The Law of Evidence* (2nd edn, Sweet and Maxwell, 2002) 618

questions of admissibility of bad character arise in criminal trials daily, case by case, affecting the vital interests of those involved. Individuals deserve that these important questions be decided by the careful and consistent application to each case by the court of a structured process, which reflects the fact that often a person's misconduct will have significance for determining the matters in issue, but also recognises that fact-finders, whether lay or professional, are susceptible, however much they may try to avoid it, to having their good judgment either overborne or distorted by prejudice.<sup>168</sup>

For instance, the fact-finder may overestimate the importance of evidence showing the defendant has committed similar offenses in the past. This could be due to a lack of statistical understanding, where the fact-finder mistakenly believes the evidence uniquely identifies the accused as the perpetrator, when in reality, it only places them in a group of individuals more likely to have committed the offense. In the case of *Mullen v The State*, the defendant faced charges for three burglaries where the perpetrator used a blowtorch to crack glass and gain entry. The Court of Appeal upheld the admissibility of evidence revealing the defendant's admission to three other burglaries committed using the same method.

A police witness testified that the defendant was one of only six known burglars in North or Northeast England who used this distinctive method. The court apparently believed that the risk of the jury overestimating the significance of the defendant's prior burglaries was mitigated by

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<sup>168</sup> The Law Commission Report, (Law Com No 273), 'Evidence of Bad Character in Criminal Proceedings, Report on a reference under section 3(1)(e) of the Law

the presence of supporting scientific evidence that helped identify the defendant as the perpetrator of the charged offenses.<sup>169</sup>

#### **4.1.3 Role in Preventing Miscarriages of Justice**

No criminal justice system is, nor could it ever be, “miscarriage proof” and certainly the innocent are convicted far more frequently than anyone dare contemplate. However, a criminal justice system should surely be judged by the efforts it makes to reduce, or minimise miscarriages of justice.<sup>170</sup>

Bad character evidence is important in criminal trials. It shows that the defendant often commits the same type of crime. The prosecution uses this evidence to strengthen their case. They try to prove that the defendant is likely to lie or commit similar crimes. The beauty of bad character evidence lies in its power to uncover the truth. By revealing a defendant's propensity for certain crimes, discrediting shaky alibis, and shedding light on inconsistencies, this type of evidence helps ensure justice is served. It's especially crucial in cases where credibility is key or when circumstantial evidence takes center stage. With careful consideration, bad character evidence can be a game-changer, helping to hold the guilty accountable and bringing peace of mind to those seeking justice. The case of *Audi Maizako and Another v superintendent of police* demonstrates how allegations against prosecution or witnesses can lead to cross examination about the defendant's bad character. The court allowed questions about the defendant's previous conviction citing section 180(g) of the Evidence Act. This exception enables the prosecution to

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<sup>169</sup> [1992] Crim LR 735

<sup>170</sup> Sam Poyser, Rebecca Milne, 'Miscarriages of Justice: A Call for Continued Research Focussing on Reforming the Investigative Process', *The British Journal of Forensic Practice* [2011] 13(2) 61 <[https://www.researchgate.net/publication/232169768\\_Miscarriages\\_of\\_justice\\_A\\_call\\_for\\_continued\\_research\\_focussing\\_on\\_reforming\\_the\\_investigative\\_process](https://www.researchgate.net/publication/232169768_Miscarriages_of_justice_A_call_for_continued_research_focussing_on_reforming_the_investigative_process)> accessed 1 December 2024

challenge the defendant character if their defense involves imputations on the prosecutor of witness character. It is noteworthy from the above that the admission of a defendant's previous conviction during cross examination is likely to strengthen the prosecution case and provide room for proof of propensity to commit such crime.<sup>171</sup> Also, in *Din v African Newspaper Limited*, the appellant put his character in issue by claiming that he retired voluntarily from the Nigerian Army as a Captain after serving meritoriously for nine years, the fact of his previous conviction, sentence and subsequent dismissal from the Nigerian Army became relevant in rebuttal for his claim of good reputation.<sup>172</sup> This exemplifies the fact that bad character evidence has been deployed by the courts significantly in some cases to bring to book offenders and achieve justice, by giving room for the prosecution to prove the guilt of the accused or downplay the credibility of such individuals in trial cases. It is important to prevent miscarriage of justice because; bad character evidence can reveal the true nature of an accused. In criminal trials, defendants may attempt to hide their true character by presenting a false narrative or pretending to be someone they are not. By allowing bad character evidence, the court can gain a more accurate understanding of the defendant's true nature which may be different from the image they are trying to project. In *R v Samuel*, the defendant was charged with the offence of larceny and gave evidence to the court as regards previous occasions where he had returned lost property to its owner. The court held that he had put his character in issue and the prosecution was allowed to give evidence of his bad character. Also, allowing bad character evidence can help ensure that dangerous or repeat offenders are held accountable, protecting victims and society as a whole.<sup>173</sup>

