## LECTURE NOTES IN EVIDENCE

(Rule 128-134)

By

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Foreword

*This is an updated, revised, compiled and codified edition based on the lectures, notes and comments delivered by the late Professor Jose E. Cristobal, Professor Emeritus of the Baguio Colleges Foundation, College of Law and Dean Honorato Y. Aquino of the Baguio Colleges Foundation, College of Law. Some of the materials incorporated herein were the products gathered by this writer from jurisprudence as printed in the Supreme Court Reports Annotated and the Supreme Court Advance Decisions and the treatises and writings of known writers on the subject.(revised as of October 2012)*

GENERAL CONSIDERATIONS

And Admissibility of Evidence

1. ***Evidence -*** It is the means sanctioned by these rules of ascertaining in a judicial proceeding, the truth respecting a matter of fact. *(Sec. 1*) It is the relation between two facts, namely

* ***Factum probandum*** – ultimate fact or the fact or the proposition sought to be established.
* ***Factum probans*** – evidentiary fact or the fact by which the *factum probandum* is to be established.

1. ***Actions are governed by our rules on evidence-*** The rules on evidence are applicable in all actions and in all courts except when the law and the rules so provide. The rules on evidence are the same both in criminal as well as in civil cases.*(Sec.2)*
2. ***Evidence not the same as proof.* Evidence** is the means of proof while **proof** is the effect of evidence, the establishment of a fact by evidence. **Proof** results as the probative effect of evidence and is the conviction or persuasion of the mind resulting from a consideration of the evidence. *(20 AmJur 34)*
3. ***Classes of evidence***

Evidence may be classified as follows:

* ***Object (Real)*** that which is directly addressed to the senses of the court and consists of tangible things exhibited or demonstrated in open court, in an ocular inspection, or at a place designated by the court for its view or observation of an exhibition, experiment or demonstration.
* ***Documentary*** Evidence supplied by written instruments or derived from conventional symbols, such as letter, by which ideas are represented on material substances.
* ***Testimonial***that which is submitted to the court through the testimony or deposition of a witness.
* ***Relevant*** Evidence having any value in reason as tending to prove any matter provable in an action; *Relevancy* refers to the logical relation of evidentiary fact to fact in issue.
* ***Material*** Evidence directed to prove a fact in issue.
* ***Competent*** One that is not excluded by law in particular case.
* ***Direct***that which proves the fact in dispute without the aid of any inference or presumption
* ***Circumstantial*** the proof of the facts other than the fact in issue from which, taken either singly or collectively, the existence of the particular fact in dispute may be inferred as a necessary or probable consequence.
* ***Cumulative*** Evidence of the same kind and to the same state of facts.
* ***Corroborative*** Evidence of a different character to the same point for higher probative value.
* ***Prima facie*** That which standing alone, unexplained or uncontradicted is sufficient to maintain a proposition
* ***Conclusive***Class of evidence which the law does not allow to be contradicted.
* ***Primary or Best***That which the law regards as affording greatest certainty of the fact in question
* ***Secondary or Substitutionary***That which is inferior to the primary evidence and is permitted by law only when the best evidence is not available.
* ***Positive***The witness affirms that a fact did or did not occur.
* ***Negative***The witness states that he did not see or know of the occurrence of a fact.
* ***Expert evidence*** -testimony of one possessing in regard to a particular subject or department of human activity, knowledge not usually acquired by other persons. Such as fingerprints, handwritings ballistics, DNA, etc.

1. ***Incomplete testimony of a witness not admissible as evidence.***

An incomplete testimony of a witness not subjected to cross examination is not admissible as evidence and must be stricken off. It is the duty of every witness to complete his testimony and make himself available for cross examination in accordance with fair play and due process. An incomplete testimony becomes incompetent and inadmissible evidence.***(Cunada vs. Drilon, G.R. No. 159118, June 28, 2004***

1. ***Rule on evidence maybe waived.***

Rules of evidence established merely for the protection of the parties may, by way of agreement, be waived. Rules of evidence established by law on grounds of public policy may not be waived. (*See Francisco on Evidence)*

1. ***No vested rights on the rules of evidence.***

A party cannot acquire vested rights on the rules on evidence. Thus evidence that is inadmissible at the time of the accrual of the cause of action may be admissible at the time of the trial if the law then applicable admits such kind of evidence.

1. ***Substantive rights.***

Rules of evidence which are expressly sanctioned by the Constitution cannot diminish, increase or modify substantive rights. (Examples are the rights against self-incrimination, confrontation, or cross-examination of witnesses).

1. ***Rules on evidence, construed***

Rules of evidence which are used in practice as effective aids in the search for truth and for the effective administration of justice must be strictly construed. However, those rules of evidence regarding the admissibility of evidence which are of doubtful relevancy, competency or materiality are to be liberally construed.

1. ***Effects of the rules on pleadings on the rules of evidence***

Pleadings help in the determination of whether evidence that is offered is relevant or material to the fact in issue. The reason for this is the fact that no evidence may be admitted to prove a fact that is not incorporated in the pleading.

1. ***Facts in issue or in dispute not the same as facts relevant to the issue.***

Facts in issue are those disputed facts which a party must prove by evidence in order to establish a claim or defense. Facts that are admitted by either party, expressly or impliedly are not considered in issue. Facts in issue or in dispute are different from facts relevant to the issue. Facts relevant to the issue refer to those facts which render probable the existence or non-existence of the fact in dispute or in issue.

1. ***Non-admissibility of illegally seized evidence.***

The answer is no. The law and the constitution disallow the admission of such kind of evidence. This is covered by the exclusionary rules of evidence. They are incompetent evidence in any proceeding.

1. ***Rules of evidence classified***

**1. Rules of Probative Policy**. These are rules the purposes of which is to improve the probative value of the evidence offered, they are either--

**a) Exclusionary Rules**- those that exclude certain kinds of evidence on the grounds of policy and relevancy. Example: the rule that character evidence is not admissible in civil cases; the rule disqualifying certain persons from being witnesses

**b) Preferential Rules**- those which require one kind of evidence in preference to any other in that they are more trustworthy. Example: the rule which require that the original of a document is preferred over any other as proof of the contents of a document

**c) Analytical rules**- those that subject certain kinds of evidence to rigid scrutiny, so as to expose their possible weaknesses and shortcomings. Examples: the rules which require that testimonial evidence be subjected to the opportunity for cross-examination

**d) Prophylactic rules-** those that apply beforehand certain measures to prevent risk, falsity or mistake. Examples: the rules which require that witnesses be placed under oath; the rules on the separation and exclusion of witnesses

**e) Quantitative Rules**- the rules that require certain kinds of evidence to be produced in specific quantity, or that certain evidence be required to be associated with other evidence when presented. Examples: the 2-witness rule in the crime of treason; the rule which require that an extra judicial confession be corroborated by evidence of corpus delicti; that the testimony of a state witness be corroborated in its material points.

**2. Rules of Extrinsic Policy**- these are rules which seek to exclude useful evidence for the sake of upholding other policies considered more paramount. They may either be absolute or conditional.

Examples: The Exclusionary Provisions of the Constitution; the Anti Wire Tapping Law.

1. ***Scope of our rules on evidence.***

The rules of evidence shall be the same in all courts and in all trials and hearings, except as otherwise provided by law or these rules***. (Sec. 2, Rule 128)***  The same rules shall govern the trial in the lower courts and appellate courts, in civil and in criminal cases. The reason is that the search for truth is subject to the same rules.

1. ***Exceptions to the rule on uniformity of the application of the rules.***

The exceptions to the rule may be the following:

A. As to whether the rules on the presentation of evidence shall be applied --

1. Cases covered by the Regular Procedure- the rules apply strictly

2. Cases covered by the Rules on Summary Procedure- the rules are relaxed and the procedure is abbreviated.

B. Between civil and criminal proceedings:

1. As to the quantum of evidence for the plaintiff to win: proof of guilt of the accused beyond reasonable doubt vs. preponderance of evidence.

2. As to the presence of the parties: in civil cases the attendance of the parties is not required and they attend on their own volition whereas in criminal cases, the presence of the accused is required unless he waived the same.

3. As to the effect of the absence of a party: in civil cases, except during the pre-trial, the proceedings may proceed even in the absence of the parties whereas in criminal cases, trial cannot proceed if the accused was not notified.

