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Objection(S) in Response to Discoveries and the Prohibition of Extraneous Matters in Affidavits in Nigeria: A Comparative Review

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ABSTRACT:
Discoveries are means through which parties to civil actions strengthen their cases, by way of eliciting admissions of fact or inquiring about documents from the opposing party to the case at the close of pleadings and before commencement of trial. In response to Interrogatories [facts] or Discovery of Documents [documents], the interrogated party, under the rules, is required to answer on oath by way of an affidavit. Though an interrogated party is not obliged to answer irrelevant or scandalous questions, the rules of most High courts in Nigeria provide that objections in such a case be raised in the affidavit in answer, even though the rules in another part, also provide that the rules on affidavits apply to the rules. The law is trite that extraneous matters; such as objections and conclusions should not be included in affidavits. Sections 79 to 90 of the Evidence Act, 2011, (Nigeria) are instructive here. A critical examination was undertaken on the laws relating to Discoveries under some of the High Court civil procedure rules in Nigeria (Federal Capital Territory, Abuja, Kano and Lagos States) and the law on deposition in affidavits. It was found that such objections did not only offend the rule against extraneous matters in affidavits, but were indeed unsuitable given the traditional role of affidavits. This paper recommends that jurisdictions like Nigeria, the United States and Canada where response to interrogatory/discovery is made by affidavit or deposition, can draw inspirations from the United Kingdom, where the rules stipulate for disclosure statement, which this article suggests can be used in addition to the answer on oath to discoveries to accommodate such objections.

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1. INTRODUCTION

While pleadings are succinct statements of allegations of facts, which highlight the areas of dispute in a civil suit, mechanisms exist in the rules for further narrowing the areas of dispute. One of such mechanisms is Discoveries [1]. The goal of discoveries is to further narrow the areas of dispute after issues have been joined by parties on their pleadings. This is because discoveries are used to elicit admissions of fact or request the production and inspection of documents in possession of the other party. Once these admissions are procured, it is a settled principle of law that no proof of such admitted fact is required at the trial [2]. Also, the documents discovered may be used by the parties to prove their case by putting it in evidence.

The procedure of discoveries under the High Court of the Federal Capital Territory Rules [3] is to the effect that, a party simply takes out the requisite form and delivers the questions, referred to as interrogatories [4] in case of facts or discovery of documents [5], where documents are the subject of the request. The party on whom the discovery is delivered has a duty to respond by providing answers within the time stipulated by the rules. The answers to discoveries are required to be on

oath i.e. in an affidavit. The rules also prohibit the asking of some kind of questions. These include irrelevant, scandalous and fishing questions. Where such questions are asked in discoveries, parties can object to the answering of such questions in the affidavit of answer [6].

The task in this paper is to examine the requirement of raising objections in answer to discoveries, vis-à-vis the rules on affidavit evidence where objections are extraneous matters which should be excluded from an affidavit. This is because the rules provide that the provisions of Sections 79 to 90 of the Evidence Act, 2011relating to affidavits shall be applicable under the rules [7]. Order 33 Rule 10 of the Kano State High Court Rules (KSHRs), 2014, provides that: 'The provisions of Sections 78-90 of the Evidence Act 'which set out in provisions governing affidavits) shall be applicable under these rules'. The use of the word "shall" in the above provision should be noted with emphasis.

It is against this background that this article seeks to interrogate:

i. Whether the requirement of raising objections in affidavits in response to interrogatories and discovery offends the law on affidavits, as contained in the Evidence Act;
ii. The basis of the law on affidavit evidence prohibiting objections;
iii. Why are answers to Discoveries required to be in the form of affidavits;
iv. Whether answers to Discoveries be exceptions to the law on affidavits; and should that be justified?
v. Whether there are lessons to learn from other jurisdictions;
vi. Whether there should be an additional process or procedure for advancing objections in addition to the affidavit in answer to discoveries.

These questions/issues form part of this work and would be highlighted and answered.

2. WHAT IS DISCOVERIES?

Discoveries are procedure before trial which is provided for in the rules of court whereby parties may elicit evidence from the other party to the case through either of its two devices. It is a mode of further narrowing the area of dispute between parties and getting evidence on which to rely on in support of one's case where they are within the knowledge of the other party. As a Pretrial procedure, it can be resorted to after pleadings have been filed and a party desires to know which facts are admitted by the other party and therefore need no proof at the trial and also which documents that may be useful as evidence are in possession of the adverse party. The procedure allows for production and inspection of the said documents, if available. It is used to find out evidence that may be useful to the party making the discoveries or to find out to what extent the evidence supports the case of the opponent. This is especially cost effective and time saving where there is likelihood of conflict of evidence [8].

In Nigeria, the two discovery devices are interrogatories and discovery of documents. This is unlike what obtains in other jurisdictions where there are other devices as depositions etc. The step- by- step procedure for discoveries is provided for under the various rules of court and varies from State to State, to the extent that in some States the leave of court is required to issue interrogatories while in others no such requirement exists. Also in some jurisdictions the procedure forms part of the agenda for the pretrial conference, the pretrial conference itself being a case management device. Parties to discoveries are usually the claimant and defendant in the suit because it is between them that there are issues to be determined. It is also available as between parties to a suit and third parties where there are issues to be determined as between them, since discoveries is a device for resolution of issues [9].

Discoveries have its roots in Nigeria's colonial heritage. Adopted from the English rules of procedure, discoveries were a feature of the pleading procedure in the English court of equity or the Chancery Division [10]. It was required before the courts that a plaintiff's pleading or 'bill' contained statement of evidence in support of their case, which a party believed were within the knowledge of the other party [11]. These pleaded statements were referred to as 'depositions'. These statements are like the modern interrogatories, to which the other party is expected to plead whether they are true or not.