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<sup>171</sup> [1960] WNLR 188

<sup>172</sup> [1990] 3 NWLR ( Pt 139) 392

<sup>173</sup> [1956] 40 Crim. App Rep 8

For instance in *Akerele v The King*, the appellant who was a medical practitioner was tried and convicted for manslaughter for causing the death of a child by administering a poisoned injection to the child. The prosecution testified that the poisoning resulted from an overdose of the drug used in the injection. The defence, on the other hand, claimed that the child was susceptible to the effect of the drug and therefore unexpectedly succumbed to a dose, which would have been harmless in the case of a normal child. The prosecution, in order to negate this defence, tendered evidence of previous occasions where nine other children who were ill and with symptoms were injected with the same drug as the deceased by the doctor had died. On appeal, the Privy Council held that this evidence was admissible.<sup>174</sup>

#### **4.1.4 Critique of Current Application in Nigeria**

The age-old adage ‘a man is known by his character’ has significant implications in the Nigerian criminal justice system, where the use of bad character evidence has become a contentious issue. While the Evidence Act (Amendment Act) 2023 provides a framework for the admissibility of bad character evidence, its application in practice had been criticized for being prejudicial and potentially abusive.<sup>175</sup>

One of the primary strengths of the application of bad character evidence in Nigeria Criminal trials is its relevance to the trial. Bad character evidence can be crucial in establishing the defendant's propensity to commit crimes, which can be a significant factor in determining their

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<sup>174</sup> [1943] AC 255

<sup>175</sup> Evidence Act (Amendment Act) 2023, s 81, 82(1)-(6)

guilt. Furthermore the Act provides a clear framework for the admissibility of bad character evidence, which helps to ensure that its application is consistent and fair.<sup>176</sup>

However, despite these strengths, the application of bad character evidence in Nigeria criminal trials is not without its weaknesses. One of the primary concerns is the risk of prejudice, as the admission of bad character evidence can influence the court's perception of the defendant's guilt. Also, the use of bad character evidence can be abused by the Prosecution to blacken the defendant's character, rather than to prove their guilt. It may be used as a 'mockery' of the defendant rather than a proof of guilt. This is also contrary to the right to privacy and dignity of the human person which is encapsulated in section 37 and 34 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).<sup>177</sup>

In the case of *R v Winfield*,<sup>178</sup> the defendant faced charges of indecent assault against a woman. As part of his defense, he called a witness to testify to his exemplary behavior towards women, effectively putting his character on trial. The prosecution seized the opportunity to cross-examine him about a prior theft conviction. Although the conviction was later overturned due to insufficient corroborating evidence, the Court of Appeal seemed to endorse the cross-examination. This scenario highlights the potential pitfalls of introducing character evidence, as it can open the door to a wide range of potentially prejudicial testimony, compromising the defendant's right to a fair trial.

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<sup>176</sup> Evidence Act (Amendment Act) 2023, s 82(1)(6)

<sup>177</sup> The Constitution of the Federal Republic of Nigeria 1999 (as amended), (Act No 24) 5 May 1999, s 36(4), (5)

<sup>178</sup> [1939]27 Cr App R 139

In addition, the Evidence Act 2023 does not provide adequate protection for the accused against the admission of bad character evidence. Although the Act provides clear guidelines on when bad character evidence is admissible which helps to prevent arbitrary decisions.<sup>179</sup> It also protects the accused from having their character unfairly impugned by limiting the circumstances under which bad character evidence can be admitted.<sup>180</sup> The Act does not provide specific safeguards for vulnerable accused persons such as those with mental health issues or intellectual disabilities. The provisions related to bad character evidence may also be abused by the prosecution to unfairly prejudice the accused. In addition, the Act should be improved by placing greater emphasis on the accused's right to a fair trial. This could involve explicit provisions to ensure the accused is not unfairly prejudiced by the admission of bad character evidence. More robust procedures for challenging bad character evidence can be provided for in the Act.

In conclusion, while the Evidence Act 2023 provides some safeguards against the admission of bad character evidence, it does not offer adequate protection for vulnerable accused persons. There should also be clearer guidelines for discretionary powers of the court in admitting bad character evidence where applicable, and the Act should be improved by placing greater emphasis on the right of the defendant to a fair trial.