4. As to the rule on confessions: this applies only in criminal cases.

5. As to the effect of an offer of compromise by the defendant: in criminal cases the offer is an implied admission of guilt whereas it does not simply any liability in civil cases.

6. As to the presumption of innocence: this applies only in criminal cases

1. ***Some doctrines or principles regarding the admissibility of evidence even if they are relevant and/or material to the fact in issue***

**A. The Exclusionary Rule Principle -** the principle which mandates that evidence obtained from an illegal arrest, unreasonable search or coercive investigation, or in violation of a particular law, must be excluded from the trial and will not be admitted as evidence. The principle judges the admissibility of evidence based on HOW the evidence is obtained or acquired and not WHAT the evidence proves. The principle is to be applied only if it is so expressly provided for by the constitution or by a particular law. Even if the manner of obtaining the evidence is in violation of a certain law but the law does not declare that the evidence is inadmissible, then such evidence will be admissible. 3. The phrase is attributed to Justice Felix Frankfurter of the U.S. Supreme and has its biblical reference to Mathew 7: 17-20.

***Let us illustrate:*** *The accused claimed that information about his bank accounts i.e. trust funds, was obtained in violation of the Secrecy of Bank Deposits Law ( R.A. 1405) and moved to have them be excluded as evidence. HELD: R.A. 1405 nowhere provides that an unlawful examination of bank accounts shall render the evidence there from inadmissible in evidence. If Congress has both established a right and provided exclusive remedies for its violation, the court would encroaching upon the prerogatives of congress if it authorizes a remedy not provided for by statute.* ***Absent a specific reference to an exclusionary rule, it is not appropriate for the courts to read such a provision into the act.*** *(Ejercito vs. Sandiganbayan, 509 SCRA 190, Nov. 30, 2006).*

**B. The Doctrine of the Fruit of the Poisonous Tree:**

1. Evidence will be excluded if it was gained through evidence uncovered in an illegal arrest, unreasonable search or coercive interrogation, or violation of a particular exclusionary law. The poisonous tree is the evidence seized in an illegal arrest, search or interrogation. The fruit of this poisonous tree is evidence discovered because of knowledge gained from the first illegal search, arrest, or interrogation or violation of a law.

2. It is an offshoot of the Exclusionary Rule which applies to primary evidence. The doctrine applies only to secondary or derivative evidence. There must first be primary evidence which is determined to have been illegally obtained then secondary evidence is obtained because of the primary evidence. Since the primary evidence is inadmissible, any secondary evidence discovered or obtained because of it may not also be used. It is based on the principle that evidence illegally obtained by the state should not be used to gain other evidence because the original illegally obtained evidence taints all those subsequently obtained.

***Let us illustrate:*** *A suspect was forced to make a confession where he revealed he took shabu from the room of X. Based on this knowledge the police went to the house of X and with the consent of X, searched his room and found the shabu. The confession is inadmissible because of the exclusionary rule. It is the poisoned tree. The shabu is inadmissible because knowledge of its existence was based on the confession. It is the fruit.*

1. ***Exceptions to the above stated principles.***

The evidence is still admissible despite the commission of an illegal arrest, search or interrogation, or violation of a particular exclusionary law under the following exceptional doctrines:

***1. Doctrine of Inevitable Discovery -*** Evidence is admissible even if obtained through an unlawful arrest, search, interrogation, or violation of an exclusionary law, if it can be established, to a very high degree of probability, that normal police investigation would have inevitably led to the discovery of the evidence.

***2. Independent Source Doctrine***- evidence is admissible if knowledge of the evidence is gained from a separate or independent source that is completely unrelated to the illegal act of the law enforcers.

***3. Attentuation Doctrine***: evidence maybe suppressed only if there is a clear causal connection between the illegal police action and the evidence. Or, that the chain of causation between the illegal action and the tainted evidence is too attenuated i.e. too thin, weak, decreased or fragile. This takes into consideration the following factors:

a) The time period between the illegal arrest and the ensuing confession or consented search;

b) The presence of intervening factors or events;

c) The purpose and flagrancy of the official misconduct

1. ***Effects of the Anti Wire Tapping Law (RA4200) on our rules on evidence.***

This law excludes evidence that is obtained through mechanical, electronic or other surveillance or intercepting devises. (Intercepted communications) The law declares as inadmissible if they are obtained through any of the following ways:

1. By using any device to secretly eavesdrop, overhear, intercept or record any communication or spoken word:

**a.** The person who obtained the evidence may be a third person or a participant in the conversation or communication.

***Let us illustrate:*** *R and G had a confrontation in the office of G. R secretly taped their verbal confrontation and used it as evidence in the action for damages against G. G in turn filed a criminal case against R for violation of R.A. 4200(Violation of the Anti-Wire Tapping Law). R contends that the taping by a participant to a conversation is not covered by the law****.***

***Ruling:*** *The law does not make a distinction as to whether the party sought to be penalized is a party or not to the private conversation. Moreover, the nature of the conversation is immaterial. What the law penalizes is the act of secretly overhearing, intercepting, or recording private communications by the devices enumerate**under Section 1. (Ramirez vs. C.A., September 28, 1995)*

**b.** To be admissible the consent of the person speaking or of all the parties to the conversation. However consent is not necessary if the words which were taped or recorded were not intended to be confidential as when they were intended to be heard by an audience or when uttered under circumstances of time, place, occasion and similar circumstances whereby it may reasonably be inferred that the conversation was without regard to the presence of third persons. From this principle the following questions may come to fore: a). Does this apply if the recording of the words was unintentional or inadvertent, such as conversations captured by a moving video camera? b). Are conversations in a police entrapment included? c) Is lip-reading included? d). Are conversations captured in surveillance cameras included? e). Does this apply to secret taping through spy cameras purposely made to be aired in television programs, such as “Bitag”, “XXX” and “Cheaters”? f). Are the gestures, snores, laughs, weeping, included as communication or spoken words? g) What about satellite discs and similar facilities? Google earth?

**2.** By the unauthorized tapping of any wire or cable as to communications used via telephone/cable, as opposed to verbal communications.

**a)** There must be a physical interruption through a wiretap or the deliberate installation of a device or arrangement in order to overhear, intercept, or record the spoken words. a). hence over hearing through an extension telephone wire is not included even if intentional because “each party to a telephone conversation takes the risk that the other party may have an extension telephone and may allow another to overhear the conversation (Ganaan vs. IAC, 1986) b). Does the Ganaan ruling apply to overhearing by telephone operators of hotels, schools, hospitals and similar establishments?

**B. Exceptions:** when evidence through secret recording or tapping is admissible:

1.When Judicial Authorization was granted upon a written petition filed pursuant to the provisions of R.A. 4200 if the crimes involve (a) treason; (b) espionage; (c) provoking war and disloyalty; (d) piracy and mutiny in the high seas; (e) sedition, inciting to sedition; (g) kidnapping; (h) other offenses against national security. The list is exclusive and does not include offenses which are equally or more serious as those enumerated, such as drug trafficking, Trafficking in Persons, Rape, Murder.

1. When Judicial Authorization is granted upon a written petition under R.A. 9372 (The Human Security Act of 2007) in connection with the crimes of terrorism or conspiracy to commit terrorism. If granted the authority covers written communications.

#### What Need Not Be Proved

Rule 129

1. ***Matters that do not need proof.*** Matters of judicial notice and judicial admissions do not need proof. ***(Sections 1, 2 & 4, Rule 129)***
2. ***Concept of judicial notice*.** Judicial notice is the cognizance of certain facts by the courts without proof because they are facts which, by common experience are of universal knowledge among intelligent persons within a country or community.

1. ***Requisites of judicial notic****e.* The requisites before a matter can be considered of judicial notice are:
   1. That they are of common or general knowledge;
   2. That they must be well and authoritatively settled and not doubtful or uncertain;
   3. That they must be known to be within the limits of the court’s jurisdiction.