The term 'interrogatories' came into use in the late 17th century as a replacement for depositions [12]. The marked difference between the old 'depositions' and 'interrogatories' is that 'depositions' could elicit admissible evidence only while 'interrogatories', which are now wider, include questions that can reasonably lead to the discovery of admissible evidence in the United States [13]. In Nigeria however, as inherited from the United Kingdom, questions in interrogatories must be relevant to the case of the Plaintiff in order to be admissible interrogatories. Another difference is that 'depositions' could request for evidence in favour of plaintiff's case only as questions on the evidence of the other party amounts to 'fishing' and is objectionable [14].

Interrogatories in the United States, transcends questions on evidence of the plaintiff only. Questions can be sent on the evidence of the other party including those of third parties. Also 'depositions' could only be pleaded as part of the bill, i.e. the pleading of the plaintiff who commenced an action. A defendant could only plead 'depositions' where he had a cross-bill, which is akin to a counter claim. The bill in the courts of equity gradually found their way into the practice at the common law courts, with further reforms leading to a clear cut difference between pleadings on the one hand and discoveries on the other as a trial device. In some jurisdictions there is e-discovery where rules have evolved on the discovery of documents in electronic copies. In criminal cases discoveries without request exist in the form of disclosure of proof of evidence, which the prosecutor must supply to the defendant as required by the various administration of criminal justice laws and criminal procedural laws [15].

The benefit of discoveries generally in litigation is to reduce the element of surprise by 'discovering' facts and documents which may be useful in evidence for the propounding party; after issues have been joined by pleadings but before trial and to further narrow the areas of dispute by eliciting admissions. It affords parties the opportunity to assess the relative strength and weakness of their case, so much so that some cases are resolved after discoveries by settlement or summary judgment. This is because the issues in a case become clearer after the discoveries. Hence discoveries elicit admissions and weaken the case of the opponent by putting on record facts from which the interrogated party cannot resile [8, p.616]. They are pre-trial in nature, unlike in some jurisdictions where discoveries can be before the suit is commenced or after trial has commenced [16].

2.1 Interrogatories

Interrogatories refer to one of the two legs of discoveries in Nigeria, where in civil suits through questions or interrogatories, questions are directed at the other party with the goal that admissions or facts are elicited in order to narrow the areas of dispute. It is a written examination of the interrogated party. It is a sort of legal questionnaire submitted to the other party as part of pre-trial discovery [14]. It is the administration of a series of questions which are directed at the interrogated party who is compelled to provide answer on oath through an affidavit [17]. The questions must be on relevant matters and in the nature of questions asked in examination in chief. The goal of interrogatories is mainly to ascertain the case a party will meet at the trial and to prevent surprises by confirmation of facts [18].

Not every question is admissible in interrogatories. Only relevant questions are admissible. It must relate to the issue in the suit. These include facts relevant to the facts directly in issue. They must be questions that support the case of the party asking but need not be conclusive of the issues [8, p.618] or questions which destroy the case of the interrogated party. The pleadings are generally directive in determining which questions are relevant. The following interrogatories are inadmissible; questions as to credit and cross-examination, questions as to evidence of the interrogated party, questions on contents of documents [19], fishing interrogatories [20], oppressive interrogatories targeted at attrition of the interrogated party's resources, time and unfairly burdensome. Other generally inadmissible interrogatories include those that are not intended to elicit admissions and questions on issues out rightly denied by a party in their pleadings or where the interrogatories are on matters of opinion [21].

The procedure for delivering interrogatories is court monitored in Nigeria, in that interrogatories are required to be filed in court, before it is served on the interrogated party. In the old High Court of the FCT, Abuja, (Civil Procedure), Rules [22], as is the case in the rules of most States High Courts, the leave of court is required in order to administer interrogatories. The High Court Rules of the Federal Capital Territory and Lagos provide for praecipe forms for interrogatories [4 & 5], which parties may take where they intend to serve interrogatories. A feature of interrogatories in Nigeria is that the time for administering interrogatories and responses thereto are regulated. For instance interrogatories are part of the agenda for Pre-trial conference [3]. Hence the rules provide that interrogatories must be served within 7 days of the close of pleadings [23]. The interrogated party is equally expected to answer on oath within 7 days of service of the interrogatories on him [24].

2.2 Discovery of Documents

Discovery of documents is the second arm of discoveries. Where the evidence required by a party in order to prove its case after the close of pleadings, consist in documents in the possession of the other party or a third party, a request may be made in writing for the discovery on oath of such documents. This is borne out for instance by Order 29 Rule 6(1) of the High Court of Lagos (Civil Procedure) Rules 2019, which provides that 'A party to a proceeding may, serve a written request on any other party to make discovery on oath of the documents relating to any matter in question in the action that are or have been in his possession, custody or under his power or control'.

So, unlike interrogatories, no praecipe or form exist for the discovery of documents. The only requirement from the rule is that the request be in writing. Also it must be noted that discovery of documents has two legs; which is disclosure by the interrogated party of documents in their possession on the one hand and the production of the document for the inspection of the applicant on the other. That is, the rules require that apart from stating whether they have or have been in possession of the document[s] subject of the discovery, the document is also required to be produced for the inspection of the party requesting same. This explains why under the above stated rules, it is required that the party interrogated, should in answer attach office copies of the discovered documents [25], failing which the affidavit may be struck out as incompetent.

As is the case with interrogatories, discovery of documents must be limited to documents that are related to the matters in dispute in the case. Hence the pleadings determine the scope of discovery of documents. It must also relate to evidence necessary for the interrogating party to establish his case or to destroy the case of the opponent. Hence documents which though may not be admissible in evidence in the suit, may be admissible if they will lead to an inquiry which may build their case or destroy the case of the opponent [8, p.629]. Also documents that are or were in possession of the interrogated party or indeed in the possession of a person which the party has control over, then the document may be subject of discoveries. Discoveries may not be allowed in some circumstances for instance, where the documents are privileged etc. other circumstances where discoveries may not be allowed and may indeed be objected to will be the subject of succeeding parts of this article.

