

Expert Witness and the Court System

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ABSTRACT

The objective of this study was to examine the role of a forensic accountant as an expert witness in the law court in Nigeria. The study focused on the extent an expert's professional experience can assist a lawyer in a case, the expert's assistance in determining the appropriate proximate cause for damages and bases for determining the authenticity of the expert witness' report. The study adopted an empirical approach using the questionnaire as its instrument in collecting data. These questionnaires were distributed to forensic accountants, accountants and forensic accounting students. The primary data was the main source of data collection, and the simple random sampling method was adopted. The chi-square method was used to analyze the questionnaires. The paper concluded that an expert witness' professional experience cannot assist a lawyer in a case, because cases differ in nature. The study also revealed that an expert witness has the ability to determine the appropriate proximate cause for damages and the authenticity of an expert's report can be determined. The study therefore recommended that experts should be assessed on the type and nature of previous professional experiences in relation to the nature of the current case at hand.

Key word; Expert witness, court system and litigation support.

INTRODUCTION

Financial fraud is a conscious deception carried out by an individual or organization at the expense of an individual, group, organization or government. There have been reoccurring cases of fraudulent acts reported on a regular basis and are still being reported, in Nigerian companies, churches, institutions and in the government. Due to the recent financial crisis, businesses, individuals, and large corporations have been facing huge financial pressures (Sanchez & Zhang, 2012).

Nigeria operates a three tier legal system, outside of customary courts. These are the State High Courts in each of the 36 states of the Federation and the Federal High Court, the Court of Appeal and the Supreme Court of Nigeria. The state and federal high court were set up in 1976, they handle the bulk of the commercial cases including Company Law Matters, Copyright Patents & Trade Marks, Admiralty, Aviation Matters, Immigration, Mineral Law Matters, cases which touch and concern the revenue of the Federal Government of Nigeria and suits which concern the Federal Government or any of its Agencies. All appeals lie to a single intermediate appellate court, the Court of Appeal, which has divisions in different zones within the country. Appeals thereafter lie from the Court of Appeal to the Supreme Court of Nigeria. This is the apex court. The work and integrity of this court has remained the most enduring symbol of Nigerian's commitment to the rule of law (Sowemimo, 2013).

In 1976, the Court of Appeal was established as a national court. The high courts are trial courts. Cases can be referred to higher courts if one party is not pleased with any judgment because under the 1999 constitution, the Supreme Court has both original and appellate jurisdictions. The decisions rendered by the court are binding on all other courts except the Supreme Court itself. In many states in the Northern part of the country, the Sharia Penal Code is in operation. Offences such as theft, homosexuality, alcohol consumption, fornication and adultery attract such punishment as stoning, lashing and long prison sentences. Nigeria's legal system is headed by the Minister of Justice and the Attorney General of the Federal Republic of Nigeria (The beehive, 2014).

The judge has an oversight over cases filed in each court. He/she is the trier of fact, as a result, he/she needs expert assistance to get to the truth. The role of an expert witness is to help the judge get to the truth. This is also true about the accounting profession. Recently, the spate of financial fraud has brought into questioning the services of a traditional auditor in the fight against fraud. Traditionally, the roles of a regular accountant in a company were to ensure that the company has a strong internal control and audit the books of account in order to prepare its financial statement. Due to the increase in the rate of financial fraud, the need to detect and prevent fraud became a necessity in companies, and this was not a part of the responsibilities of a regular accountant. Because of this, a gap was created which resulted to the need of a forensic accountant. In addition to the forensic accountant's role of detecting financial fraud, he can also act as an expert witness in the law court.

Forensic accountants play an increasingly important role in providing litigation services for financial fraud cases. Many attorneys need assistance from accountants during the preparation of their cases and then later need accountants to testify as expert witnesses. This paper adds to the current literature by providing an overview of the role of the accountant as an expert witness in financial fraud cases and should give both students and practitioners good insight into the role of the expert witness, from preparation to actual testimony. The main role of forensic accountants is to assist the courts, solicitors and clients understand the complex financial and accounting issues and presenting that information in a manner that all users can understand. An important addition to this is that the opinions or results are supported by evidence that will hold up under cross examination or scrutiny, which involves the need for additional qualities and skills (Sanchez & Zhang, 2012).