1. ***Effect of cognizance of matters of judicial notice.*** Judicial notice takes the place of proof and is of equal force. It replaces evidence and stands for the same thing.
2. ***Matters of judicial notice classified*** - Matters of judicial notice are classified into: (a) those matters which are mandatory to be taken judicial notice of by the courts ***(Sec. 1, Rule 129);*** and (b) those that are considered discretionary on the part of the court to take judicial notice of. **(*Sec. 2, Rule 129)***
3. ***Basis of the rule on judicial noticed.*** The doctrine of judicial notice is based upon obvious reasons of convenience and expediency and operates to save trouble, expense, and time which would be lost in establishing, in the ordinary way, facts which do not admit contradiction.
4. ***Facts that must be considered of judicial notice -*** The following facts or matters are to be considered mandatory judicial notice:
   1. Existence and territorial extent of states, their forms of government and symbols of nationality;
   2. Law of Nations;
   3. Admiralty and maritime courts of the Philippines;
   4. Matters relating to the executive, legislative and judicial branches of the government;
   5. Laws of nature;
   6. Measure of time;
   7. Geographical divisions.
5. ***Facts that may be given judicial notice.***The following:
   1. Matters of public knowledge; or
   2. Matters of capable of unquestionable demonstrations; or
   3. Matters ought to be known to judges because of their judicial functions*.*
6. ***Judicial notice not synonymous with personal knowledge of the judge.***

The answer is no. There is a basic distinction between the two terms. A fact may be known personally to the judge but not proper for judicial notice, in the same vein, a fact may be personally unknown to the judge but may be proper for judicial notice.

1. ***Procedure regarding judicial notice***

During the trial, the court, motu proprio or on request of a party, may announce its intention to take judicial notice of any matter and allow the parties to be heard thereon. The purpose of a hearing is to afford the parties reasonable opportunity to present information relevant to the propriety of taking such judicial notice or the tenor of the matter to be notice. **(*Sec. 2, Rule 29, Zamora vs. Caballero, G.R. No. 147767, Jan.14, 2004)***

1. ***Judicial notice of a matter of fact done at any stage of the proceeding.*** The court may take judicial notice of a matter of fact -
   * + 1. During the trial;
       2. After trial and before judgment;
       3. Appeal.

In the above instances, the court may act on its own or on request of a party*.* ***(Sec. 3, Rule 129)***

1. ***Judicial notice of facts during the trial but before judgment and the taking of judicial notice after judgment but on appeal not the same.***

The answer is yes. There is a distinction between the two proceedings. In the former the court may announce its intention to take judicial notice of any matter and may hear the parties thereon. ***(Sec. 3)*** While in the latter case, the court may take judicial notice of any matter and allow the parties to be heard thereon if such matter is decisive of a material issue in the case. In either case, the courts are not precluded by the rules of evidence from to take judicial notice of matters brought to their attention.

1. ***Pardon granted by the President not matter of judicial notice.***

The answer is no. It is a private act of the President which must be pleaded and proved by the person pardoned.

1. ***Newspaper accounts or customs are not matters of judicial notice.***

The answer is no. These matters are to be proven by the party as matters of fact.

***15. Verbal or written declarations made by a party in the course of the proceedings in the same case subject to rebuttal.***

The answer is yes. A party may contradict said verbal or written declarations by showing that they had been made through palpable mistake or that the admission was never made by such party.

***16. Doctrine of processual presumption***

Absent any evidence or admission, the foreign law in question is presumed to be the same as that in the Philippines. ***(Read also Sec. 48, Rule 39)***

***17. Judicial admissions***

Judicial admissions are those made by the parties in their pleadings, or in the course of the judicial proceedings as well as those made in the progress of the trial. ***(Sec. 4, Rule 129)***

***18. Admissions made by a party during the pre-trial conference.***

We must make a distinction in this case, whether the admission is made in a pretrial of a civil action or in a criminal action. Admission made by a party during a pretrial conference in a civil action is considered judicial admission. In criminal actions, the admissions made during the pretrial conference become only a judicial admission after the counsel and accused affix their signatures in the pretrial order or pretrial agreement.

***19. Effects of the following acts:***

1. *Failure of a party to specifically deny under oath an actionable document;*
2. *Admissions made by a party in a pleading filed in another action;*
3. *Failure to answer the complaint resulting in default of the non-answering party;*
4. *Admissions made by a party in a pleading that has been superseded by an amendatory pleading;*

***Answers:***

1)The failure of a party to specifically deny under oath an actionable document will result to the admission of the document as evidence even if they are not introduced as such;

2) Admissions made in a pleading filed in another action are not considered judicial admissions. However, they may be considered as extra-judicial admissions.

3) Failure of a party to answer a pleading does not amount to an admission of the facts alleged in the complaint. The court must still receive evidence to prove the allegations in the complaint. *(Sec. 1, Rule 18)*

4) Our rules on pleadings provide that superseded or amended pleadings disappear from the record as judicial admissions. Said pleadings must still be offered in evidence and considered as extrajudicial admission.

1. ***Effect of doubt on matter of judicial notice***

The power of the courts to take judicial notice must be exercised with caution and care, such that every reasonable doubt upon the subject matter to be taken judicial notice of must be resolved in the negative. ***(Republic vs. CA, 107 SCRA 504)***

1. ***In summary, matters that do not need proof.***

Generally, all facts in issue and relevant facts must be proven by evidence except the following: ***(Republic vs. Neri, G.R. No. 139588, March 4, 2004)***

* 1. Allegations contained in the complaint;
  2. Facts which are admitted or which are not denied in the answer provided they are alleged with certainty;
  3. Facts which are the subject of an agreed stipulation of facts between the parties;
  4. Facts admitted by a party in the course of the proceedings of the same case;
  5. Facts which are the subject of judicial notice;
  6. Facts which are legally presumed (Legal Presumptions)
  7. Facts peculiarly within the knowledge of the opposite party.

Rules of Admissibility

##### Rule 130

1. *Evidence, when admissible.*

Evidence is admissible when it passes the test of relevancy and competency. Evidence is relevant when it is related to the fact in issue and competent when it is not excluded by any rule or law. They may relate to the axioms of relevancy and competency of evidence. Aside from these axioms we also have the rule on materiality of evidence.

1. ***Admissibility not synonymous with Credibility of evidence***

The answer is no. Admissibility is based on whether or not the evidence is relevant and competent; while credibility is a matter that is addressed to the discretion of the court.

1. ***Multiple Admissibility of evidence.***

The answer is yes, so long as the evidence is relevant and competent for several purposes. In which case, the evidence will be admitted if it satisfies the requirements of the rules regarding admissibility for the purposes for which it is presented even if it does not satisfy the requirements for other purposes. This is what we call ***multiple admissibility of evidence.***

1. ***Conditional admissibility of evidence.***

Yes. This is what we call conditional admissibility of evidence. That is, evidence which appears to be immaterial is admitted by the court subject to the condition that its connection or relevance with other facts subsequently to be established. This is what we call ***conditional admissibility of evidence.***

1. ***Collateral matters***

Those other than the facts in issue and which are offered as a basis for inference as to the existence or non-existence of the facts in issue. Generally they are not allowed by the court, except when they tend in a reasonable degree to establish the probability or improbability of the fact in issue.

1. ***Classes of collateral matters.***

Collateral matters may be classified into: (a) ***prospectant***-those preceding the fact in issue but pointing forward to it, such as moral character, motive, conspiracy, plan and design. (b) ***Concomitant*** –those matters accompanying the fact in issue and pointing to it, such opportunity, and incompatibility or alibi. (c) ***retrospectant***- those succeeding the fact in issue but pointing backward to it, such fight, concealment, behavior of the accused upon his arrest, finger prints, articles left at the scene which may lead to the identity of the accused.

***Materiality of evidence -*** Evidence is material when it is directed to prove a fact in issue as determined by the rules or substantive law and pleadings. It refers to the quality of substantial importance to the particular issue raised in the pleading apart from being relevant thereto.

1. ***Curative admissibility***

It is that evidence, otherwise improper, is admitted to contradict improper evidence introduced by the other party.

1. ***Equiponderance or equipoise of evidence****.*

It refers to the situation where, after the trial, the evidence presented by the parties is on the balance. In such a situation, the proposition is to be resolved against the party having the burden of proof.

1. ***Physical or object evidence***

It is a mute but eloquent manifestation of truth and rates highly in the hierarchy of trustworthy evidence. It enjoys a far superior probative weight than corroborative testimonial evidence**. *(Aradillos vs. CA, G.R. No. 135619, Jan. 15, 2004)*** It is addressed to the senses of the court. It is also called “autoptic preference.” It may even include experiments and the use of devises in court. Test of blood and drugs and other chemical test fall within the meaning of object evidence. The experiments may be conducted in or out of the courtroom.

