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An exploratory study on gathering evidences and forms of evidences for successful forensic audit

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Abstract---Evidence is one of the powerful tool required to complete any forensic accounting assignment successfully, keeping in mind this requirement author has tried to elaborate on term evidence its meaning and the different forms in this research paper. This clarity of idea will also help forensic auditor for giving decision on many forensic audits. The researcher has tried to explain in detail the evidence, importance of evidence, forms of evidence and techniques for gathering the evidences in this paper.

Keywords---evidence, forensic audit, exploratory study.

Introduction

Most of the assignments a forensic auditor may receive will require him to prove or reject an argument or a claim presented before him for verification. Evidences will be the most important tool that a forensic auditor may use for proving or rejecting an argument or claim. How effectively he gathers various types of evidences will be crucial for getting success in the forensic audit assignment. The researcher has tried to explain in detail the evidence, importance of evidence, forms of evidence and techniques for gathering the evidences in this paper.

Meaning and definition of evidence

As per Oxford Dictionary

“Evidence means the available body of facts or information indicating whether a belief or proposition is true or valid.”

As per Cambridge Dictionary

“Evidence means one or more reasons for believing that something is or is not true.”

As per Collins Dictionary

1. "Evidence is the anything that you see, experience, read, or told that causes you to believe that something is true or has really happened."
2. "Evidence is the information which is used in a court of law to try to prove something. Evidence is obtained from documents, objects, or witnesses."

As per Business Dictionary

"Evidence means testimony and presentation of documents, records, objects, and other such items relating to the existence or non-existence of alleged or disputed facts into which a court enquires."

As per Section 3 of The Indian Evidence Act, 1872

"Evidence" means and includes—

- (1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry, such statements are called oral evidence;
- (2) all documents including electronic records produced for the inspection of the Court.

Based on above definitions, to summarize, An Evidence must have the following characteristics

- (1) It must be a fact.
- (2) It may be in the form of witness, document, objects, records and statements.
- (3) It must be capable of supporting or rejecting a claim in court of law.

Why is evidence important?

Evidence is about ascertaining accountability. Evidence is part of our everyday life and it helps us assess the impact and effectiveness of our work. Through evidence, it becomes easy for establishing or rejecting a contention that we are examining. *Evidence forms the building blocks of the investigative process and for the final product to be built properly, evidence must be recognized, collected, documented, protected, validated, analyzed, disclosed, and presented in a manner which is acceptable to the court.*

How should evidence be used?

Evidence should be used in the design, delivery and evaluation of assignment targeting the hypothesis that we want to test. Here are some important principles about using evidence:

- Evidence is support, not proof or truth, of an assertion
- Evidence provides a deeper understanding and insight into the impact of our work

- Evidence gives us opportunities for reflection and improvement
- Evidence is for anyone, adding value to all those involved in the delivery of, or benefitting from, services

Standards for Evidence

- Make sure your evidence is appropriate to the report you are writing
- Make sure the evidence does, in fact, support your argument or your claims
- Tell your reader why this evidence supports your argument/claims
- Make sure you have an appropriate amount of evidence
- Make sure to appropriately cite your evidence

Sources of Evidence

Evidence can be separated into two categories, primary and secondary sources.

- a. Primary Sources
- b. Secondary Sources

Primary Sources

Primary sources are first-hand experiences, accounts, observations, reports, or narratives. Primary sources could include diaries, letters, contemporary newspapers, or eyewitness accounts of events. Official documents, data collected from surveys, and laboratory results are also primary sources. In the humanities, the text you are writing about is also considered your primary text. So, for example, if you are writing a paper on Chankya, then the book is your primary source. In the sciences, primary sources are also the results of an experiment that have been peer-reviewed and published in an academic journal.

Secondary Sources

Secondary sources are critiques written by academics and scholars. These sources are considered secondary because they examine primary sources to present an argument or support a point of view; as such, they may be selective with their evidence or insert themselves in a debate happening among a number of scholars. In the sciences, reviews, which are surveys of articles that demonstrate an understanding of a field, are considered secondary. It is a good idea to be aware of the bias in secondary sources when employing them as evidence. Frequently the assignment will specify whether you need to use primary or secondary sources.