A forensic accountant can provide valuable insights for many different scenarios such as financial reporting fraud, shareholder/partner disputes, intellectual property infringement, asset impairment, business valuation, dissolution of marriage and white-collar criminal investigations, among other instances where their expertise in assessing the financial situation can be useful. There are also times when a forensic accountant is used for more personal matters, such as the dissolution of a marriage. In these instances, the accountant may review the financial situation of each person and their spending to help in the settlement process or to help in establishing accurate support figures for their attorneys to use in court (Laura, 2013).

On occasion in the corporate world, disputes between businesses arise. In the majority of cases, these issues can be easily resolved. However, in a few instances, it becomes necessary to manage the dispute through legal channels. In such cases, the advice of accountants versed in the legalities of commercial disputes can be essential. Litigation support is one of the most common reasons to hire a forensic accountant. Litigation support is, essentially, the process by which accountants familiar with the commercial disputes provide consultation and advice to attorneys. The kind of support provided can vary significantly from case to case. In some circumstances the advice might mean assistance during research or the provision of relevant facts and documentation, while in others it might entail determining the extent of damages once the case has been tried. In such cases, a forensic accountant can provide assistance with settlement discussions or in obtaining documentation to support a legal claim. They can also provide crucial support in the early stages of a legal dispute by conducting reviews of relevant documentation to form an initial assessment of the case, or by aiding in the discovery proceedings by helping to formulate key questions with regard to the financial evidence (Arthur, 2012).

STATEMENT OF THE RESEARCH PROBLEM

Linda (2009) submitted that Fraud investigators will always spend weeks working on a case to prosecute fraud, but with the help of forensic accountants, fraud will be easily detected because they are well trained in the rules of evidence, financial data, communication skills as well as the ability to convince a judge that they should be viewed as an expert in their field. Modugu & Anyaduba (2013) concluded that there is significant agreement amongst stakeholders on the effectiveness of forensic accounting in fraud control, improving financial reporting and internal control. Enofe, Okpako, & Atube (2013) revealed that forensic accounting services provide firms with the necessary tools to deter fraudulent activities but does not curb fraudulent activities.

However, there has not been adequate emphasis on the extent to which an expert witness' experience can assist an attorney in the court and how the expert can appropriately determine the proximate cause for damages. This could be as a result of the fact that forensic accounting is still a recent area in the accounting profession. Therefore, the study covers this gap with the following research questions:

1. To what extent does an expert witness' professional experience assist a lawyer in handling a case in the law court?
2. To what extent does the technical assistance of an expert witness help to determine the appropriate proximate cause?
3. What are the bases for determining the authenticity of an expert's report in the law court?

RESEARCH OBJECTIVES

The main objective of this study is the role of a forensic accountant as an expert witness in the law court. The specific objectives are to:

1. know the extent an expert witness' experience assists a lawyer in handling a case in the law court,
2. identify the extent to which the technical assistance of an expert witness helps to determine the appropriate proximate cause, and
3. find out the bases for determining the authenticity of an expert's report in the law court.

RESEARCH HYPOTHESIS

1. H_01 - The expert witness' professional experience does not assist a lawyer in the law court.
2. H_02 - The expert witness cannot technically assist in determining the appropriate proximate cause.
3. H_03 - The authenticity of the expert's report cannot be determined.