2.3 Answer to Discoveries.

Answer to discoveries is generally on oath. The rules require that the answer must be delivered within 7 days of the service of the interrogatories or upon being served with the relevant form. To underscore this point the FCT Rules for instance provide in respect of interrogatories that: 'Interrogatories shall be answered by affidavit to be filed within 7 days, or within such other times as the court may allow. Two copies of the affidavit in answer shall be delivered to the registrar [26]. The same rules in respect of discovery of documents provide that:

> A party may in writing request any other to any cause or matter to make discovery on oath of the documents that are or have been in his possession. … . The party on whom such a request is served shall answer on oath completely and truthfully within 7 days of the request or within such other time as the court may allow and it shall be dealt with at the pre trial conference [27].

The answers to interrogatories are required to address each of the questions asked. Also, in respect of Discovery of documents, the answer on oath must state documents in possession of the party, documents that were in his possession but are no longer in his possession with particulars of date of when it was last in his possession and the fact that no other relevant document is left out of the answer [8]. The point must be made that whether in answer to interrogatories or Discovery of Documents, objections may be made in answer regarding inadmissible interrogatories or discovery of documents.

3. Objections to Discoveries

As has been stated earlier, interrogatories or discovery of documents must meet some conditions in order to be allowed. Where they fall short of the conditions, the party to whom the discoveries are directed may object to answering the discoveries. The rules provide that the objection, which will be taken at the Case Management Conference, should first be raised in the affidavit in answer to the discoveries [28]. It is the propriety of raising such objections in the affidavit of answer that is the task of this work. Meanwhile a discussion on the basis of raising such objections in respect of interrogatories and discovery of documents is necessary.

3.0.1 Basis for Objections to Interrogatories

The under-mentioned objections may be raised, in answer to discoveries of fact by an interrogated party. It needs mentioning here that not all questions that may be asked in the examination of a witness during trial may be asked in interrogatories. These objections are either on the basis of the provisions of the rules of court or on other grounds under the law.

A. Objections on Grounds Provided in the Rules

The High Court Civil Procedure Rules in Nigeria provide specifically for grounds upon which an objection may be raised [29]. The Federal Capital Territory as well as the Lagos and Kano States Rules' provisions are similarly worded in this respect. Federal Capital Territory, Abuja, High Court (Civil Procedure) Rules, 2018, for example, provides that: 'An objection to answering any one or more of several interrogatories on ground that it is or they are scandalous or irrelevant may be taken in the affidavit in answer at the pre-trial conference '[30]. From the above, two grounds of objection may be distilled:

i. Scandalous Questions.

This refers to a question that is insulting, denigrating to the personality of the person interrogated, and which has no bearing on the issues as raised by the pleadings of the parties, except to embarrass or denigrate the interrogated party [31]. A relevant question, however scandalous, must be answered. This is because a relevant question cannot be scandalous and should be answered even if it is embarrassing. Hence a question intended to embarrass and diminish only may be objected to in the affidavit in answer.

ii. Irrelevant Questions

The second ground from the rules is that the question is irrelevant. The point has already been made that interrogatories are defined by the pleadings of the parties. They serve no useful purpose; whether to strengthen the case of the party or weaken the case of the opponent if they are irrelevant. Therefore, questions that have no bearing on the live issues raised by pleadings of parties may be objected to by the interrogated party. What this translates to is that only facts in issue and relevant facts may be subject of interrogatories. So for instance facts that make a fact in issue probable or improbable may be asked in interrogatories. Also, the questions must be such as would be asked of a witness in examination in chief, hence a question irrelevant as an interrogatory may be admissible for cross- examination [32].

B. Other Grounds of Objection to Interrogatories Not Expressly Provided in the Rules

The following objections may be raised in addition to those expressly provided by the rules.

i. Questions as to Credit and Cross Examination

The point has been made that interrogatories relate to facts in issue and relevant facts. Irrelevant questions that focus on the credibility of a party only are generally inadmissible as interrogatories. This is because it is difficult to see how, through such questions, admissions may be elicited or indeed how the goals of interrogatories can be achieved through questions on credibility only, except they are in issue. Interrogatories by nature are akin to questions that may be asked in examination- in-chief [33]. Hence, cross-examination on credit, are inadmissible. Therefore, questions in the nature of cross -examination or only as to credit may be objected to by the party at whom the questions are directed.

ii. Questions as to Evidence of Party Interrogated

The court has stated that the goal of interrogatories is to elicit useful facts from the other party that supports the interrogating party's case [18, p.74]. Where such facts have no bearing on the issues in a case except to discover how the opponent makes out his case then it is inadmissible.

iii. Questions as to Contents of Documents

This ground is clearly premised on the rule of evidence that forbids the proof of the contents of documents otherwise than by production of the document itself. In Famuyide's case, the court held that it is within the purview of discoveries to disclose or produce documents not the content of the documents. Except under the exceptions to the giving of evidence of the contents of documents interrogatories on the contents is inadmissible and can also be objected to.

iv. Fishing Questions

Questions outside the pleadings of the parties are fishing questions or fishing interrogatories [14, p.499]. This especially so when a party by the questions seeks only to make a case not already made out by his case before the court is on a fishing expedition. Such questions are inadmissible, hence may be objected to.

v. Oppressive Questions

These are questions akin to a game of attrition where the sole aim of the interrogating party is to overburden the interrogated party. The key test in determining the questions whether interrogatories are oppressive is whether the cost of procuring the answer over weighs the benefit, or the requirements of litigation especially at the stage at which it is requested.

vi. Questions asked Mala fide

Questions asked in bad faith with no bearing on the issues in the suit or intended to support the case of the interrogating party are also objectionable. Questions were held to be in bad faith where they were asked merely to support a cause of action in a fresh case to be instituted [34].