## **4.2 Admissibility Criteria and Judicial Discretion**

### **Rules of Admissibility and Exclusion**

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<sup>179</sup> Evidence Act 2023 (n13)

<sup>180</sup> Evidence Act 2023 (n 13)

In Nigeria, the omnibus statute regulating the admissibility of evidence in criminal trials is the Evidence Act, 2023.<sup>181</sup> Admissibility is the fact of being considered satisfactory and acceptable in a law court.<sup>182</sup> The hallmark of admissibility of evidence, documentary or oral, is whether or not the piece of evidence sought to be tendered is relevant to the facts in issue in any judicial proceedings. A cardinal principle under the law of evidence in Nigeria is that evidence must be relevant to the facts in issue or any other relevant fact.<sup>183</sup> This is unlike some foreign jurisdictions where they have separate legislations for civil and criminal proceedings. For example, Britain has the Civil Evidence Act of 1995, which regulates civil proceedings, and the Police and Criminal Evidence Act of 1984, which governs criminal proceedings.<sup>184</sup> Similarly, Ireland has the Civil Law (Miscellaneous Provisions) Act, 2008 for civil matters and the Criminal Evidence Act of 1992 for criminal proceedings.<sup>185</sup> It is essential to recognize that the standards for admitting evidence in civil cases differ significantly from those in criminal cases. In civil proceedings, evidence is admissible if it has been properly pleaded, is relevant to the case, and complies with legal requirements. In contrast, criminal cases involve distinct rules, where admissibility hinges on relevance and strict guidelines ensuring a fair trial. Notably, the rules governing admissibility are far more rigorous in criminal proceedings. Additionally, while a civil

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<sup>181</sup> Evidence Act (Amendment Act) 2023

<sup>182</sup> Cambridge Dictionary, 'Admissible' <<https://dictionary.cambridge.org/dictionary/english/admissibility>> accessed 30 November 2024

<sup>183</sup> Evidence Act 2023 (n 18), s 1

<sup>184</sup> Civil Evidence Act 1995, UK Public General Acts, c 38 <<https://www.legislation.gov.uk/ukpga/1995/38>> accessed 1 December 2024; Police and Criminal Evidence Act 1984, UK Public General Acts, c 60 <<https://www.legislation.gov.uk/ukpga/1984/60/contents>> accessed 1 December 2024

<sup>185</sup> Civil Law (Miscellaneous Provisions) Act, 2008, (Act No 8) <<https://revisedacts.lawreform.ie/eli/2008/act/14/front/revised/en/html>> accessed 1 December 2024; Criminal Evidence Act of 1992, (Act No 12) <<https://revisedacts.lawreform.ie/eli/1992/act/12/revised/en/html>> accessed 1 December 2024

court may exercise discretion in deciding whether to admit or reject inadmissible evidence, a criminal court is obligated to exclude such evidence.

Judicial discretion is a term applied to the unrestricted power of a judge or a court and means discretion bound by the rules and principles of the law. In *Oyeyemi v Irewole Local Government*, per Nnaemeka\_ Agu, J.S.C, judicial discretion was described as a science of understanding, to discern between falsity and truth, between wrong and right, between shadow and substance, between equity and colourable glosses and pretences, and not according to their wills and private affections.<sup>186</sup>

The Evidence Act 2023 provides that evidence of bad character may be admissible in certain circumstances, such as when it is relevant to the issue of guilt or when it is necessary to correct a false impression created by the defendant.<sup>187</sup>

In exercising discretion to admit bad character evidence, the court must carefully weigh its probative value against its potential prejudicial effect. The court must also consider whether the evidence is necessary to prove a fact in issue or rebut a defense. The court must carefully consider the facts of the case and apply relevant laws and principles.

#### **4.2.1 Discretionary Powers of the Court**

Discretionary power refers to the authority granted to a judge, court or other decision-making body to make decisions based on their own judgment, rather than being bound by strict rules or law. It is the power of a judge, public official or private party to act according to the dictates of

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<sup>186</sup> [1993] 24 NSCC(Pt 1) 94 at 102

<sup>187</sup> Evidence Act 2023 (n 18), s 82(2)

their own judgment and conscience within general legal principles.<sup>188</sup> Discretionary powers can be traced back to the administration of justice by the Lord Chancellor by his conscience prior to the Judicature Act. Judicial Discretion is exercised when a judge is granted power under either statute or common law that requires the judge to choose between several different, but equally valid, courses of action. It is the power to make a choice between alternative courses of action.<sup>189</sup>

In the context of evidence admissibility, discretionary powers allow a judge to decide whether to admit or exclude evidence, even if it does not strictly meet the requirements of the law.