LITERATURE REVIEW

Conceptual Framework

Forensic accountants have been around for nearly 200 years. The earliest reference was found in 1824 in an accountant's advertising circular in Glasgow, Scotland. These special accountants gave testimony in court and in arbitration proceedings. According to Godwin (2013), one of the first institutions to use the services of such investigative accountants was the IRS. The story of Al Capone the famous mobster being caught on a tax evasion scheme is well-known. The FBI decided to use forensic accountants and employed nearly 500 such agents during World War II. As a profession, forensic accounting continued to grow during the latter half of the century, as Generally Accepted Accounting Principles (GAAP) and tax laws became widespread and mandatory. They also provide services in seven different legal areas; damages, antitrust, accounting, valuation, general consulting and analysis. The history of Forensic Accounting is long, but the field came into its own just in the last century. The selection of an expert is a process dependent upon on a number of factors, including prior interactions with a particular expert and the type of engagement for which the expert is being retained.

Joseph and Derk (2004) were of the view that the type and nature of an assignment should be the main determinant in the selection of an expert, primarily because this ensures that the approaches employed to complete the engagement will be: conducted in conformance with the relevant authorities and constructed in a supportable manner. Those responsible for selecting an expert should assess their case and determine the requisite core skills and experience that are relevant to the case at hand. In reality, attorneys often select experts with whom they have past dealings and established relationships. This often becomes a concern when the case for which the expert is being retained contains issues outside the skill set or experience of that individual. Although many forensic accounting experts can be proficient in most cases involving investigative accounting, there are a number of instances where investigative accounting is only one of several skill sets required to address the complex issues inherent in a particular case. Knowing what skill set you are looking for in a forensic accounting expert is only part of the selection process; perhaps even more difficult is sifting through the large number of potential experts to find the one that is perfect for the engagement at hand.

According to Godwin (2013), the roles and qualifications of an expert witness are; to analyze, interpret, summarize and present complex business and financial deals in a logical, understandable manner supported with facts, investigate and analyze financial information and develop computerized applications (if applicable) to assist in the analysis and presentation of financial information, communicate findings in the form of a report and supporting documents, assist in any Legal Proceedings, assist in obtaining documentation necessary to support or refute a claim, review of the relevant documentation to form an initial assessment of the case and identify areas of loss, assist with examination for discovery including the formulation of questions to be asked regarding the financial evidence, attend the examination for discovery to review the testimony, assist with understanding the financial issues and to formulate additional questions to be asked, review of the opposing expert's damages report and reporting on both the strengths and weaknesses of the positions taken, assist with settlement discussions and negotiations and attend trial to hear the testimony of the opposing expert and to provide assistance with cross-examination.

Joseph and Derk (2004) opined that in this information age, the selection of an expert witness has been greatly facilitated by resources available through the Internet. We forego discussion of the usual expert witness sources, such as locally and nationally distributed directories, in favor of listing quality expert witness databases like ExpertWitness.com and JurisPro.com that are available online. These Internet expert witness databases are very beneficial because they generally have been corroborated or filtered, they provide more comprehensive information, than do printed directories, about each expert, and they also provide links to the expert's website so that further research can be performed. Furthermore, these databases are continuously updated to provide accurate information and it is fairly easy to compare and contrast experts from around the country, or the world if necessary.

Zysman (2009) outlined some steps that the forensic accountant should follow; Meet with key individuals, discuss expectations, discuss fees and reimbursable costs, gather evidence after meeting with key individuals, research, discuss with key individuals on information that was obtained after research, make any necessary

adjustment to the facts, if any, after discussion with key individuals and write a formal report supported by evidence.

In addition, Joseph and Derk (2004) opined that certain separate qualifications and certifications that are possessed by a forensic accountant that regards him an expert witness, they are as follows: First is- Academic; It's safe to say that the majority of potential forensic accounting experts possess a significant amount of formal training. Typically, a forensic accountant will have an undergraduate degree, as well as an advanced or post-graduate degree. While academic training provides a forensic accountant with solid foundational skills, such training should be considered only as an entry point for further credentialing.