3.0.2 Basis of Objections to Discovery of Documents

In respect of discovery of documents, also objections may be raised where the documents are protected or where they cannot, by some rule of law, be disclosed [35]. The grounds for such objection are generally where the document is privileged. The grounds upon which the objection may be taken to discovery of documents are as follows:

1) Incriminating documents because of the rule against self-incrimination [36].
2) Documents containing communication between lawyer and client [37].
3) Documents prepared in anticipation of litigation [38].
4) Documents protected on ground of public interest [39].
5) Documents marked without prejudice [40].
6) Documents of title or title deeds of a person who is not a party to a suit [41].

Discovery of the above documents may be objected to and such objection, as has been shown, may be made in the affidavit in answer which will be part of the agenda of a Pre-trial Conference. However, the rules of courts and the laws on affidavit provides for the form and nature in which an affidavits may be made. This brings to question whether the laws on affidavit contemplate objections, extraneous matter and conclusion, amongst others.

4. Nature of Affidavits

An affidavit is a statement of fact, which the maker, known as the deponent, swears to be true to the best of his knowledge, information or belief [42]. Facts in affidavits are therefore taken as the truth of the matters contained therein. This is because as captured in the definition, affidavits are on oath or on affirmation [43]. Where affidavits are used, no further oral testimony is required in proof of the facts contained in it except to resolve conflicts [44]. Affidavits are used in a variety of ways; whether in respect of matters in court or for other purposes. In respect of matters in court, affidavits typically accompany originating processes as originating summons and motions and mostly in all interlocutory applications in which facts are relied upon. Affidavits have out of court uses, especially where the correctness of statements of fact is required. Examples include affidavits of loss of documents etc. Affidavits to be valid are sworn to before commissioners of oath or other persons required by law [45]. They are valid internationally provided they are sworn to before authorized persons.

4.0 Contents of an Affidavit.

The formal contents of an affidavit are set out in the Evidence Act [46]. It is valid where it substantially complies with the requirements of the law [47]. An affidavit must contain facts, excluding extraneous matters as arguments, conclusions and objections [48]. The facts must be within the knowledge of the deponent, if not, they must disclose the source of the information [49]. In terms of the formal contents of an affidavit, section 117 of the Evidence Act, 2011, sets out the requirements that it should be headed in the court, state full particulars of the deponent, written in first person and the paragraphs numbered consecutively [50]. Affidavits should also contain a Jurat setting out the particulars of the person before whom it was sworn especially where the deponent is an illiterate or blind [51]. Alterations and interlineations must be attested to by the person taking the affidavit by affixing their signature or initials in the margin opposite the erasure or interlineations.

4.1 Matters Excluded from Contents of Affidavits.

Affidavits should generally not contain extraneous matters. What then are extraneous matters? The Evidence Act provides that 'an affidavit shall not contain extraneous matter, by way of objections, prayers or legal arguments or conclusion' [48]. The import of the section is that extraneous matters refer to objections, prayers or legal arguments or conclusions. This statutory provision received judicial affirmation in the case of Emeka v Chuba-Ikpeazu [52] where the Supreme Court held to that:

> By virtue of section 115(1) and (2) of the Evidence Act, 2011, every affidavit used in the court shall contain only a statement of facts and circumstances to which the witness depose, either of his own personal knowledge or from information which he believes to be true. An affidavit shall not contain extraneous matter, by way of objection or prayer or legal argument or conclusion. Thus, depositions in any affidavit sworn in support of a cause or matter must not be drafted to include legal argument, conclusion in law or fact. Where depositions in an affidavit offend this basic law, the offending paragraphs of such an affidavit must be struck out.

Also in the case of Elias v ECOBANK (Nig) Plc [53] the Court of Appeal held thus:

> By virtue of section 115(1) and (2) of the Evidence Act, 2011, an affidavit shall not contain extraneous matter, by way of objection or prayer or legal argument or conclusion…It, therefore, means that prayers, objection and legal arguments are matters that may…not fit…in affidavit evidence…

5. Objection to Discovery of Facts or Documents and the Rules Prohibiting Extraneous Matters; Objection, Arguments, prayers and Conclusions in Affidavits In Nigeria

Are the rules permitting objection to answer to discovery of facts or documents on the ground of being irrelevant or scandalous, consistent with the Rules prohibiting extraneous matters; objection, arguments, prayers and conclusions in affidavits in Nigeria? The answer is 'No'. The point has been made that the Evidence Act, 2011, forbids the inclusion of extraneous matters in affidavits [54]. Extraneous matters include objections, prayers, legal arguments and conclusions [55]. Yet most States High Court Rules, on the one hand provide that answers to discoveries be on oath i.e. by way of an affidavit, and also provide that objections to the answering of any question may be included in the affidavit of answer [56], in clear violation of the law on exclusion of extraneous matters in affidavits.

It is our view, which accords with common sense that the basis for the law in the Evidence Act excluding objections is because affidavits should basically contain facts, which the deponent believes to be true. Extraneous matters, by their nature, are not facts but opinions or views of a party regarding the facts. So, in respect of discoveries, objections are opinions of the interrogated party, which may or may not be accepted by the court. Opinion evidence is generally inadmissible [57] as it is only the court that may form an opinion on facts. Affidavit evidence is indeed evidence, which should be accepted by the court and acted upon if it is un-contradicted, except the facts are manifestly untrue. Unlike other forms of evidence, which may be tested by cross-examination, answer to interrogatories does not have that option, where the other party can test same, by cross-examination or like procedures. This is the more reason why the sanctity of the answer, which is an affidavit, must be safe-guarded by ensuring that it complies with all the legal safeguards contained in the Evidence Act. The relevant one here is the exclusion of objections, which has been shown to be at best, opinions.