Discretionary powers are often guided by principles such as; justice, relevance, probative value and prejudice. A clear illustration of where judicial Discretion was appraised is the case of *Odi v Osafile* where Obaseki JSC stated; “Laws are made for men, not men for laws. The administration of justice involves the administration of the purest principles of law. Man is fallible, so also are the courts of men.”<sup>190</sup>

It is imperative to note that the administration of justice is not always straightforward. While the law is absolute in theory, its application in practice can be influenced by various factors. A judge's decision may be swayed by the circumstances surrounding a case, leading to a more lenient or severe judgment. The judge's discretion plays a significant role in the administration of justice. For instance, judges have the authority to determine the admissibility of evidence in court and to decide on the appropriate penalty for a defendant found guilty. Moreover, judges have the discretion to assign weight to specific pieces of evidence and to exercise flexibility in sentencing.

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<sup>188</sup> Legal Information Institute, ‘Discretion’ < <https://www.law.cornell.edu/wex/discretion#>> accessed 1 December, 2024

<sup>189</sup> Legal Institute of Information, ‘Judicial Discretion’ < [https://www.law.cornell.edu/wex/judicial\\_discretion](https://www.law.cornell.edu/wex/judicial_discretion)> accessed 30 November 2024

<sup>190</sup> [1985] LPELR 2212 SC, [1985] 1 NWLR (Pt 1) 17

This discretion allows judges to consider the unique aspects of each case and to render justice accordingly.

In Nigeria criminal trials, judges must carefully exercise their discretion when dealing with bad character evidence. They must consider whether the evidence is relevant to the facts in issue, whether it is reliable, and whether it is likely to prejudice the defendant.

Ultimately, judges discretion in admitting bad character evidence can significantly impact the outcome of a trial. It is therefore essential that judges exercise their discretion judiciously and in accordance with the principles of justice and fairness.

#### **4.2.2 Judicial Precedents and Case Laws**

In *Makanjuola v The State* , Ibrahim Muhammed Musa Salauwa, JSC stated that “ evidence of the fact that a defendant is of bad character is generally inadmissible in a criminal proceeding subject to the following exceptions;

- (a) When the bad character of the defendant is a fact in issue or
- (b) When the defendant (unwittingly) had given evidence of his good character thereof, a defendant may equally be asked questions to show that he is of bad character in the circumstances mentioned in paragraph c of the provision to section 180 of the Evidence Act.”<sup>191</sup>

In *Maxwell v DPP*, Viscount LC stated that if the accused or his witness give evidence of his own good character, for the purpose of showing that it is unlikely that he committed the offence charged, he raises by way of defence an issue as to his good character so that he may fairly be

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<sup>191</sup> [2021] LPELR\_54998 (SC)

cross examined to show the contrary.<sup>192</sup> However, in the case of *R V Fisher*, the court held that the principle is that prosecutors are not allowed to prove that the accused had committed the offence with which he is charged by giving evidence that he is a person of bad character who is in the habit of committing crimes, for that is equivalent to asking the court to say that because an accused has committed other offences he must therefore be guilty of the particular offence for which he is being charged, it is admissible because it is relevant in issue and it is admissible because it proves that the accused committed another offence. The court finally held that the governing rule must always be that any evidence to be admissible must be relevant to the issue.<sup>193</sup> In *Royston v R*, it was held that if the imputations of bad character are an integral part of the defence of the accused without which he cannot put his case fairly and squarely then he cannot be cross examined on criminal past history.<sup>194</sup> In *Din v African Newspaper Limited*, the Supreme Court held that, were in a proceeding, the plaintiff puts his character in issue and claims to be of good reputation, evidence of his previous conviction would be relevant. In the instant case, as the appellant himself put his character in issue by claiming that he retired voluntarily from the Nigerian Army as a Captain after serving meritoriously for nine years, the fact of his previous conviction, sentence and subsequent dismissal from the Nigerian Army became critical in rebuttal of his claim for good reputation.<sup>195</sup> The prosecution can only adduce evidence of the defendant's bad character for the purpose of rebutting evidence of good character. If the defendant attacks the character of the prosecution witnesses, the prosecution cannot give

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<sup>192</sup> [1935] AC 309

<sup>193</sup> [1910] 1KB 149

<sup>194</sup> [1953] 20 EACA 14

<sup>195</sup> [1990] 3 NWLR, Pt 139, 392

evidence of the defendant's bad character under this section. However this can be done under section 180(g) (ii) of the Act.<sup>196</sup>