Another certification according to Joseph and Derk (2004) is- Accreditations; the most applicable accreditations are dependent upon the type of engagement for which the expert is being retained. Although certain accreditations hold universal appeal, some are more specifically targeted to particular types of cases; a) Investigative Accounting; In analyzing financial records to determine whether they have been manipulated, investigative accountants draw heavily on an understanding of the accounting process and procedures used to account for funds, particularly cash. For this reason, most investigative accountants are Certified Public Accountants (CPAs) and/or Certified Fraud Examiners (CFEs). In specific instances, particularly cases involving bankruptcy or troubled business, investigative accountants with the Certified Insolvency and Restructuring Advisor (CIRA) designation may also prove extremely helpful. The CIRA designation denotes that the holder has demonstrated a high degree of specialized, professional, financial, and operational expertise in the area of underperforming and insolvent businesses. b) Economic Loss Calculation; in determining economic damages, the forensic accountant relies upon expertise in accounting as well as on an understanding of the economic basis of a loss claim. For this reason, most economic damages experts are CPAs or have a background in economics. Since most of the principles of economic loss calculation deal with academic theories of economic reality, many economic loss experts are accounting, economic or finance professors and practitioners. c) Business Valuation; Business valuation experts also draw upon forensic accounting because many of the financial details used and relied upon in the valuation process often need to be reconstructed or thoroughly analyzed. An important, but often overlooked, fact is that there are differences between the objectives of an audit in compliance with GAAP and a forensic accounting reconstruction of accounting records.

The latter often attempts to reconstruct financial statements from an economic perspective. Business valuation experts typically have the Accredited Senior Appraiser (ASA) designation, in addition to other designations such as Certified Business Appraiser (CBA), Accredited in Business Valuation (ABV), and Certified Valuation Analyst (CVA). The requirements for obtaining these designations vary significantly. The ASA designation is the most difficult to obtain, because of its education, proficiency, and five year experience requirement, and is consequently considered by most practitioners to be the most prestigious. Finally, Joseph & Derk (2004) mentioned- Experience: Perhaps the most important characteristic of an effective expert is the extent of prior experience in forensic accounting cases. The effective application of forensic accounting derives from a wealth of knowledge accumulated over years of working on similar cases. Experience in depositions and with courtroom testimony is also critical. It is important that forensic accountants who wish to serve as experts are comfortable and familiar with the litigation process and Courtroom procedure.

According to Godwin (2013), the qualities that should be found in a forensic accountant that would qualify him as an expert witness are: a forensic accountant must be part detective and part accountant while analyzing, investigating, testing and examining evidence in order to present expert testimony on the occurrence of fraud. This requires knowledge of financial and managerial accounting, corporate financial management, advanced computer skills, a good knowledge of the legal environment, and strong communication skills. A naturally suspicious state of mind also helps the forensic accounting during the task of uncovering fraud.

According to Enyi (2012), in forensic accounting, a man is expected to know the trick of the monkey in order to catch it, but he should ensure that he did not become the monkey in the process. Impeccable character must be weaved around ethical considerations in forensic accounting for it to succeed. This implies that for effective investigation to be carried out, the investigator must understand the tricks being employed by the perpetrator, hence forensic accounting skill is required.

Enyi (2012) also opined that forensic accountants must have basic foundational knowledge in Accounting and Finance for a solid understanding of financial statements and the markets in which they operate. They include: Financial Statement Analysis - for the ability to critically analyze financial statements and their related ratios, Taxation and Business Law - for a thorough understanding of the legal elements of fraud, Securities Law and

Corporate Governance - for an in-depth coverage of the specific regulations affecting companies and their behavior, Information Systems - covering computer essentials and the flow of funds and information through the electronic media, Business Valuation - the often complex methods of finding hidden assets and the correct value of a business are useful tools for the forensic accountant, Criminology - for the many aspects of criminal law and procedure, Psychology - for an understanding of human behavior that leads to fraud, Business ethics - general ethics and specific codes that cover many professionals working in the field of finance and accounting and Business Communication - for clear report writing and oral communication skills that are crucial for conducting interviews and expert testimony in court. A Forensic Accountant must be open to consider all alternatives, scrutinize the fine details and at the same time see the big picture. In addition, a Forensic accountant must be able to listen effectively and communicate clearly and concisely.