In addition, facts to be deposed to in affidavit must be on issues within the knowledge of the deponent or facts from other sources, which they believe to be true. Objections in the form of an opinion, is not a fact within a person's knowledge but a perspective of facts or inference drawn from facts which may or may not be true. Also, it is within the domain of the courts or a judge to draw inferences on facts, not parties, as objections in affidavits will invariably do. So, from this perspective also, objections allowed to be in answers to discoveries, are in clear breach of the law on affidavits.

Therefore to the extent that affidavits exclude extraneous matters as has been shown above, the requirement of the rules for raising objections in answer to discoveries in affidavit is in clear breach of the law. But the rule may be rationalized as a special provision fit for the purpose of the procedure. One may ask however, whether there cannot be alternative procedure for raising the objection. Lessons can be drawn from the procedure for raising objections in regular procedures where affidavits are involved. In motions for instance, where the other party has an objection, it is raised and argued in the written address in support, because it will have no place in the affidavit.

6. Objection to Discovery of Facts or Documents and the Rules Prohibiting Extraneous Matters; Objection, Arguments, prayers and Conclusions in Affidavits: A Comparative Review

The law and practice of discovery of facts and documents as a pre-trial or trial procedure in civil proceedings is common to jurisdictions around the world. Like Nigeria, the discovery process in civil litigation has two principal components: disclosure

of documents (document exchange) [58] and discovery of facts (interrogatories) [59]. Interestingly however, the rules of court allow for objection to disclosure of facts and documents for reasons stated under the respective rules of court of each country. The manner and reasons for the objection differs and in some cases similar. While in Nigeria, under the rules of court, objection to disclosure of facts or interrogatories may be on the ground that it is scandalous or irrelevant, no clear indices is stated for objection to document [60]. In other jurisdictions, such provisions as privilege over and/ or that the documents are no longer in the party's possession, control or power are listed as objectionable grounds [61]. Whereas, in the United Kingdom Civil Procedure Rules, 1998, objection to disclosure of document may be on the ground that disclosure would damage the public interest [62] or on the basis that to do so will be unreasonable [63]. Also in Canada, a witness being deposed in a Canadian case is generally not required to answer any question that has been subject to an objection, unless a court rules otherwise [64]. In terms of the standard of disclosure of documents, Canada and the U.S. have different standards for what is discoverable in an action. In Canada, a document must be disclosed if it is relevant to a matter at issue in the pleadings. The position in Canada is similar to what is obtainable in Nigeria. In the U.S., a document is discoverable so long as it is reasonably calculated to lead to the discovery of admissible evidence. As the U.S. standard is much broader, the volume of information exchanged between parties is often significantly higher in the U.S. than it would be in Canada [65].

In Nigeria, the procedure for disclosure, whether on response to an interrogatory or disclosure of document is by an affidavit and any objections to interrogatories and discovery of documents are also expected to be taken in the affidavits [66]. The procedure for disclosure as provided in the rules in the case of the United Kingdom, however, appears distinct as it is not required to be by an affidavit but by way of what is called 'Disclosure Statement' [67] and where an objection is intended; it is by way of an application to the court. Rules 31.10 provide thus:

> (1)The procedure for standard disclosure is as follows. (2) Each party must make and serve on every other party, a list of documents in the relevant practice form. (3) The list must identify the documents in a convenient order and manner and as concisely as possible. (4) The list must indicate— (a) those documents in respect of which the party claims a right or duty to withhold inspection; and (b) (i) those documents which are no longer in the party's control; and (ii) what has happened to those documents. (Rule 31.19 (3) and (4) require a statement in the list of documents relating to any documents inspection of which a person claims he has a right or duty to withhold) (5) The list must include a disclosure statement. (6) A disclosure statement is a statement made by the party disclosing the documents— (a) setting out the extent of the search that has been made to locate documents which he is required to disclose; (b) certifying that he understands the duty to disclose documents; and (c) certifying that to the best of his knowledge he has carried out that duty…

While rule 31.19 provides thus: '(1) A person may apply, without notice, for an order permitting him to withhold disclosure of a document on the ground that disclosure would damage the public interest'. The position in the U.K clearly does not presuppose the use of affidavit in objecting to answer a disclosure.

Under the Federal Rules of Civil Procedure; 2019 of the United States, answers to interrogatory, to the extent it is not objected to, must be answered separately and fully in writing under oath [68] and any objections thereto must be stated with specificity [69]. Equally, the responding party to the request for the discovery of documents must do so in writing and where objection is intended, the responding party must state with specificity the grounds for objecting to the request, including the reasons [70]. Like Nigeria, raising objection to interrogatory/discovery is by way of affidavit, which clearly contradicts the rule on extraneous matters in an affidavit. The statutory and judicial authority on the subject in Nigeria is not far from what is obtainable in the United States.

In the United States for instance, objections that contradict the civil rules or other authority [71] are prohibited. Some examples include: objections to interrogatories to the extent that they call for legal and factual conclusions [72]. This also extends to boilerplate response in objection to a discovery request. An objection is boilerplate when it merely states the legal grounds for the objection without (1) specifying how the discovery request is deficient and (2) specifying how the objecting party would be harmed if it were forced to respond to the request [73]. The boilerplate response [74] prohibition rule in the United States is largely born out of case law [75]. That is to say, the impropriety of various categories of boilerplate objections is not as direct or clear -cut under the language of the rules. Whatever is the scope of the rules, the use of objection in whatever form, we respectfully submit, obstructs the discovery process, violates numerous rules of civil procedure and rules of evidence, and imposes costs on litigants, thus, frustrate the timely and just resolution of cases [76, pp. 914-936].