1. ***Admissibility of object evidence, scope thereof***

Object evidence to be admissible must be relevant to the fact in issue and must be properly authenticated. It must also pass the test of competency. Repulsive, indecent or improper objects are not admissible under the rules on object evidence.

***A. Those exhibited to the Court or observed by it during the trial, such as:***

1. The weapons used, the articles recovered or seized as subjects of an offense, the effects of the crime, clothing apparels
2. The wound or scars in the body in physical injury cases
3. Inspection of the body of the accused and his personal appearance to determine his body built, physique, height, racial characteristics, and similarities with another, in paternity suits
4. Observations as to the demeanor of witnesses
5. Re-enactment or demonstrations of actions
6. Documents when the purpose is only to prove their existence or condition; nature of the handwritings thereon; to determine the age of the paper used.

***B. Those which consists of the results of inspections of things or places conducted by the court (ocular inspections) outside the court***

* 1. The observations made by the parties are duly recorded; pictures and other representations may be made such as sketches and measurements
  2. Examples: inspection of the crime scene; disputed boundaries; objects which cannot be brought to court

***C. Those which consists of the results of experiments, tests or demonstrations, which may be scientific tests/experiments, or practical tests/demonstrations provided the conduct of experiments/tests is subject to the discretion of the court.***

1. ***Scientific test or experiments acceptable to the Philippine Courts.***

In some cases our Supreme Court adopted the so-called Forensics or Microanalysis examinations in aid of disposition of cases brought before our courts: these are applications of scientific principles to answer questions of interest in the legal system. In this connection we have the principle Trace Evidence to solve crimes based on the Principle of Contact: - DNA

**a)** ***Trace Evidence***- evidence found at a crime scene in small but measurable amounts such as hairs, fibers, soils, botanical materials, explosive residue

**b)** ***Principle of Contact***: every person who is physically involved in a crime leaves some minute trace of his/her presence in the crime scene or in the victim and often takes something away from the crime scene and/or victim

1. ***Requirements of admissibility of object evidence***

The purpose is two-fold: (a) to ensure/preserve the Identity of the Object which is to prevent the introduction of a different object and (b) to ensure/preserve the Integrity of the Object which is to ensure that there are no significant changes or alterations in the condition of the object or that the object has not been contaminated.

1. ***Elements of authentication of object evidence.***

Important component elements of the process of Authentication are:

**a) Proof of Identity:** Through the testimony of a witness as to objects which are readily identifiable by sight provided there is a basis for the identification by the witness which may either be:

* The markings placed by the witness upon the object, such as his initials, his pictures in the digital camera, or
* By the peculiar characteristics of the object i.e. by certain physical features which sets it apart from others of the same kind or class by which it is readily identified. Examples: a hole caused by burning in a sweater; the broken hilt of a knife

**b) Proof of Identity and Integrity:** By proving that there was no break in the Chain-of-Custody in the event the object passed into the possession of different persons. This means proving the chronological sequence through which the object was handled only by persons who, by reason of their function or office, can reasonably be expected to have the right or duty to possess or handle the object. This is done by calling each of these persons to explain how and why he came into the possession of the object and what he did with the object.

(i) When the object passed into the possession of a stranger, then there is doubt as to the integrity, if not identity of the object.

**c) Proof of Integrity:** By proving the Proper Preservation of the object which consist of showing that the object was kept in a secure place as to make contamination or alteration difficult, and it has not been brought out until its presentment in court.

1. ***Improper authentication of object evidence****.*

If there was improper authentication the object maybe excluded upon proper objection, or that it may not be given any evidentiary value. Thus in a criminal case, reliance thereon may be a ground for acquittal.

1. ***Scope of documentary evidence***

The so-called documentary evidence includes the following:

**A.** Writings or Paper Based Documents

**B.** “Or any other material” refers to any other solid surface but not paper such as blackboard, walls, shirts, tables, floor.

1) As in a contract painted on the wall

2) They include pictures, x-rays, videos or movies.

***Note: Both kinds maybe handwritten, typewritten, printed, sketched or drawings or other modes of recording any form of communication or representation. Example: The Rebus, Secret Codes.***

C. Electronic Evidence pursuant to the Rules of Electronic Evidence effective August 01, 2001, which provides:

**1) Rule 3 section 1:** “Electronic evidence as functional equivalent of paper-based documents- Whenever a rule of evidence refers to the term writing, document, records, instrument, memorandum or any other form of writing, such term shall be deemed to include an electronic document”.

**2) “Electronic document”** refers to information or to the presentation of information, data, figures or symbols or other modes of written expression, described or however represented, by which a sight is established or an obligation extinguished, or by which a fact maybe proved and affirmed, which is received, recorded, transmitted, stored, processed, retrieved or produced electronically.

**3)** It includes digitally signed documents and any printout or output, readable by sight or other means which accurately reflects the electric data message or electronic document. For purposes of these rules the term electronic document maybe used interchangeably with “electronic data message”

**4)** Rule 3 section 2: An electronic document is admissible in evidence if it complies with the Rules of Admissibility prescribed by the Rules of Court and related laws and is authenticated in the manner prescribed by these rules.---There are three requirements for admissibility: relevancy, competency and proper authentication.

D. Text messages are electronic evidence being ephemeral electric communications. They may be proven by the testimony of a person who was a party to the same or who has personal knowledge thereof such as the recipient of the messages ***(Nunez vs. Cruz Apao 455 SCRA 288)***

1. ***Documentary evidence***

Documentary evidence is evidence supplied by written instruments, or derived from conventional symbols. They may refer to letters, by which ideas are represented on material substances. Documents are either public or private writings.

1. ***Distinction between Public Documents and Private Writings.***

(a) ***Authenticity***: A public document is admissible in evidence without proof of its due execution or genuineness; a private writing needs proof of its due execution and authenticity before it is admitted in evidence in any proceeding;

(b) ***Persons bound***: A public document binds third parties or strangers to the document and may be used in evidence for or against the said persons; private documents on the other hand bind only the parties who executed them and their privies insofar as the due execution and date of the document is concerned. (Read this with Article 1311 NCC);

(c) ***Validity of certain transactions***: There are instances where the law requires form for their validity or enforceability (see Article 1356 and 1403, NCC), otherwise they may not be considered valid or enforceable by action.

1. ***Authenticity and due execution of a private writing***

The authenticity and due execution of a private writing may be established by:

1. Anyone who saw the writing executed; (e.g. probate of holographic will)
2. By evidence of the genuineness of the handwriting of the maker; (e.g. Negotiable instruments law; read with opinion evidence) or
3. By a subscribing witness; (e.g. probate of Notarial or Legal Wills)

1. ***Doctrine of self-authentication of a private writing.***

The doctrine of self-authentication simply means that a private writing is deemed authenticated when the facts in the writing could only have been known by the writer of the document himself.

A private writing is deemed authenticated by the adverse party when the reply of the adverse party refers to and affirms the sending and his receipt of the private writing in question.

1. ***Authentication not required***

Authentication is not required when the document is considered as an ancient document; or a public document or part of public record; or a duly notarized document; or when the authenticity of the writing is admitted. A document is deemed ancient when it is more than 30 years, containing no alterations or circumstances which may give rise to any suspicion and that it is produce from a custody in which it would naturally be found if genuine.

1. ***Proof of genuineness of handwriting.***

The genuineness of handwriting is proved and established by the testimony of a person who saw the person write; or by a person who is familiar with the handwriting; or by opinion evidence by an expert witness on questioned documents.

1. ***Rule on production of the documents in question.***

The rule on authenticity includes the production of documents and other writings for the scrutiny of the court and of the parties. A party may be directed to produce such documents as they are needed and relevant to the fact in issue or when they become the subject matter of the controversy.

1. ***Best Evidence Rule.***

General Rule: When the subject of an inquiry is the contents of a document, no evidence shall be admissible other than the *original* document itself. (If only the fact of execution/existence/surrounding circumstances is involved, Rule does not apply) In short, the document the content of which is in controversy must be produced in court or its existence properly established and proved. The rule applies to both criminal as well as civil actions.

In a criminal prosecution for falsification of a document, the original itself must be produced (the document subject of the falsification and on which the falsification or forgery has been committed).

1. ***Best evidence rule applied to libel cases.***

If what is to be proven is the authorship - the manuscript delivered by the author to the editor or publisher is the original; but if what is to be proven is the libelous publication – article found in any copy of the same edition of the newspaper is considered the original.