METHODOLOGY:

The objective of this research is to answer the research questions and identify the roles played by a forensic accountant as an expert witness in a law court. The simple random sampling method was adopted for this study and the main source of data was the primary data. An empirical analysis was adopted for the purpose of this study which involved the use of questionnaires and these questionnaires were distributed amongst 40 respondents which include; forensic accountants, accountants and forensic students. These questionnaires were analyzed using the chi-square method, using a significance level of 0.05. The chi-square method which involves testing the relationship between variables was adopted for this study. The chi-square formula is represented as;

$$\chi^2 = \sum_{i=1}^r \sum_{j=1}^c (o_{ij} - e_{ij})^2 / e_{ij}$$

Where o_{ij} = observed frequency in the i th row and j th column

e_{ij} = expected frequency in the ij th cell

$e_{ij} = (\text{ith row total} \times \text{jth column total}) / \text{grand total}$

Decision rule

Reject H_0 : if $\chi^2_{\text{calculated}} > \chi^2_{\text{tabulated}}$

Don't Reject H_0 : if $\chi^2_{\text{calculated}} < \chi^2_{\text{tabulated}}$

DATA PRESENTATION AND ANALYSIS

TABLE 1.0;

	SEX		AGE		EDUCATIONAL QUALIFICATION	
	MALE	25	25 – 30	20	WASCE	-
	FEMALE	15	30 – 35	9	OND/NCE	1
			35 - ABOVE	11	B.Sc.	25
					M.Sc./Ph. D.	14

Source; Field study, 2015.

TABLE 1.1a;
 Hypothesis 1; The expert witness' professional experience and the lawyer.

	SA		A		U		D		SD		Total
	oij	eij	oij	eij	oij	eij	oij	eij	oij	eij	
A	23	17.25	17	21.25	0	1.00	0	0.50	0	0.00	40
B	18	17.25	20	21.25	1	1.00	1	0.50	0	0.00	40
C	15	17.25	24	21.25	1	1.00	0	0.50	0	0.00	40
D	13	17.25	24	21.25	2	1.00	1	0.50	0	0.00	40
Total	69		85		4		2		0		160

Source; Field study, 2015.

TABLE 1.1b;

oij	eij	$(oij - eij)^2$	$(oij - eij)^2/eij$
23	17.25	33.06	1.96
18	17.25	0.56	0.03
15	17.25	5.06	0.29
13	17.25	18.06	1.05
17	21.25	18.06	0.85
20	21.25	1.56	0.07
24	21.25	7.56	0.36
24	21.25	7.56	0.36
0	1.00	1.00	1.00
1	1.00	0.00	0.00
1	1.00	0.00	0.00
2	1.00	1.00	1.00
0	0.50	0.25	0.50
1	0.50	0.25	0.50
0	0.50	0.25	0.50
1	0.50	0.25	0.50
0	0.00	0.00	0.00
0	0.00	0.00	0.00
0	0.00	0.00	0.00
0	0.00	0.00	0.00
			X² calculated= 8.93

Source; Author, 2015.

X² Tabulated; d.f. = (r - 1) (c-1), level of significance = 0.05.

(4 - 1)(5 - 1)

3 x 4 = 12.

X² tabulated = 21.02.

Therefore, we accept the null hypothesis which states that the expert witness' professional experience cannot assist a lawyer in the law court and reject the alternate hypothesis.

TABLE 1.2a;
 Hypothesis 2; The expert witness and the appropriate proximate cause.

	SA		A		U		D		SD		Total
	oij	eij	oij	eij	oij	eij	oij	eij	oij	eij	
A	12	8.50	18	18.75	9	9.75	1	3.00	0	0.00	40
B	9	8.50	23	18.75	6	9.75	4	3.00	0	0.00	40
C	9	8.50	16	18.75	9	9.75	6	3.00	0	0.00	40
D	4	8.50	18	18.75	15	9.75	1	3.00	0	0.00	40
Total	34		75		39		12		0		160

Source; Field study, 2015.