7. Conclusion

Discoveries, whether of fact [Interrogatories] or of documents, has been demonstrated to be a potent pre-trial device, whereby parties may extract either evidence of facts through admissions or procure a disclosure of the existence of documents for the purpose of reducing the burden of proof of establishing particular facts. The goal of discoveries being to further narrow the areas of disputes as determined by the pleadings as well as to strengthen their case and also weaken the case of the opponent. Hence the point has also been made, that admissible discoveries generally are those that target the above mentioned goals. In addition, discoveries must relate to the live issues in the case and therefore only questions that have bearing on relevant matters that are pleaded or questions that may lead to the unraveling of relevant matters are allowed in discoveries.

Answer to discoveries is required to be on oath. The rules also provide that objections to answering discoveries, on grounds of the questions being scandalous or irrelevant or indeed on other grounds recognized by law, may be done in the affidavit in answer [40 & 42]. It has been shown that such mode of raising objection offends the rule regarding the contents of an affidavit. The Evidence Act, 2011, in the case of Nigeria, it has been shown, forbids extraneous matters in the form of objections, prayers, legal arguments and conclusions in affidavits. The same position is also held in other jurisdiction both by substantive laws and judicial authorities. The position in the United Kingdom presents a different and more acceptable approach where response to interrogatory and disclosure of document is expected to be by way of Disclosure Statement, instead of an affidavit or deposition, and where objection is expected to be raised by way of an application to the court for permission to withhold evidence [67]. The rationale for the position in the United Kingdom is more in accord with the argument that, objections being extraneous matters, cannot be said to be main facts strictly so called 'within the knowledge' of the deponent or facts obtained from another knowing same to be true. They are at best the opinion, conclusion and argument of the deponent. In relation to objections to discoveries, such objections to answering questions are the opinion of the deponent that the questions are either irrelevant or scandalous, amongst others, which the court will examine at the pre-trial conference and if they are so extraneous, they are disallowed, but if not, the party against whom the questions are directed is compelled to answer the questions [14].

It is our observation that like some specialized affidavits, such as witness statements on oath, special rules may allow for the raising of objections in the affidavit of answer to discoveries, even though they are affidavits. However, it is suggested that the sanctity of affidavits which should be taken as evidence facts without more, as is the case of witness statements which needs to be adopted and its veracity tested by cross-examination, can only be maintained if such answers comply with the rules of affidavit evidence and written addresses, which accompany the affidavit to embody any objection a party may have with regard to answering such questions. Hence it is recommended that the rules should provide for the filing of an additional process, may be by way of written address or any form of application, where a party intends to object to answering any question in discoveries. This written address or application should be filed along with, or, in the Pre-trial Information Sheet, which parties must file setting out the issues they intend to be tackled at a preliminary stage i.e. the case

management conference before trial. By this, the age-long principle that affidavit should not contain extraneous matters by way of argument and conclusion, would be maintained.

8. References

1. Others include settlement of Issues- Order 27, High Court of the Federal Capital Territory (Civil Procedure) Rules 2018 (HCCPRs FCT, 2018); Order 30 High Court of Lagos (Civil Procedure) Rules 2019 (HCLCPRs, 2019); Order 27 Kano State High Court Rules, 2014 (KSHRs, 2014). See also Ord. 18 of the Federal High Court (Civil Procedure) Rules, 2019
2. Evidence Act 2011 on admissions see Akinyede Olaiya V The State (2017) LER SC.562/2014; Odebunmi & Anor v. Oladimeji & Ors (2012) LPELR – 15419 (CA) and ACB Int'l Bank Plc v. Adiele (2013) LPELR – 21164 (CA) relying on Ogolo v.-Fubara (2003) 11-NWLR (pt, 831) 231; Odulana v Haddad (1973) 11 SC 35; NNPC vs Klifco (Nig) Ltd 2011 10 NWLR (Pt. 1255) 209; Ikare Community Bank vs Ademuwagun (2005) 7 NWLR (Pt 924) 275; Ogolo vs Fubara (2003) 11 NWLR (Pt 831) 231; Adeleke vs Asarifa (1986) 3 NWLR (Pt 30) 575; Nonye vs Anyichie (1989) 2 NLWR (Pt 101) 110
3. Order 28, HCCPRs FCT, 2018; Order 29, HCLCPRs, 2019 and Order 26, KSHRs, 2014
4. Form 21. See Order 28 HCCPRs FCT, 2018; Form 20 Order 29 Rule 4, HCLCPRs, 2019 and Form 26, Order 26 Rule 6, KSHRs, 2014. See also Ord. 43 of the Federal High Court (Civil Procedure) Rules, 2019.
5. Form 23. Order 28, Rule.8 HCCPRs, FCT, 2018; Form 21, Order 29 Rule 6(5), HCLCPRs, 2019 and Form 27, Order 26 Rule 8(3), KSHRs, 2014
6. See Order 28 Rule 4 HCCPRs FCT 2018; Order 29 Rule 3, HCLCPRs, 2019 and Order 26 Rule 4, KSHRs, 2014; Ord. 43 Rule 4 of the Federal High Court (Civil Procedure) Rules, 2019.
7. See for example,Order 36 rule 10 HCCPRs FCT 2018; Order 33 Rule.10 KSHRs, 2014; see also Order 37 Rule 9 HCLCPRs, 2019 (The provisions of the Evidence Act and Oaths Laws governing Affidavit shall be applicable under these Rules)
8. Fidelis Nwadialo, Civil Procedure in Nigeria [University of Lagos Press Akoka Lagos 2000] p. 615.
9. For instance in a counterclaim, third party proceedings of discoveries as between Co-defendants
10. It is now disclosure since the Justice Woolfe reforms on the English Civil Procedure Rules in 2001.
11. See Goldstein, Alan K. (1981). A Short History of Discovery. Anglo-American Law Review, 10: 257–270; The Harvard Law Review Association, (1961), Developments in the Law. Discovery, Harvard Law Review, Vol. 74, No. 5, pp. 940-1072 available at <https://www.jstor.org/stable/pdf/1338748.pdf?loggedin=true> accessed 14/8/2019; Siller, Ezra, "The Origins of the Oral Deposition in the Federal Rules: Who's in Charge?" (2012). Student Legal History Papers. Paper 1. http://digitalcommons.law.yale.edu/student_legal_history_papers/1> accessed 14/8/2019
12. Ibid
13. ibid
14. Abubakar v YarAdua (2008) 4 NWLR (PT. 1078) 465
15. See The Harvard Law Review Association, (1961), Developments in the Law. Discovery, Harvard Law Review, Vol. 74, No. 5, pp. 940-1072 available at <https://www.jstor.org/stable/pdf/1338748.pdf?loggedin=true> accessed 14/8/2019; Siller, Ezra, "The Origins of the Oral Deposition in the Federal Rules: Who's in Charge?" (2012). Student Legal History Papers. Paper 1. http://digitalcommons.law.yale.edu/student_legal_history_papers/1 accessed 14/8/2019
16. For instance, Paragraph 12 of the First Schedule to the Supreme Court of Judicature Act empowers the court to order discovery "before or after any proceedings are commenced, as the court may be prescribe; See Jeffrey Pinsler, (2004), Destruction of Evidence Prior to the Commencement of Civil Proceedings: How a Court to Respond, Singapore Journal of Legal Studies, pp. 20-36, available at https://www.jstor.org/stable/24869529 accessed 14/8/2019
17. Order 28, HCCPRs FCT, 2018; Order 29, HCLCPRs, 2019 and Order 26, KSHRs, 2014
18. Famuyide v Irving & Co Ltd. (1992) 9 SCNJ 63 at 73 cited in Nwadialo p. 617
19. See rule on exclusion of oral by documentary evidence rule or parole evidence rule.
20. Fishing is where party asks questions to elicit admissions or to prove matters not pleaded.
21. Section 67of the Evidence Act, 2011, excludes opinion evidence generally.
22. High Court of the FCT, Abuja, Civil Procedure Rules, 2004
23. ibid
24. ibid
25. See for instance Order 29 Rule 4 HCLCPRs, 2019 and Order 26 Rule 8(2), KSHRs, 2014