Also, in *DPP v Boardman*, the House of Lords held that, in exceptional cases evidence that the accused had been guilty of other offences in the past, will be admissible if it shows that those offences share with the offence which is the subject of the charge common features of such an unusual nature and striking similarity was explicable on the basis of coincidence. In such a case, the judge had a discretion to admit the evidence if he is satisfied: (1) that its probative force in relation to an issue in the trial outweighs its prejudicial effect, and (2) there was no possibility of collaboration between the parties.<sup>197</sup>

#### **4.2.3 Balancing Probative Value and Prejudicial Effect**

The administration of Justice in Nigeria criminal trials relies heavily on the presentation of evidence. One of the most critical aspects of evidence law is the balancing of the prejudicial effect and the probative value of evidence. This balancing act is particularly crucial when dealing with bad character evidence, which can have a significant impact on the outcome of a trial. Probative value is the probability of evidence to reach its proof purpose of a relevant fact in issue.<sup>198</sup> It is one of the main elements of admitting evidence, as the admitted evidence must be relevant, tending to make the fact in issue more likely or less likely to happen, no matter how slight its probability is. However, while both probative and prejudicial evidence can affect the outcome of a trial, they are significantly different. Prejudicial evidence is that which negatively

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<sup>196</sup> Evidence Act 2023 (n 18)

<sup>197</sup> [1974] 3WLR 673

<sup>198</sup> Legal Institute of Information, 'Probative Value' <[https://www.law.cornell.edu/wex/probative\\_value](https://www.law.cornell.edu/wex/probative_value)> accessed 1 December 2024

impacts the fairness and integrity of the case. This can include evidence that is misused, confuses issues, wastes time, or simply takes up too much time.

Bad character evidence itself is particularly prone to prejudicial effect. This type of evidence seeks to prove that a defendant has a propensity to commit crimes or engage in bad behaviour. However, the admission of bad character evidence can have a devastating impact on a defendant's case, as it can create a negative impression in the minds of the judge or jury.

In Nigeria criminal trials, the Evidence Act (Amendment Act) 2023 has laid down a number of guidelines for determining when bad character evidence is admissible.<sup>199</sup> Nevertheless, the application of these guidelines can be challenging, particularly in cases where the bad character evidence is highly prejudicial. In such cases, the court must carefully balance the probative value of the evidence against its prejudicial effect. This balancing act requires the court to consider some factors like; the relevance of the evidence, its reliability and its potential impact on the jury.

In conclusion, balancing the prejudicial effect and probative value of evidence is crucial in Nigeria's criminal trials, particularly with bad character evidence. By carefully weighing the potential impact of such evidence, courts can ensure justice is served while protecting defendants' rights.

### **4.3. Challenges and Controversies**

One of the most pressing concerns with the use of bad character evidence in Nigerian criminal trials is the potential for bias and prejudice. When jurors are presented with evidence of a defendant's past misdeeds, it can be challenging for them to separate this information from the

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<sup>199</sup> Evidence Act 2023 (n 18)

facts of the current case. This can lead to a situation where the defendant is judged not on the evidence presented, but on their reputation or past actions.

For instance, research has shown that jurors are more likely to convict defendants with prior convictions, even when the evidence against them is weak. This is because the prior conviction creates a negative impression in the juror's mind, making them more likely to assume the defendant is guilty. This is a clear example of how bad character evidence can lead to biased judgments.<sup>200</sup>

Moreover, the use of bad character evidence can also undermine the defendant's right to a fair trial. By introducing evidence of past misdeeds, the prosecution can create an uneven playing field, where the defendant is forced to defend not only against the current charges but also against their past actions. This can be particularly challenging for defendants who may not have the resources or support to defend themselves against these additional allegations.

In light of these concerns, it is essential to carefully consider the admissibility and weight of bad character evidence in Nigerian criminal trials. This may involve implementing stricter rules around the introduction of such evidence, or providing additional support and resources to defendants who may be impacted by its use. By taking these steps, we can help ensure that justice is served, and that defendants receive a fair trial.