Techniques for Gathering Evidence

- Inquiry
- Interview
- Questionnaire
- Expert Opinion
- External Confirmation

Inquiry

Inquiry consists of seeking information of knowledgeable persons, both financial and non financial, within the entity or outside the entity. Inquiry is used extensively throughout the audit in addition to other audit procedures. Inquiries may range from formal written inquiries to informal oral inquiries. Evaluating responses to inquiries is an integral part of the inquiry process. Responses to inquiries may provide the auditor with information not previously possessed or with corroborative audit evidence. Alternatively, responses might provide information that differs significantly from the other information that the auditor has obtained, for example, information regarding the possibility of management override of controls. In some cases, responses to inquiries provide a basis for the auditor to modify or perform additional audit procedures.

Interviews

Interviewing is a frequently used technique to gather evidence and opinions. Interviews can help to define the issues, furnish evidence to support audit findings, and clarify positions between the auditor and the auditee on audit observations and recommendations. Interviews can also be used to solicit the opinions and experiences of stakeholders or recipients of the auditee's products or services. Adequate preparation and good skills are needed to use interviews effectively in building or confirming audit evidence.

What is the technique?

An interview is a question-answer session to elicit specific information. Interviews could be structured or individual (un-structured). Structured interviews aim to gather the same information from many people. Questions in a structured interview have specific wording and are asked in a set order. Data from structured interviews can be quantified. An individual interview is more exploratory in nature. Here, the interviewer can change direction of the interview, probe on certain issues. Interviews can have open-ended or closed questions. Open-ended questions allow greater freedom to explore issues. They cannot provide quantitative evidence but can provide explanations, impressions and opinions. Interviews can be held telephonically or more commonly face-to-face.

When to use the technique?

Interviews can be used both in the planning and execution phases. In the planning stage, individual interviews help to obtain opinion and ideas that can identify the potential key issues in the auditee and thus help in focusing the audit. Interviews also provide clue to other possible evidence sources and the availability of documents in the entity. In the execution phase, individual interviews can be used to obtain opinions and ideas that relate to the audit objectives. Interviews can be used to corroborate evidence used from other sources. Interviews can also be used to explore possible recommendations. Structured interviews are often a part of surveys.

Questionnaires

Questionnaires comprise lists of questions designed to obtain information on a specific subject. When the cost of interviewing a large number of people would be prohibitive, questionnaires are a valuable means of gathering information. The information from questionnaires tend to fall under two broad categories - facts and opinions.

Questionnaires are suitable in circumstances when

- There is need to minimize the time and cost involved in collecting information.
- The information is not otherwise available
- The auditor is trying to identify strength and weaknesses in an organization
- An assessment of quality of service is being made on the basis of rating given by customers.
- Audit evidence is required to support particular conclusion from the study.
- The design of a questionnaire will have a direct impact on the quality of evidence. It is to be ensured that:
- The questions will not be irritating or annoying for the respondents
- The respondents will have some information, knowledge or experience or opinion on the topic of question.
- The proposed style is suited to the target group.
- The questions require respondents to answer only about themselves or matters of facts they can realistically answer for others.
- The questions are on a topic and kind which the respondent will be willing to answer.

Expert opinion

Experts are persons who have recognized skills or knowledge in particular fields. They could have expert knowledge of an entity or its business or of a scheme/project or a particular issue. Their expertise is recognized based on their qualifications and experience as also on the currency of their knowledge and their involvement in the field. When several experts are consulted, even if they disagree, their opinions can be summarized in a systematic way and the results can add credibility to audit reports.

Expert opinion is sought

- When advice is needed about a new or highly technical subject
- When only professional disciplines are qualified to judge whether a criteria is met

External Confirmations

- a) External confirmation – Audit evidence obtained as a direct written response to the auditor from a third party (the confirming party), in paper form, or by electronic or other medium.

- b) Positive confirmation request – A request that the confirming party respond directly to the auditor indicating whether the confirming party agrees or disagrees with the information in the request, or providing the requested information.
- c) Negative confirmation request – A request that the confirming party respond directly to the auditor only if the confirming party disagrees with the information provided in the request.
- d) Non-response – A failure of the confirming party to respond, or fully respond, to a positive confirmation request, or a confirmation request returned undelivered.
- e) Exception – A response that indicates a difference between information requested to be confirmed, or contained in the entity's records, and information provided by the confirming party.