TABLE 1.2b;

oij	eij	$(oij - eij)^2$	$(oij - eij)^2/eij$
12	8.50	12.25	1.44
9	8.50	0.25	0.03
9	8.50	0.25	0.03
4	8.50	72.25	8.50
18	18.75	0.56	0.03
23	18.75	18.06	0.96
16	18.75	7.56	0.40
18	18.75	0.56	0.03
9	9.75	0.56	0.59
6	9.75	14.06	1.44
9	9.75	0.56	0.06
15	9.75	27.56	2.83
1	3.00	4.00	1.33
4	3.00	1.00	0.33
6	3.00	9.00	3.00
1	3.00	4.00	1.33
0	0.00	0.00	0.00
0	0.00	0.00	0.00
0	0.00	0.00	0.00
0	0.00	0.00	0.00
			X² calculated= 22.33

Source; Author, 2015.

X² Tabulated; d.f. = (r - 1) (c-1), level of significance = 0.05.

(4 - 1)(5 - 1)

3 x 4 = 12.

X² tabulated = 21.02.

Therefore, we accept the alternate hypothesis which states that the expert witness can assist in determining the appropriate proximate cause and reject the null hypothesis.

TABLE 1.3a;
 Hypothesis 3; The authenticity of the expert witness' report.

	SA		A		U		D		SD		Total
	oij	eij	oij	eij	oij	eij	oij	eij	oij	eij	
A	10	9.75	27	19.50	9	6.75	8	4.00	0	0.00	40
B	9	9.75	10	19.50	4	6.75	2	4.00	0	0.00	40
C	12	9.75	30	19.50	4	6.75	3	4.00	0	0.00	40
D	8	9.75	11	19.50	10	6.75	3	4.00	0	0.00	40
Total	39		78		27		16		0		160

Source; Field study, 2015.

TABLE 1.3b;

oij	eij	$(oij - eij)^2$	$(oij - eij)^2/eij$
10	9.75	0.06	0.01
9	9.75	0.56	0.06
12	9.75	5.06	0.52
8	9.75	3.06	0.31
27	19.50	56.25	2.88
10	19.50	90.25	4.63
30	19.50	110.25	5.65
11	19.50	72.25	3.71
9	6.75	5.06	0.75
4	6.75	7.56	1.12
4	6.75	7.56	1.12
10	6.75	10.56	1.56
8	4.00	16.00	4.00
2	4.00	4.00	1.00
3	4.00	1.00	0.25
3	4.00	1.00	0.25
0	0.00	0.00	0.00
0	0.00	0.00	0.00
0	0.00	0.00	0.00
0	0.00	0.00	0.00
			X² calculated= 27.82

Source; Author, 2015.

X² Tabulated; d. f. = (r - 1) (c-1), level of significance = 0.05.

(4 - 1)(5 - 1)

3 x 4 = 12.

X² tabulated = 21.02.

Therefore, we accept the alternate hypothesis which states that the authenticity of the expert's report can be determined and reject the null hypothesis.

SUMMARY OF FINDINGS

This study has shown that whether the expert witness has an experience or not, does not matter when assisting a lawyer in a case. However, the study has also shown that the expert witness has the ability to calculate the appropriate proximate cause for damages and the possibility of determining the authenticity of an expert witness' report.

CONCLUSION AND RECOMMENDATION

This study therefore concludes that an expert witness' professional experience cannot assist a lawyer in a case. This is due to the fact that litigation cases are different in nature, and so where the expert's previous experiences were on cases different from his current case, it renders his prior experiences irrelevant in addressing the case at hand. Therefore, it is a matter of the nature of litigation case and not the professional experience. It is therefore recommended that experts should be assessed on the basis of their prior experiences in relation to current case and not on their professional experiences in general, because cases differ in nature and require different approaches.

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