#### **4.4 Judicial Application and Interpretation**

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<sup>200</sup>HJ Bavli, 'Character Evidence as a Conduit for Implicit Bias', *UC Davis Law Review* [2023] (56)3,1074 <<https://lawreview.law.ucdavis.edu/archives/56/3/character-evidence-conduit-implicit-bias>> accessed 30 November 2024

Section 82(1) of the Evidence Act 2023 generally provides that evidence of the fact that a defendant is of bad character is inadmissible in criminal proceedings, and the exception is provided for under sub section (2) of the Act. That except in the following circumstances;

- a) When the bad character of the defendant is a fact in issue
- b) When the defendant has given evidence of his good character
- c) Circumstances where the accused may be cross examined to show that he is of bad character pursuant to the provision of section 180(g) of the Act.<sup>201</sup>

In *R v Samuel*, the Court of Criminal Appeal held that, a person who was charged for the offence of larceny, put his character in issue when he gave evidence with regard to previous occasions on which he had returned lost property to its owner.<sup>202</sup>

In *Audu Maizako and Another v Superintendent General of police*, the first appellant made allegations against the police and one of the witnesses for the prosecution. Consequently, the prosecution asked him questions about his previous conviction of some offences. The court held that the questions about his previous convictions were properly admitted under section 180(g) (ii).<sup>203</sup>

In *R v Cocker*, the appellant, a man of poor intelligence, was charged to court with entering the dwelling house of one Mr. James Ballantyne with intent to steal. The evidence before the court was that he climbed through the open window of the house into a room in which Mr. Ballantyne was sleeping. When Mr. Ballantyne woke up, he found the appellant asleep in an armchair. The

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<sup>201</sup> Evidence Act 2023 (n 18)

<sup>202</sup> *R v Samuel* (n 11) 8

<sup>203</sup> *Audu Maizako and Another v Superintendent General of Police* (n 9) 188

appellant did not steal anything including the money in the room which had not been touched. It was argued on behalf of the appellant that he had entered the room to sleep because he was not feeling well, and had not intended to steal anything. The prosecution sought tender evidence to prove the appellant's knowledge of the offence and intent (*mens rea*). The court in spite of objection from appellant's counsel, allowed questions to be put to the appellant In cross examination as to a previous occasion when he had been found on a private premises and charged with entering the premises with intent. On that occasion however, he had been acquitted. Nevertheless, the appellant was convicted, and his appeal against the conviction succeeded on the grounds of his acquittal in previous trial and that it was prejudicial and contrary to section 1(f) of the Criminal Evidence Act 1898.<sup>204</sup>

In the case of *Din v African Newspaper Limited*, The appellant himself put his character in issue by claiming that he retired voluntarily from the Nigerian Army as a Captain after serving meritoriously for nine years, the fact of his previous conviction, sentence and subsequent dismissal from the Nigerian Army became critical in rebuttal of his claim for good reputation. The Supreme Court held that, were in a proceeding, the plaintiff puts his character in issue, and claims to be of good reputation, evidence of his previous conviction would be relevant. In *R v Rouse*, the accused said in his evidence that the prosecutor was a liar. The court however held that this did not amount to imputations on the character of the prosecutor.<sup>205</sup> In the case of *Makin v Attorney General of New South Wales*, a husband and his wife were charged for murdering a baby and during the investigation, the remains of the baby and that of three other babies were found buried in the garden at the back of their house. Further investigation revealed that remains

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<sup>204</sup>[1960] 2QB 207, [1960] 2 ALL ER 175

<sup>205</sup> [1904] 1KB 184

of seven other babies were found in the yard of the house were they once lived. The Privy Council accepted these evidence on ground that they showed that the accused persons had deliberately killed the baby in question. Although not directly related to the facts of the case, they were necessary in establishing the guilt of the defendant.<sup>206</sup>

#### **4.5 Impact on Defendant's Right and Trial Outcomes**

Members of the High court of Australia in *HML v The Queen* have warned against setting up false dichotomies between evidence that establishes disposition or propensity and evidence that has some other use. Whether or not it is tendered for the purposes of establishing the accused's disposition, it will very much have the same effect.<sup>207</sup>

At common law, evidence of a person's other misconduct is thought to threaten factual accuracy, efficiency and liberal values. The exclusionary rule has been described as 'fundamental', one of the most deeply rooted and jealously guarded principles of our criminal law.<sup>208</sup>The general exclusion of evidence of character is based upon public policy and fairness, since its admission would surprise and prejudice the parties by raking up the whole of their careers, which they could not come into court prepared to defend. Evidence of bad character, by its very nature, is of a kind that projects the accused in a bad light, reprehensible to the conscience of the judge. In that case, the law casts a presumption of prejudice. The mere fact that the accused had acted in a certain way, or possessed a certain mind previously, is not enough to establish liability in the instant case. It is submitted that in most cases, where evidence of bad character is relied upon, it

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<sup>206</sup> [1984] AC 57

<sup>207</sup> (2008) 245 ALR 204 at 244

<sup>208</sup> *Maxwell v DPP* (n 29) 309

leads to unfair prejudice on the accused and may even have the devastating effect of undermining the presumption of innocence. Another issue equally demonstrative of the loopholes in the admission of bad character evidence in criminal trials is the issue of surprise. It is considered absolutely unjust to present to the judge overwhelming evidence of prior misconduct which the accused is unprepared to defend and has consequential adverse effects on the future of the accused.