26. Order. 28 Rule 5.
27. Order. 28. Rules. 1 & 8. See also Order 43 R. 5 of the Federal High Court (Civil Procedure) Rules, 2019
28. For instance, Order. 28 Rule.4, HCCPRs FCT, 2018 and Order 43 R. 4 of the Federal High Court (Civil Procedure) Rules, 2019
29. See Order 29 Rule 3 HCLCPRs,2019 and Order 26 Rule 4 KSHRs, 2014
30. Order. 28 Rule.4, HCCPRs FCT, 2018 (italics, ours, for emphasis). Order 43 R. 4 of the Federal High Court (Civil Procedure) Rules, 2019
31. Stanley-Idum, M. &Agaba, J., Civil Ligation in Nigeria, 2nd Edition, (Renaissance Law Publishers Limited, 2018). P.470
32. Kennedy v Dodson (1895) 1 Ch. 334, cited in Nwadialo p. 623.
33. Lyell v Kennedy (1883) 8 AC 217 at 234
34. Edmondson v Birch & Co Ltd (1905) 2 KB 523 cited in Nwadialo p. 624.
35. Order 28 Rule. 8(3) HCCPRs FCT 2018
36. See Section 183 Evidence Act 2011
37. Section 192 & 195 Evidence Act 2011
38. Section 83(3) Evidence Act 2011; UTC (Nig) Plc v Lawal (2013)LPELR, 23002(SC) at P.27 Para A-F
39. Section 191 & 243 Evidence Act, 2011
40. Section 196 Evidence Act 2011; United Bank of Africa Ltd v I. A. S & Co Ltd (2001) FWLR Pt.75 p.578; Ashibogwu v Attorney General Bendel State (1988) 1 NWLR Pt.69 P.138 @ 170-171; Jadesimi v Egbe (2003) 10 NWLR Pt.827 P.1 @ 28
41. Section 184 & 185 Evidence Act 2011
42. Josien Holdings Ltd v Lornamaed Ltd (1995) 1 SCNJ 133 cited in Olusesan O. Orimogunje, Law of Evidence in Civil and Criminal Litigation in Nigeria [Chenglo Limited, Enugu, 2009] p. 180
43. S. 120(1)(a) Evidence Act 2011
44. Section 116 Evidence Act, 2011, Falobi v Falobi(2002) WRN 50
45. Buhari v INEC (2008) 4 NWLR (Pt. 1078) 546 at 607. Where it was held an affidavit (Witness Statement on Oath) sworn to before a Notary Public, the counsel representing the petitioner was inadmissible. S. 112 Evidence Act 2011, prohibit the swearing of an affidavit before the person for whom the affidavit is made or before his legal practitioner.
46. Section 115 Evidence Act, 2011
47. Section 113 Evidence Act, 20112011. See Lonestar Drilling Ltd v Triveni Eng. & Ind. Ltd (1999) 1 NWLR (pt. 558) 622
48. Section 115 (2) Evidence Act, 2011 2011
49. Section 115(1), (3) & (4) Evidence Act, 2011
50. Section 117 (1) Evidence Act, 2011
51. Section 119 Evidence Act, 2011
52. (2017) 15 NWLR Pt. 1589 P.354 @ 388 Paras D-H
53. (2017) 2 NWLR Pt.1549 P.175 @ 194-195 paras F-F
54. Emeka v Chuba-Ikpeazu (2017) 15 NWLR Pt. 1589 P.354 @ 388 Paras D-H; Elias v ECOBANK (Nig) Plc (2017) 2 NWLR Pt.1549 P.175 @ 194-195 paras F-F
55. Ibid
56. Order 28 Rules 4, 5 & 8(3) HCCPRs FCT, 2018; Order 29, HCLCPRs, 2019 Rule 4 and Order 26 Rules 4, 5; 8(3), KSHRs, 2014 and Ord. 43 Rule 4 of the Federal High Court (Civil Procedure) Rules, 2019.
57. Section 67 of the Evidence Act, 2011.
58. In the United Kingdom, the disclosure process relates principally to disclosure and inspection of document. See Part 31 of Supreme Court of England and Wales County Courts Civil Procedure Rules; 'The Civil Procedure Rules 1998', Statutory Instrument 1998 No. 3132 (L.17) '31.1. (1) (This Part sets out rules about the disclosure and inspection of documents)
59. The discovery process in Canadian civil litigation has two principal components: document exchange and oral discovery (the latter referred to as "examinations for discovery" as opposed to "depositions"). See Osler, Hoskin & Harcourt, Introductory Guide to Civil Litigation in Ontario, Osler's National Litigation & Resolution Team. Available @ <https://www.osler.com/osler/media/Osler/reports/litigation/Civil-Litigation-in-Ontario-Introductory-Guide.pdf> accessed 16/8/2019; see also generally, Rules 26 Federal Rules of Civil Procedure, 2019 of the United States
60. , KSHRs, 2014 (Kano)
61. See for instance Rule 30 of Rules of Civil procedure, R. R. O, 1990 Reg. 194 (The Rules) Common to Canada.