External confirmation procedures frequently are performed to confirm or request information regarding account balances and their elements. They may also be used to confirm terms of agreements, contracts, or transactions between an entity and other parties, or to confirm the absence of certain conditions, such as a "side agreement."

Responses to confirmation requests provide more relevant and reliable audit evidence when confirmation requests are sent to a confirming party the auditor believes is knowledgeable about the information to be confirmed. For example, a financial institution official who is knowledgeable about the transactions or arrangements for which confirmation is requested may be the most appropriate person at the financial institution from whom to request confirmation.

Forms of Evidences

The following are some of the key definitions and protocols that an investigator should understand relating to various forms of evidence during the investigative process:

- a) Relevant evidence
- b) Direct evidence
- c) Circumstantial evidence
- d) Inculpatory evidence
- e) Exculpatory evidence
- f) Corroborative evidence
- g) Witness evidence
- h) Hearsay evidence

Relevant Evidence

Relevant evidence speaks to an issue before court in relation to the charge being heard. Relevant evidence includes both direct evidence and indirect circumstantial evidence. For either direct or indirect circumstantial evidence to be considered relevant to the court, it must relate to the elements of the offence that need to be proven. If the evidence does not relate to proving the place, time, identity of the accused, or criminal acts within the offence itself, the evidence will not be considered relevant to the charge. The prosecution may present evidence in

the form of a physical exhibit that the court can see and examine to consider, or they may present evidence in the form of witness testimony, in which case the witness is telling the court what they perceived within the limits of their senses.

Direct Evidence

Direct evidence is evidence that will prove the point in fact without interpretation of circumstances. It is any evidence that can show the court that something occurred *without the need for the judge to make inferences or assumptions to reach a conclusion*. An eyewitness who saw the accused shoot a victim would be able to provide direct evidence. Similarly, a security camera showing the accused committing a crime or a statement of confession from the accused admitting to the crime could also be considered direct evidence.

Circumstantial Evidence

Indirect evidence, also called circumstantial evidence, is all other evidence, such as the fingerprint of an accused found at the crime scene. Indirect evidence does not by itself prove the offence, but through interpretation of the circumstances and in conjunction with other evidence may contribute to a body of evidence that could prove guilt beyond a reasonable doubt. Strong circumstantial evidence that only leads to one logical conclusion can sometimes become the evidence the court uses in reaching belief beyond a reasonable doubt to convict an accused. It requires assumptions and logical inferences to be made by the court to attribute meaning to the evidence.

Circumstantial evidence demonstrates the spatial relationships between suspects, victims, timelines, and the criminal event. These spatial relationships can sometimes demonstrate that an accused person had a combination of intent, motive, opportunity, and/or the means to commit the offence, which are all meaningful features of criminal conduct. Circumstantial evidence of conflict, vengeance, financial gain from the commission of the offence can also become evidence of motive.

Circumstantial evidence of opportunity can be illustrated by showing a suspect had access to a victim or a crime scene at the time of the criminal event, and this access provided opportunity to commit the crime. Circumstantial evidence of means can sometimes be demonstrated by showing the suspect had the physical capabilities and/or the tools or weapons to commit the offence. Presenting this kind of circumstantial evidence can assist the court in confirming assumptions and inferences to reach conclusions assigning probative value to connections between the accused and a person or a place and the physical evidence. These circumstantial connections can create the essential links between a suspect and the crime.

Inculpatory Evidence

Inculpatory evidence is any evidence that will directly or indirectly link an accused person to the offence being investigated. For an investigator, inculpatory evidence can be found in the victim's complaint, physical evidence, witness

accounts, or the circumstantial relationships that are examined, analyzed, and recorded during the investigative process. It can be anything from the direct evidence of an eyewitness who saw the accused committing the crime, to the circumstantial evidence of a fingerprint found in a location connecting the accused to the victim or the crime scene.

Naturally, direct evidence that shows the accused committed the crime is the preferred inculpatory evidence, but, in practice, this it is frequently not available. The investigator must look for and interpret other sources for evidence and information. Often, many pieces of circumstantial evidence are required to build a case that allows the investigator to achieve reasonable grounds to believe, and enables the court to reach their belief beyond a reasonable doubt.