Also, evidence of bad character is peripheral to the main issue. Therefore, attaching undue relevance to such evidence leads to confusion of the issues at hand, and necessarily detracts attention from the main issues that require determination.

#### **4.6 Summary of Findings and Implications for Nigerian Criminal Justice**

In Nigeria, the admission of bad character evidence raises important questions about the balance between the pursuit of justice and the protection of individual rights.

Bad character evidence is frequently admitted in Nigerian criminal trials, often without sufficient consideration of its relevant or probative value. This lack of scrutiny can lead to the admission of evidence that is prejudicial to the defendant, thereby undermining their right to a fair trial.<sup>209</sup>

Also, the current legal framework governing bad character evidence in Nigeria is unclear and inconsistent. There is insufficient clarity of instances by the statute where bad character evidence should be admitted where relevant to the case at hand. In addition, the admission of bad character evidence can have profound impact on the outcome of trials, particularly in cases where the

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<sup>209</sup> CFRN 1999 (n 14), s 36(1),(4)

evidence is weak or circumstantial. In such cases, the defendant's bad character may be used to fill the gaps in the prosecution's case, leading to a wrongful conviction.

Also, the use of bad character evidence can also undermine the defendant's right to a fair trial, as guaranteed by the Nigerian Constitution.<sup>210</sup> The admission of such evidence can create an uneven playing field, where the defendant is forced to defend not only against the charges brought against them but also against their past actions.

In light of these findings, there is a need for clarification of the legal framework governing bad character evidence in Nigeria. Improved judicial training is also necessary to ensure that judges and magistrates are properly equipped to apply the rules governing bad character evidence. Also, the Nigerian criminal justice system must ensure that defendants are protected from potential prejudice and ensuring that defendants have adequate representation.

In conclusion, the efficacy and admissibility of bad character evidence in Nigerian criminal trials remain contentious issues. While such evidence may be useful in establishing guilt and preventing miscarriages of justice, its application is often marred by challenges and controversies, including potential biases, prejudices, and risks of misleading the jury. To address these concerns, legislative reforms, judicial training, and enhanced protection for defendants' rights are necessary. Ultimately, a balanced approach that carefully weighs the probative value of bad character evidence against its prejudicial effect is essential to ensuring that justice is served while upholding the rights of all parties involved.

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<sup>210</sup> Ibid

## **CHAPTER FIVE**

### **CONCLUSION**

#### **5.1 SUMMARY OF FINDINGS**

One of the key findings of this study is that bad character evidence is a complex concept that is governed by the Evidence Act (Amendment Act) 2023. This law sets out the criteria for admitting bad character evidence, which includes; when bad character is a fact in issue, when defendant has given evidence of his good character and by other exceptions provided by the statute. These criteria are crucial in determining whether bad character evidence is admissible in court. However, researcher found that the use of bad character evidence raises considerable concerns

about its potential impact on the rights of the accused. For instance, if bad character evidence is admitted in court, it could potentially prejudice the jury against the accused. This could lead to an unfair trial and a miscarriage of justice, and this is contrary to international provisions and domestic laws on the right to a fair trial and presumption of innocence.

A comparative analysis of the use of bad character evidence in other jurisdictions, such as the United Kingdom with the Nigerian Jurisdiction reveals that there are similarities and differences in the way it is approached. For example, both jurisdictions recognize the relevance of bad character evidence in certain circumstances, have statutory provisions governing its admissibility, and consider its probative value and prejudicial effect. However, the UK's Criminal Justice Act (2003) has a broader definition of bad character evidence and more relaxed rules for admissibility, whereas Nigeria's Evidence Act (Amendment Act) 2023 has stricter rules. To align with international best practices, it is recommended that Nigeria's Evidence Act (Amendment Act) 2023 adopts a clearer definition of bad character evidence, consider a more nuanced approach to admitting previous convictions, provide clearer guidelines for judicial discretion, offer regular training for judges, and emphasize the importance of probative value in determining admissibility.