1. ***Concept “original of the writing”***

In civil actions, the term original may vary in its meaning. There are documents that are considered to fall within the term “original”. Such that an entry repeated in the regular course of business, one being copied from another at or near the time of the transaction – the entries are considered as originals. At present (age of computers and the so-called E-Commerce) where one could reproduce as many copies as may be desired regarding a particular transaction, all the copies are originals. Although under the Electronic Evidence Rules, restrictions and limitations as well as safeguards are imposed before such kind of document may be admitted in evidence. The term may also include -The one the contents of which are the subject of an inquiry, such as:

1. ***If in 2 or more copies executed:***

i. At or about the same time; AND

* 1. With identical contents

⮚Then all copies are originals

1. ***If entry is***
2. Repeated in regular course of business, with
3. One being copied from another;
4. At or near the time of the transaction,

⮚ Then all entries are originals

1. ***Exceptions* *to Best Evidence Rule***

In the following instances, the original of the writing need not be produced:

a. Original is lost or destroyed, or cannot be produced in court without bad faith on the part of the offeror;

1. When the original is in the custody of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;
2. When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the only fact sought to be established is the general result of the whole; and
3. When the original is a public record in the custody of a public officer or is recorded in a public office.
4. ***Explanation of the above-stated exceptions.***

***First Exception: “When the original has been lost, destroyed, or cannot be produced in court without bad faith on the part of the offeror.***

1. “Lost/destroyed”: the original is no longer in existence

2. “Cannot be produced in court”- the original exist but either (i) it is of a nature that it is physically impossible to bring it in court as in the cases of a painting on a wall or tombstone or it consists of the data stored in a computer (ii) would entail great inconvenience, expense or loss of time if brought to court, as in the case of a writing on a rock (iii) it is outside the Philippine territory

3. “Without bad faith on the part of the offeror”- the lost or unavailability was not due to the act or negligence of the party presenting secondary evidence, or if due to the act or fault of a third person, then the offeror had no part therein.

4. Procedural requirement: Foundation or Order of Proof is (i) existence (ii) execution (iii) loss and (iv) contents Thus:

(a) Proof of the existence and the due execution of the original through the testimonies of the persons who executed the document; the instrumental witnesses; by an eyewitness thereof; who saw it after its execution and recognized the signatures therein; by the person before whom it was acknowledged, or to whom its existence was narrated

Exception: Ancient documents.

(b) Proof of the fact of loss or destruction of the original through the testimonies of (b.1) anyone who knew of the fact of the loss as in the case of an eyewitness to the loss or testimony of the last custodian (b.2) any who made a diligent search in the places where the original was expected to be in custody and who failed to locate it (b.3) one specially tasked to locate but was unable to find the original, as in the case of a detective. If the original consists of several copies, all must be accounted for and proven to be lost.

(c) Proof of lack of bad faith on the part of the offeror

(d) Proof of the contents by secondary evidence according to the Order of Reliability i.e.:

d.1) By a copy whether machine made or handmade so long as it is an exact copy. It need not be a certified copy

d.2) By its Recital of the Contents in some Authentic Document\_ a document whether public or private, which is shown to be genuine and not manufactured or spurious, and which narrates, summarizes or makes reference to the contents of the original document.

Examples: personal diaries; letters; annotation of encumbrances at the back of the title; drafts or working papers; minutes and recordings by secretaries; memoranda by an employer to a secretary or employee; the baptismal records as to the age of a person.

d.3) Recollection or testimony of a witness such as the parties, instrumental witnesses and signatories thereto; one who read the original; one present when the terms were discussed or to whom the contents were related.

The testimony need not be accurate as long as the substance is narrated.

5. If the offeror failed to lay the proper foundation but the opposing party did not make any objection, the secondary evidence may be treated as if it were on the same level as the original and given the same weight as an original.

In the case of ***People vs. Cayabyab (Aug. 03, 2005),*** in a rape case the prosecution presented a photocopy of the birth certificate of the victim to prove her age and which was not objected to. The admissibility and weight were later questioned in the Supreme Court.

1. The best evidence to prove a person’s age is the original birth certificate or certified copy thereof; in their absence, similar authentic documents maybe presented such as baptismal certificates and school records. If the original or certified true copy of the birth certificate is not available credible testimony of the mother or a member of the family maybe sufficient under the circumstances. In the event that both the birth certificate or authentic documents and the testimonies of the victim’s mother or other qualified relatives are unavailable, the testimony of the victim (a minor 6 years of age) maybe admitted in evidence provided it is expressly and clearly admitted by the accused.

2. Having failed to raise a valid and timely objection against the presentation of this secondary evidence the same became primary evidence and deemed admitted and the other party is bound thereby.

***Second Exception: When the original is in the adverse party’s custody and control.*** The Foundation consists of the following:

1. Proof of the Existence and Due Execution of the Original

2. Proof that the original is in the (a)actual, physical possession/custody or (b) control i.e. possession or custody by a third person for and in behalf of the adverse party, as that of a lawyer, agent or the bank.

Maybe by the testimony of the one who delivered the document; registry return receipt by the Post Office or some other commercial establishments engaged in the delivery of articles and the receipt thereof, or by one who witnessed the original being in the possession of the adverse party.

3. Proof that reasonable notice was given to the adverse party to produce the original: the notice must specify the document to be produced.

a) If the documents are self incriminatory, notice must still be sent as the adverse party may waive the right

b) The notice may be a formal notice or an-on-the-spot oral demand in court if the documents are in the actual physical possession of the adverse party.

4. Proof of failure or refusal to produce.

A. Effects of refusal or failure to produce:

a) The adverse party will not be permitted later to produce the original in order to contradict the other party’s evidence

b) The refusing party may be deemed to have admitted in advance the accuracy of the other party’s evidence

c) The admission of secondary evidence and its evidentiary value is not affected by the subsequent presentation of the original.

d). Example: In G&M Phil. Inc. vs. Cuambot it was held: “ the failure (of the employer) to submit the original copies of the pay slips and resignation letter raises doubts s to the veracity of its claim that they were signed by the employee. The failure of a party to produce the original of a document which is in issue has been taken against such party, and has been considered as a mere bargaining chip, a dilatory tactic so that such party would be granted the opportunity to adduce controverting evidence

5. Proof of the contents is by the same secondary evidence as in the case of loss.

***Third Exception: When the original consists of numerous accounts or other documents which cannot be produced in court without great loss of time and the fact sought to be established there from is only the general result of the whole.***

1. This is based on practical convenience

2. The Foundation includes:

a) Proof of the voluminous character of the original documents

b) Proof the general result sought is capable of ascertainment by calculation or by a certain process, procedure or system

c) Availability of the original documents for inspection by the adverse party so that he can inquire into the correctness of the summary

3. How the general result is introduced:

(a) by the testimony of an expert who examined the whole account or records;

(b) by the introduction of authenticated abstracts, summaries or schedules

4. Illustrations:

a) The income of a business entity for a period of time maybe known through the income tax return field by it, or by the result of the examination of an accountant

b) A general summary of expenses incurred maybe embodied in a summary to which are attached the necessary supporting receipts witness

c) The state of health of an individual maybe established through the testimony of the physician

d) The published financial statement of SLU as appearing in the White and Blue

***Fourth Exception: When the original is a public record in the custody of a public official or is recorded in a public office***

1. The documents involved: (a) a strictly public document such as the record of birth, the decision of a court and (b) a private document which was made part of the public record, such as a document of mortgagee involving a registered land and submitted of the Office of the Register of Deeds

2. Reason: The Principle of Irremovability of Public Records i.e. public records cannot be removed or brought out from where they are officially kept, because:-

(i) the records should be made accessible to the public at all times;

(ii) the great in convenience caused to the official custodian if he were called to present the records to the court every now and then; and

(iii) to guard against the possibility of loss/destruction of the documents while in transit.

3. Exception or when the original has to be presented. Only upon prior Order from the court as when an actual inspection is necessary for the proper determination of the case, as in cases of falsification pursuant to the Gregorio Doctrine. In the absence of a court order, the official may be liable for infidelity in the custody of documents.