A single fingerprint found on the outside driver's door of a stolen car would not be sufficient for the court to find an accused guilty of car theft. However, if you added witness evidence to show that the accused was seen near the car at the time it was stolen, and a security camera recording of the accused walking off the parking lot where the stolen car was dumped, and the police finding the accused leaving the dump site where he attempted to toss the keys of that stolen car into the bushes, the court would likely have proof beyond a reasonable doubt.

If an abundance of inculpatory circumstantial evidence can be located for presentation to the court that leads to a single logical conclusion, the court will often reach their conclusion of proof beyond a reasonable doubt, unless exculpatory evidence is presented by the defence to create a reasonable doubt.

Exculpatory Evidence

Exculpatory evidence is the exact opposite of inculpatory evidence in that it tends to show the accused person or the suspect did not commit the offence. It is important for an investigator to not only look for inculpatory evidence, but to also consider evidence from an exculpatory perspective. Considering evidence from the exculpatory perspective demonstrates that an investigator is being objective and is not falling into the trap of tunnel vision. If it is possible to find exculpatory evidence that shows the suspect is not responsible for the offence, it is helpful for police because it allows for the elimination of that suspect and the redirecting of the investigation to pursue the real perpetrator.

Sometimes, exculpatory evidence will be presented by the defense at trial to show the accused was not involved in the offence or perhaps only involved to a lesser degree. In our previous circumstantial case of car theft, there is strong circumstantial case; but what if the defense produces the following exculpatory evidence where:

- A tow truck dispatcher testifies at the trial and produces records showing the accused is a tow truck driver;
- On the date of the car theft, the accused was dispatched to the site of the car theft to assist a motorist locked out of his car;
- The accused testifies that he only assisted another male to gain entry to the stolen car because he could see the car keys on the front seat;

- The accused explains that, after opening the car, he agreed to meet this male at the parking lot where the car was left parked;
- He accepted the keys of the stolen car from the other male to tow the vehicle later to a service station from that location;
- When approached by police, he stated that he became nervous and suspicious about the car he had just towed; and
- He tried to throw the keys away because he has a previous criminal record and knew the police would not believe him.

Corroborative Evidence

The term corroborative evidence essentially refers to any type of evidence that tends to support the meaning, validity, or truthfulness of another piece of evidence that has already been presented to the court. A piece of corroborative evidence may take the form of a physical item, such as a DNA sample from an accused matching the DNA found on a victim, thus corroborating a victim's testimony. Corroborative evidence might also come from the statement of one independent witness providing testimony that matches the account of events described by another witness. If it can be shown that these two witnesses were separated and did not collaborate or hear each other's account, their statements could be accepted by the court as mutually corroborative accounts of the same event.

The courts assign a great deal of probative value to corroborative evidence because it assists the court in reaching their belief beyond a reasonable doubt. For investigators, it is important to not just look for the minimum amount of evidence apparent at the scene of a crime. Investigation must also seek out other evidence that can corroborate the facts attested to by witnesses or victims in their accounts of the event. An interesting example of corroborative evidence can be found in the court's acceptance of a police investigator's notes as being *circumstantially corroborative* of that officer's evidence and account of the events. When a police investigator testifies in court, they are usually given permission by the court to refer to their notes to refresh their memory and provide a full account of the events. If the investigator's notes are detailed and accurate, the court can give significant weight to the officer's account of those events. If the notes lack detail or are incomplete on significant points, the court may assign less value to the accuracy of the investigator's account.

Witness Evidence

Witness evidence is evidence obtained from any person who may be able to provide the court with information that will assist in the adjudication of the charges being tried. This means that witnesses are not only persons found as victims of a crime or on-scene observers of the criminal event. They may also be persons who can inform the court on events leading up to the crime, or activities taking place after the crime. These after-the-crime activities do not just relate to activities of the suspect, but also include the entire range of activities required to investigate the crime. Consequently, every police officer involved in the investigation, and every person involved in the handling, examination, and analysis of evidence to be presented in court, is a potential witness.