Also, key findings of the study indicate that Nigeria's legal framework, comprising the Evidence Act (Amendment Act) 2023, Criminal Code Act 2004, Penal Code 2004, and Administration of Criminal Justice Act 2015, balances the admission of relevant bad character evidence with the protection of the accused's rights. The country's institutional framework, including law enforcement agencies, courts, and regulatory bodies, plays a crucial role in enforcing these laws and effective implementation, judicial discretion, and ongoing regulatory oversight are essential

to preventing abuse and ensuring the fair application of bad character evidence in Nigerian criminal trials.

In addition, the efficacy and admissibility of bad character evidence in Nigerian criminal trials are contentious issues. While bad character evidence can be useful in establishing guilt and preventing miscarriages of justice, its application is often challenged by potential biases, prejudices, and risks of misleading the jury.

## **5.2 RECOMMENDATIONS**

1. The Evidence Act (Amendment Act) 2023 should be amended to provide a clearer and more comprehensive definition of bad character evidence.
2. A more nuanced and flexible approach to admitting previous convictions should be adopted to ensure that only relevant and reliable evidence is presented.
3. Clearer guidelines should be established to govern judicial discretion in admitting bad character evidence, ensuring consistency and fairness.
4. Regular training programs should be implemented for judges to enhance their understanding of bad character evidence laws, best practices, and international standards.
5. The importance of probative value in determining the admissibility of bad character evidence should be emphasized to prevent prejudicial evidence from influencing trial outcomes.
6. Legislative reforms should be undertaken to address concerns surrounding bad character evidence, ensure compliance with international human rights standards, and promote fairness and justice.

## **5.3 CONTRIBUTIONS TO KNOWLEDGE**

This research contributes significantly to the existing body of knowledge on bad character evidence in Nigerian criminal trials. By providing a comprehensive examination of the conceptual, theoretical, and literary underpinnings of bad character evidence, this study addresses a critical knowledge gap in Nigerian legal scholarship.

One of the key contributions of this research is the development of a nuanced understanding of the role of bad character evidence in Nigerian criminal trials. Through a comparative analysis with the United Kingdom, this study highlights the convergences and divergences between the two jurisdictions, yielding valuable insights into the strengths and weaknesses of Nigeria's legal framework governing bad character evidence.

Furthermore, this research contributes to the ongoing discourse on the efficacy and admissibility of bad character evidence in Nigerian criminal trials. By underscoring the potential risks and challenges associated with bad character evidence, this study emphasizes the need for a balanced approach that carefully weighs the probative value of such evidence against its prejudicial impact.

The study's findings and recommendations also has significant implications for legal practice, policy, and scholarship. For instance, the research highlights the need for clearer guidelines on the admissibility of bad character evidence, enhanced judicial training, and more robust safeguards to prevent abuse. Additionally, the study emphasizes the importance of adopting a more nuanced and contextualized approach to bad character evidence in Nigerian criminal trials.

Overall, this research makes a significant contribution to the existing body of knowledge on bad character evidence in Nigerian criminal trials. The study provides valuable insights for legal scholars, practitioners, and policymakers seeking to promote fairness, justice, and human rights in Nigeria's criminal justice system.

## **5.4 AREAS FOR FURTHER STUDIES**

One area that warrants further investigation is a comparative analysis of bad character evidence in other jurisdictions. A study examining the laws and practices governing bad character evidence in countries such as the United States, Canada, or Australia could provide valuable insights into best practices and potential reforms.

Another critical area of study is the impact of bad character evidence on vulnerable witnesses. Research could delve into the specific challenges and risks associated with the use of bad character evidence against witnesses such as children, women, or individuals with disabilities. This study could provide a deeper understanding of the need for special protections and safeguards to prevent further trauma or exploitation.

Furthermore, research could investigate the effectiveness of existing safeguards against abuse of bad character evidence. This study could examine the impact of warnings to the jury, limitations on the use of bad character evidence, and other measures designed to prevent abuse and ensure fairness.

Finally, research could focus on developing best practices for handling bad character evidence, including guidelines for judges, prosecutors, and defense attorneys, as well as recommendations for legislative reforms. This study could provide a comprehensive framework for managing bad character evidence in a fair, efficient, and effective manner.

In Conclusion, this research provides a comprehensive examination of bad character evidence in Nigerian criminal trials, highlighting its complexities and challenges. The study recommends a balanced approach to admitting bad character evidence, weighing its probative value against its

prejudicial impact. Clearer guidelines, enhanced judicial training, and robust safeguards are necessary to prevent abuse. Further research is needed to explore its impact on vulnerable witnesses and judicial discretion.

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