4. Secondary evidence allowed:

a) A certified copy issued by the official custodian bearing the signature and the official seal of his office. When presented the document must bear the documentary and science stamp and the accompanied by the official receipt of payment of the copy

b) An official publication thereof

Parol Evidence Rule

The basic principle on parol evidence is found in Section 9, Rule 130, which provides: “***Section 9. Evidence of Written Agreements. “When the terms of an agreement had been reduced into writing, it is considered as containing all the terms and conditions agreed upon and there can be between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.”***

Literally parol evidence means oral or verbal testimony of a witness regarding a written agreement. It is sometimes referred to as evidence *aliunde* or extrinsic evidence because it is outside of the terms of the written agreement. Strictly speaking, it is not a rule of evidence or procedure but of substantive law. It is a part of our law on contracts, the negotiable instruments law and the law on wills. It is founded upon the substantive rights of the parties to the contract or written agreement. “***Parol******evidence***” is different from the “***parol******evidence rule”.***

1. ***Requisite of the parol evidence rule.***

The requirements for the Application of the Rule are:

1. That there be a valid written contract or a written document which is contractual in nature in that it involves the disposition of properties, creation or rights and imposition of obligations, as such:

***a) Void contracts do not create any right and produces no legal effects***

***b) The contract maybe in any written form whether in the standard form or as worded by the parties themselves***

***c) The document may be signed or not as in the case of way bills, tickets***

***d) The rule does not cover mere receipts of money or property since these are incomplete and are not considered to be the exclusive memorial of the agreement and are inconclusive***

***e) However a “Statement of a Fact”, as distinguished from statements which constitute “Terms of the Contractual Agreement” maybe varied, such as statements as to the personal qualifications of the parties.***

2. That there is a dispute as to the terms of the agreement

3. That the dispute is between the parties to the contract or their successors or that the rule is invoked by one who is given a right or imposed an obligation by the contract. This is because the binding effect of a contract is only upon the parties thereto or their successors.

1. ***State the parol evidence rule.***

***Parol Evidence Rule***: “When the terms of an agreement have been reduced into writing, it is considered as containing all the terms agreed upon, and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.” It simply means that the written agreement is presumed to contain all the prior and contemporaneous agreements (terms and conditions, proposals and counter-proposals) of the parties. Such that *no party to the agreement* can present oral testimony that would vary, modify or alter what is written in the agreement. ***(Sec. 9, Rule 130)***

1. ***Principle of Integration of Jural Acts on written agreements; its purpose***

The principle simply means that the written agreement is the final culmination of the negotiation and discussion of the parties as to their respective proposals and counter-proposals and is the final and sole repository, memorial and evidence of what was finally agreed upon. Therefore, whatever is not found in the written agreement is deemed to have been abandoned, disregarded, or waived by them. Only those contained in the written agreement are considered the only ones finally agreed upon and no other. Thus oral testimony will not be permitted to show there were other agreements or terms between the parties.

The purposes of such application are: (i) to give stability and permanence to written agreements otherwise they can be changed anytime by mere testimony, then written agreements would serve no useful purpose (ii) to remove the temptation and possibility of perjury which would be rampant if oral/parole evidence were allowed as a party may resort to such testimony in order to either escape compliance with his obligation, or to create fictitious terms favorable to him.

1. ***Parol evidence rule and best evidence rule, distinguished.***

The two rules may be distinguished from each other as follows:

1. ***As to what is prohibited***: The Best Evidence Rule prohibits the introduction of inferior evidence when the best evidence is available whereas the Parol Evidence Rule prohibits the introduction of oral testimony to vary the terms of a written agreement.

2. ***As to scope***: The Best Evidence Rule applies to all kinds of written documents while the Parol Evidence Rule is limited to contracts and wills.

3. ***As to the substance of the evidence***: The Best Evidence Rule goes to the form of the evidence while the Parol Evidence Rule goes to the very substance of the evidence

4. ***As to who may invoke***: The Best Evidence Rule may be invoked by any party to a case while the Parol Evidence Rule may be invoked only by a party to the written agreement and his successor in interest, or by one given right or imposed an obligation by awritten agreement. (see Article 1311)

*5.*  ***As to the issue:***The issue under the Best Evidence Rule is the contents of the written document whereas the issue in Parol Evidence Rule is the term and condition of a written agreement.

1. ***Persons bound by the parol evidence rule***

From the language of the rule, only the parties to the instrument or agreement and their successors-in-interest are bound. Strangers or third parties are not bound; neither can they invoke the rule. (Take note of Article 1311, par. 2 on Stipulation in favor of a third person)

1. ***Contemporaneous or prior agreements allowed to establish jural acts.***

Contemporaneous or prior agreements which, even if they affect or relate to the contract, may still be proven by the parties by oral testimony, such as:

1. Those which refer to separate and distinct subject matters and which do not vary or contradict the written agreement.

***Example: The buyer of a land in a written contract may prove by oral testimony that the seller agreed to give him the right of first refusal of the seller’s adjoining lot. Similarly the promise of first refusal by the lessor in favor of the lessee may be proven by oral testimony.***

2. Those which constitute “Conditions Precedent” if the written contract specifically stated that it shall be complete and effective upon the performance of certain conditions.

***Example: that the contract be first referred to a third person who must give his approval thereto or that a third person should also sign as a witness thereto.***

3. Those which are the moving and inducing cause, or that they form part of the consideration and the contract was executed on the faith of such oral agreement in that : (i) the party would not have executed the contract were it not for the oral agreement and ii) they do not vary or contradict the written agreement.

***a) The promise by a vendor to give a road right of way to the vendee over the latter’s remaining property***

***b) An agreement to allow the son of the vendor to occupy a room free of charge in the apartment sold, for a certain period of time***

***c) An agreement that the vendor shall harvest the standing crops over the land sold***

***d) An agreement that the vendor shall cause the eviction of squatters from the land sold***

***e) That the party was to pay off the indebtedness of the other; or to give or deliver a thing to a third person.***

1. ***Statutory exemptions on the parol evidence rule.***

The General Concept of the statutory exceptions to the rule is: - That oral testimony is allowed even if they pertain to the contents, terms or agreements of the document, provided they were specifically alleged in the pleadings by the party concerned. In the following instances oral testimony may be allowed as exceptions to the parol evidence rule, to wit:

***A. That there is an ambiguity***

1. Ambiguity refers to an uncertainty or doubt in the document or something in its provisions is not clear, or of being susceptible to various interpretations or meanings. They are either (a) latent or intrinsic (b) patent or extrinsic and (c) intermediate ambiguity

a) Latent or Intrinsic- The instrument/document itself is clear and certain on its face but the ambiguity arises from some extrinsic, collateral or outside factor, thus there is an uncertainty as to how the terms are to be enforced. It is of two kinds: (i) when the description of the person or property is clear but it turns out the description fits two or more persons or things and (ii) where the description of the person or object is imperfect or erroneous so as to leave doubt what person or object is referred to. ***Examples***: (i) the donee is described as “My uncle Tom” but the donor has several uncles named Tom (ii) the thing sold is “my house and lot in Baguio City” but the vendor has three houses and lots in Baguio City (iii) the money shall be for the tuition fee of my son “who is enrolled in SLU” but it is the daughter who is enrolled in SLU while the son is enrolled in UB (iv) the subject of the sale is the vendor’s “ two storey house in Bakakeng” but what he has in Bakakeng is a grocery store and it is his house in Aurora Hill which is of two stories.

Reason for the exception: the introduction of oral testimony does not vary or contradict the document but it aids the court in ascertaining and interpreting the document thereby enabling it to give effect and life to the document.

b) Patent or Extrinsic (Ambiguitas patens) – the uncertainty is very clear and apparent on the face of the document and can easily be seen by simply reading the terms/contents of the document. Aside from being clear and apparent, the ambiguity is permanent and incurable. It cannot be removed or explained even with the use of extrinsic aids or construction or interpretation. ***Examples***: (i) A promissory note or memorandum of indebtedness which does not specify the amount of the obligation (ii) sale of property without the property being described or (iii) where the description is “one of several properties” or one of several persons is mentioned but he is not specifically identified e.g. “ I leave my cash to my favorite son”.

c) Intermediate Ambiguity – where the ambiguity consists in the use of equivocal words/terms/phrases or descriptions of persons or property. Parole evidenced is admissible to ascertain which sense or meaning or interpretation was intended by the parties.  ***Examples***: (i). the use of the word “dollar” (ii) the use of the term sugar (iii) where in a deed of mortgage it was uncertain which amount of loan was being secured

***B. There was a Mistake or Imperfection***

1. Imperfection includes situations of inaccurate descriptions

2. Mistake- when a person did or omitted to do an act by reason of an erroneous belief or interpretation of a law or assessment of a fact, or due to ignorance, forgetfulness, unconsciousness, or misplaced confidence. The exception requires the following requisites:

a) Must be of a fact and is mutual to both the parties. ***Examples:*** (i) both were in error as to the property sold and described in the deed of sale i.e. another property as the one involved and not that described in the document (ii). two persons were supposed to be witness but were named instead as parties (iii) the writing was incomplete when it mentioned only some but not all the terms agreed upon.