Hearsay Evidence

Hearsay evidence, as the name implies, is evidence that a witness has heard as a communication from another party. In addition to verbal communication, legal interpretations of the meaning of hearsay evidence also include other types of person-to-person communication, such as written statements or even gestures intended to convey a message. Hearsay evidence is generally considered to be inadmissible in court at the trial of an accused person for several reasons; however, there are exceptions where the court will consider accepting hearsay evidence. The reasons why hearsay is not openly accepted by the court include the rationale that:

- The court generally applies the best-evidence rule to evidence being presented and the best evidence would come from the person who gives the firsthand account of events;
- The original person who makes the communication that becomes hearsay, is not available to be put under oath and cross-examined by the defense;
- In hearing the evidence, the court does not have the opportunity to hear the communicator firsthand and assess their demeanor to gauge their credibility; and
- The court recognizes that communication that has been heard and is being repeated is subject to interpretation. Restatement of what was heard can deteriorate the content of the message.

The court will consider accepting hearsay evidence as an exception to the hearsay rule in cases where:

- There is a dying declaration
- A witness is the recipient of a spontaneous utterance
- The witness is testifying to hearsay from a child witness who is not competent

Analyzing Evidence

Once you have selected your evidence it is important to tell you reader why the evidence supports your claim. Evidence does not speak for itself: some readers may draw different conclusions from your evidence, or may not understand the relation between your evidence and your claim. It is up to you to walk your reader through the significance of the evidence to your claim and your larger argument. In short, you need a reason why the evidence supports the claim – you need to analyze the evidence. Some questions you could consider are:

- Why is this evidence interesting or effective?
- What are the consequences or implications of this evidence?
- Why is this information important?
- How has it been important to my report or to the field I am investigating?
- This evidence points to a result of an experiment or study, can I explain why these results are important or what caused them?
- Can I give an example to illustrate this point?
- What are the strengths and weaknesses of the evidence presented?

Conclusion

It can be concluded that Evidence plays a vital role in any examination or investigation assignment a forensic auditor may undertake. It is of utmost important to understand the evidence, types of evidence, sources of evidence and techniques for gathering the various evidences. All the above listed forms of evidence may or may not be available in particular assignment, but combination of one or more forms of evidence will definitely lead the investigator to draw some form of conclusion. The techniques of gathering evidence discussed in the paper will be useful to the investigator in designing their investigation plan for collecting the appropriate and effective evidence.

References

- <https://dictionary.cambridge.org/dictionary/english/evidence> accessed on 15/07/2019 at 9.40 am
- <https://www.collinsdictionary.com/dictionary/english/evidence> accessed on 15/07/2019 at 9.42 am
- <http://www.businessdictionary.com/definition/evidence.html> accessed on 15/07/2019 at 9.44 am
- <https://indiankanoon.org/doc/1031309/> accessed on 15/07/2019 at 9.47 am
- <https://www.lib.uoguelph.ca/get-assistance/writing/writing-disciplines/using-evidence-effectively> accessed on 15/07/2019 at 9.50 am
- <http://mentor-adepis.org/importance-of-evidence/> accessed on 15/07/2019 at 9.54 am
- <https://i-sight.com/wp-content/uploads/2017/01/Understanding-15-Types-of-Evidence.pdf?x15763> accessed on 15/07/2019 at 10.02 am
- <https://pressbooks.bccampus.ca/criminalinvestigation/chapter/chapter-3-what-you-need-to-know-about-evidence/> accessed on 15/07/2019 at 10.04 am
- <https://www.courts.ca.gov/documents/getting-evidence.pdf> accessed on 15/07/2019 at 10.07 am
- https://www.worldbank.org/content/dam/Worldbank/Feature%20Story/ECA/Romania/Conferencejune2014/EFC%20workshop_Opatija_Session%205_UK_Final.pdf accessed on 15/07/2019 at 10.10 am
- <https://guide.iacrc.org/the-basics-of-evidence-for-fraud-and-corruption-investigators/> accessed on 15/07/2019 at 10.13 am
- https://www.acfe.com/uploadedFiles/Shared_Content/Products/Books_and_Manuals/2014%20Sample%20Chapter_Planning%20and%20Conducting%20a%20Fraud%20Examination.pdf accessed on 15/07/2019 at 10.15 am
- <http://rtiallahabad.cag.gov.in/rti-website/rti-allahabad/course%20anoun/Note%20Evidence%20ring%20Techniques.pdf> accessed on 15/07/2019 at 10.19 am

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