62. Rules 31.19 Supreme Court of England and Wales County Courts Civil Procedure Rules; 'The Civil Procedure Rules 1998', Statutory Instrument 1998 No. 3132 (L.17) '31.1. (1)
63. Ibid Rules 31.7(3)
64. Osler, Hoskin & Harcourt, Introductory Guide to Civil Litigation in Ontario, Osler's National Litigation & Resolution Team. Available@<https://www.osler.com/osler/media/Osler/reports/litigation/Civil-Litigation-in-Ontario-Introductory-Guide.pdf > accessed 16/8/2019, p.3
65. Osler, Hoskin & Harcourt, Introductory Guide to Civil Litigation in Ontario, Osler's National Litigation & Resolution Team. Available@<https://www.osler.com/osler/media/Osler/reports/litigation/Civil-Litigation-in-Ontario-Introductory-Guide.pdf > accessed 16/8/2019, p.3
66. See for instance Order 29 Rule 3 & 6(5) HCLCPRs, 2019 and Order 26 Rule 4, KSHRs, 2014 and Order 43 Rule 4 of the Federal High court (Civil Procedure) Rules, 2019.
67. This is a statement made by the party disclosing the documents— (a) setting out the extent of the search that has been made to locate documents which he is required to disclose; (b) certifying that he understands the duty to disclose documents; and (c) certifying that to the best of his knowledge he has carried out that duty. See Rule 31.19 of the United Kingdom Civil Procedure Rules, 1998.
68. Rule 33(3) Federal Rules of Civil Procedure, 2019
69. Ibid Rule 33(4)
70. Ibid Rule 34(b)
71. Answer to an interrogatory may be used to the extent allowed by the Federal Rules of Evidence. Heller et al v. City of Dallas, No. 3:2013cv04000 - Document 48 (N.D. Tex. 2014) at 484. https://law.justia.com/cases/federal/district-courts/texas/txndce/3:2013cv04000/238409/48/; see Nicholas J. Brannick, (2017), Courts Make Clear that General Objections are Generally Inappropriate,, in Bankruptcy Litigation, <https://www.csbankruptcyblog.com/2017/04/articles/bankruptcy-litigation/courts-make-clear-general-objections-generally-inappropriate/>; see for instance Article VII & VIII of the Federal Rules of Evidence, as amended in 2019 (Rules 701 prohibits improper lay opinion. Thus, lay witnesses can't testify as to opinions, conclusions or inferences. The same applies to speculative and hearsay evidence, subject to the allowed exceptions)
72. Civil Rule 33(a)(2) provides that an interrogatory is not objectionable simply because it "asks for an opinion or contention that relates to … the application of law to fact". See Edgar Ortega Bituminuous Insurance Company v National Oilwell varco, L. P. Court of Appeal of Texax No. 07-13-00140-CV-(April, 2014);
73. St. Paul Reinsurance Co. v. Commercial Fin. Corp., 198 F.R.D. 508, 512 (N.D. Iowa 2000), cited in Matthew L. Jarvey, (2013) Biolerplate Discovery Objections: How They Are Used, Why They Are Wrong and What We Can Do About Them, Drake Law Review, p.914
74. For example, a party may object on "grounds that the interrogatory [or request for production is] overly broad and unduly burdensome, that the information sought [is] irrelevant, and that [the information sought is] protected by the work-product and attorney-client privileges. See Zagorski v. Allstate Insurance Co., 2016 IL App (5th) 140056, p. 34., cited in Gregory R. Jones, General and Boilerplate Objections: Curbing Routine Abuse of the Discovery Process
75. See Matthew L. Jarvey, (2013) Biolerplate Discovery Objections: How They Are Used, Why They Are Wrong and What We Can Do About Them, Drake Law Review, p. 916
76. Matthew L. Jarvey, (2013) Boilerplate Discovery Objections: How They Are Used, Why They Are Wrong and What We Can Do About Them, Drake Law Review, pp. 914-936