***C. The Failure of the Written Agreement to Express the True Intent and Agreement of the Parties***

1. The deed maybe ambiguous or vague either through ignorance, lack of skill or negligence of the party/person who drafted the deed, or through the use of imprecise words.
2. Maybe cured through the remedy of reformation of instrument. ***Example:*** (i) The deed turned out to be a sale when the intention was as a security or (ii) the deed was a sale and not an SPA

***D. The Validity of the Agreement is put In Issue***

1. One or both parties assert the agreement or document is null and void or unenforceable for lack of the essential elements of a valid contract. ***Example:*** The Validity of the written agreement;

Evidence may be admissible to show:

►that a written agreement changing, modifying or abrogating a contract was entered between the parties subsequent to the execution of the first contract;

►that one of the parties to a contract was induced to execute the same by false and fraudulent representation;

►that the operation of a contract was based on the occurrence of an event as a condition precedent;

►to explain an incomplete description of property in an express trust;

***E. In case of Subsequent Agreements- the terms and conditions being testified on were agreed upon after the execution of the document***

**1.** As in the case of novation of the document, in whole or in part Parties are free to change or modify or abandon their written agreement in which case it is the latter which should given force and effect. ***Example:*** Existence of other terms agreed upon subsequent to the execution of the written agreement. E.g. A deed of sale with right of repurchase was entered into between JR and RJ. Before the expiration of the period of redemption, JR the vendee-a-retro orally promised to grant RJ an extension of 30 days from the expiry date within which to redeem the property. May RJ present parol evidence to prove the oral promise of JR? The answer is yes.

**Qualification of Witnesses**

**Competency of Witnesses**

**⮚ *General Rule:* All persons who can perceive, and perceiving can make known their perception to others may be witnesses.** *(Sec. 20, Rule 130)*

1. ***General concept of “competency” of a witness***

The first rule on qualification of witnesses is the rule on competency of the person to be presented as witness. Competency of a witness means the legal fitness or ability of a witness to be heard on the trial of a case. (Bouvier’s Law Dictionary) The term competency should not be confused with competency of evidence as earlier discussed. When a person takes the witness stand to testify, the law, on grounds of public policy, presumes that he is competent to testify. Insofar as competency to testify is concerned, if the evidence is equipoise, the witnesses should be permitted to testify.

A person may not be rejected by the court unless there is proof of his incompetency.

1. ***Burden of showing the incompetence of a person as a witness***

The burden of showing that a person is not competent to testify rests on the party objecting to the qualification of a witness.

1. ***Requisites for rejection of a person as a witness***

Before a person may be rejected as a witness, proper and timely objection as to his competency must be raised by the adverse party. The objection must be raised before the person has given his testimony, if such incompetency was known before the trial. If the incompetency becomes apparent during the trial it must be interposed as soon as it becomes apparent.

1. ***Persons disqualified as witness.***

A person may be declared incompetent as a witness on any of the following grounds:

a) Physical or mental disqualification;

b) Marital Disqualification Rule;

c) Dead Man’s Statute;

d) Privilege Communications, such as:

d-1 Marital Privilege;

d-2 Attorney-Client Privilege;

d-3 Physician-Patient Privilege;

d-4 Priest-Penitent Privilege;

d-5 State Secrets;

e) By reason of relationship

1. ***Marital disqualification rule, its reason***

This is also called the disqualification by reason of marriage. During the marriage neither spouse may testify for or against the other without the consent of the affected spouse. ***(Sec. 22, Rule 130)***

The rule is based on public policy of preserving the marital relationship, family unity, solidarity and harmony. The rule seeks to avoid the danger of admitting perjured testimony and to prevent the witness spouse from being liable for perjury. Finally, there is that identity of interest of the spouses such that to compel a spouse to testify against the other is tantamount to compelling the witness to testify against his interest.

1. ***Requirements for the application of the rule; testimonies covered.***

In order that the rule is applicable, it must be shown that one spouse is a party to case, whether civil or criminal, singly or with other third persons; that they must be legally married; that the marriage must be subsisting; and that the case is not one filed against the other; and that the other spouse has not given his consent.

1. ***Spouses testify against each other***

The spouses may testify against each other under any of the following circumstances:

a) In a civil case filed by one against the other. Examples: cases of annulment, legal separation, support, declaration of mental incompetency, separation of property.

b) In a criminal case for a crime committed:

(i) by one against the other, such as those involving physical assault and violence; Violation of RA 9262; economic abuse or; (ii) against the direct ascendant or descendant of the other.

*NOTE:* ***When the reason for the law has ceased. Where the marital and domestic relations are so strained that there is no more harmony to be preserved, or peace and tranquility which may be disturbed, the reasons based on such harmony and tranquility no longer apply. In such cases, the identity of interest disappears and the consequent danger of perjury based on identity of interest disappears. (The law ceases when the reason for the law ceases)***

1. ***Privilege communication***

*The following persons disqualified by reason of the rule on privileged communications (Sec. 24, Rule 130)*

Generally the rule on privileged communications is used to designate any information which one derives from another by reason of confidential relationship existing between the parties.

The person deriving such information is barred from divulging the information by reason of public policy such that in the rule on evidence it is considered as incompetent evidence.

There are five (5) relationships covered by the rule on privileged communications. They are:

a) The Marital Privileged Rule which is different from the Marital Disqualification rule;

b) attorney-client relationship;

c) Physician and Patient relationship;

d) Priest and Penitent Relationship; and

e) Disqualification of public officers by reason of public interest.

1. ***Marital Privileged Disqualification Rule.***

The husband or wife, during or after the marriage, cannot be examined without the consent of the other as to any communication received in confidence by one from the other during the marriage. The purpose is to encourage honesty and confidentiality betweens spouses. The privilege can be claimed by either spouse. The privilege matter endures even after the dissolution of the marriage.

However, acts not intended to be confidentially, such as acts within public view, or tattoos displayed publicly, are not confidential. Likewise, acts done in secret and hidden from the witness are not confidential.

1. ***Overheard communications between the spouses; requisites***

a) If the receiving spouses revealed to a third person, the communication ceases to be privileged;

b) If the communication was heard by a third person, the rules are as follows:

i) If the spouses were aware of the presence of the third person, the communication is not confidential except if the third person is a minor child; or stands in special confidence to the spouses such as their agent

ii) If the spouses are not aware, the communication remains confidential, but the third person may testify to what was heard.

The requisites in order that the rule may be invoked by either spouse are:

a) The witness is a lawfully married person, or is a party to voidable marriage or one which enjoys the presumption of validity;

b) The case is not between the witness and the latter’s spouse;

c) The subject of the testimony is a communication made by and between the witness and the latter’s spouse;

d) The communication was made during the marriage;

e) The communication is confidential in that it was intended to be known or heard only by the other spouse and it was made precisely because of the marriage.

1. ***Marital Disqualification rule and Marital Privileged Disqualification Rule, distinguished.***

Marital Disqualification and Marital privilege distinguished

|  |  |
| --- | --- |
| Marital Disqualification | Marital Privilege |
| Can be invoked only if one of the spouses is a part to the action | Can be claimed whether or not the spouse is a party to the action |
| Right to invoke belongs to the spouse who is a party to the action | Right to invoke belongs to the spouse making the communication |
| Applies only if the marriage is existing at the time the testimony is offered | Can be claimed even after the marriage has been dissolved |
| Constitutes a total prohibition against any testimony for or against the spouse of the witness (with certain exceptions) | Applies only to confidential communications between spouses made during the marriage |

1. ***A deed of sale of real estate belonging to the conjugal partnership was executed by the husband in favor of a third person. The husband made it appear that his wife gave her conformity to the sale by falsifying the latter’s signature thereon. In a case of falsification filed by the buyer against the husband, may the wife be disqualified to testify as to the falsification issue?***

Wife may testify against the husband in a criminal case for falsification, where the husband made it appear that the wife gave her consent to the sale of a conjugal property. This is covered by the exception where it is considered as a crime committed against the wife.

1. ***The husband was charged of homicide for the death of X. When the husband testified he declared that it was in fact the wife who killed X. May the prosecution call on the wife to rebut the testify of the husband?***

If husband-accused defends himself by imputing the crime to the wife, he is deemed to have waived all objections to the wife’s testimony against him. The wife may therefore be validly called to testify on rebuttal.

**DISQUALIFICATION BY REASON OF THE DEATH**

**OR INSANITY OF THE ADVERSE PARTY.**

**(Otherwise known as “Dead Man’s Statute)**

***“Parties, or assignors of parties to a case, or persons in whose behalf a case is prosecuted against an executor, administrator or representative of a deceased person, or against a person of unsound mind, upon a claim or demand… cannot testify as to any matter of fact occurring before the death of the deceased person or before such person became of unsound mind.”(Sec. 23, Rule 130)This is the so-called Survivorship Disqualification Rule or Dead Man’s Statute.***..

1. ***Survivorship Disqualification Rule.***

The disqualification is merely relative. It is based on what the witness is to testify on. The rule maybe waived expressly or by failure to object or by introducing evidence on the prohibited matter.

The purposes are:

(i) To put the parties on equal footing or equal terms as to the opportunity to give testimony. ”If death has closed the lips of the defendant, then the law closes the lips of the plaintiff”;

(ii) To guard against the giving of false testimony.

1. ***Survivorship disqualification rule or dead man’s statute. When applicable; when not.***

It applies to:

a) Civil cases where the defendant is the executor, administrator or representative of the deceased person or person of unsound mind. But the rule will not apply to a counter-claim against the plaintiff;

b) The subject is a claim or demand that affects the real or personal properties of the deceased;

1. The case must be a personal action for the enforcement of a debt or demand involving money judgment, or where the defendant is demanded to deliver personal property to plaintiff

2. The evidence of this claim is purely testimonial and allegedly incurred prior to the death or insanity. They are therefore fictitious claims.

The rule does not apply to the following:

1. To claims or demands which are not fictitious or those supported by evidence such as promissory notes, contracts, or undertakings, including the testimony of disinterested witnesses.

2. Fraudulent transactions of the deceased or insane person, as when the deceased was an illegal recruiter or that he absconded with money entrusted to him

3. To mere witnesses

4. Stockholders/members of a juridical entity testifying in cases filed by the juridical entity

5. Claims favorable to the estate.

**Disqualification by reason of**

**privileged communications**

**(Sec. 24, Rule 130)**

1. ***State the sources of privileged communications.***

The sources of privileged communications are:

1. Those enumerated under Section 24 of Rule 130 of the Revised Rules of Court.

2. Those declared as privileged by specific provision of a law (Statutory Privileged Communications).

3. Those declared as such by Privilege Communications by Jurisprudence.

1. ***Distinctions between privilege and incompetency.***

1. A privilege is a rule of law which excuses a witness from testifying on a particular matter which he would otherwise be compelled to reveal and testify on. It is a legal excuse to prevent the witness from revealing certain data. The witness may claim this excuse.

2. An incompetency is a ground for disqualification which may be invoked by the opposing party to prevent a person from being presented as a witness.

3. Thus a person maybe competent as a witness but he may invoke a privilege and refuse to testify on a certain fact.

1. ***Purpose of the rule on privileged communications.***

The purpose of a privilege is to protect the confidentiality or privacy of certain relationships. They are usually based on public policy which recognizes that the protection of certain relationship is more paramount than the testimony of the witness. The privilege may be asserted by the person for whose benefit the privilege was granted personally, or through a representative, or it may be claimed for him by the court.

***The RULE: “An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of, or with a view to, professional employment, nor can an attorney’s secretary, stenographer, or clerk be examined, without the consent of the client and his employer, concerning any fact the knowledge of which has been acquired in such capacity” (Sec. 24(b)***

1. ***State the reason of the rule regarding the attorney-client privilege.***

The rule is grounded on public policy and the proper administration of justice. It is to encourage clients to make a full disclosure of all facts relative to a problem for which he sought the professional services of a lawyer, without fear or reservation that these facts will later be revealed especially if the nature of the facts are such that they might adversely affect his rights, property or reputation.

This is to inspire confidence and thus it is also to enable the lawyer to give the appropriate advice or to undertake such action that will best serve the interest of the client.

1. ***State the requirements in order that the privilege may be invoked.***

The requirements are:

* 1. There is an attorney-client relationship;
  2. There is a communication made by the client to the attorney;
  3. Such communication was made in the course of, or with a view to, professional employment;
* Extends to attorney’s secretary, stenographer or clerk; requires consent of both employer and the client to testify as to matters learned in their professional capacity

1. ***State the exceptions to the above rule.***

The exceptions to the rule are as follows:

1. Actions brought by client against his attorney
2. Communications made in presence of third persons
3. Communications regarding an intended crime
4. ***What is included in the term “communication”?***

The term communication may include any but not limited to any of the following:

a) Any data or information supplied by the client personally or through confidential agents, either to the lawyer or to the lawyer’s employees. This may have been supplied through any form of oral or written communication.

b) All documents, objects or thing delivered to the lawyer except those the existence and/or contents of which are or maybe known. Titles to land, contracts, reply-communications, bank pass books, dishonored checks, cannot be considered as confidential.

c) Acts or conduct by the client, such as physical demonstration of actions or events, or giving a sample of his handwriting to show he is not the falsifier.

d) The advice given by the lawyer to the client orally or though any mode of written communication.

e) The identity of the client. As a matter of public policy a lawyer may not invoke the privilege and refuse to divulge the name or identity of the client except in the situation when the client’s name has an independent significance such that disclosure would reveal the client’s confidences.

1. ***As a General Rule, a lawyer may not invoke the privilege when it refers to the identity of the client; state the exceptions, if any.***

General Rule: Lawyer may not invoke the privilege and refuse to divulge the name of his client.

*Exceptions:*

1. If there is a probability that the revealing the client’s name would implicate the client to the activity for which he sought the lawyer’s advice;
2. The disclosure would open the client to civil liability;
3. Where the identity is intended to be confidential.***(Regala vs. Sandiganbayan: 262 SCRA 122)***
4. ***What is the so-called “work product doctrine” regarding the attorney-client privilege?***

The doctrine simply means that the pleadings prepared by the lawyer or his private files containing facts and data obtained by him or resulting from his own investigation or by any investigator hired by him; and/or his impressions or conclusions whether reduced in writing or not, about the client or the clients cause. A lawyer may not testify that his client, charged with theft of silver coins, paid him with silver coins.

1. ***What communications are not covered by the privilege in which case, the lawyer may divulge the same?***

The following communications are not covered and the lawyer may reveal them:

a) Those intended to be made public;

b) Or intended to be communicated to a third person;

c) Intended for an unlawful purpose or for a future crime or act;

d) Received from a third person not acting in behalf or as agent of the client;

e) Those made in the presence of third persons;

f) Those which are irrelevant;

g) The effects of a crime as well as weapons or instruments of a crime.

h) Opinions on abstract questions or hypothetical questions of law

*NOTE:* ***The******Privilege is not confined to verbal or written communications made by the client to the lawyer, but it extends to all information communicated by the client to the attorney by other means, such as when the attorney is called to witness the preparation of a document. The duration of the privilege is perpetual. It continues to exist even after the termination of the attorney-client relationship.***

***Physician-Patient Relationship***

***RULE: A person authorized to practice medicine, surgery or obstetrics cannot in a civil case, without the consent of the patient, be examined as to any advice or treatment given by him or any information which he may have acquired in attending such patient in a professional capacity, which information was necessary to enable him to act in that capacity, and which would blacken the reputation of the patient. (Sec. 24(c)***

1. ***State the requisites before the foregoing rule may be invoked by the patient.***

Requisites for Physician-Patient privilege are as follows: (CRANB)

* 1. The action is a ***Civil*** case;
  2. The ***Relation*** of physician-patient existed;
  3. The information was ***Acquired*** by the physician while attending to the patient in his professional capacity;
  4. The information was ***Necessary*** for the performance of his professional duty; and
  5. The disclosure of the information would tend to ***Blacken*** the character of the patient;
* A patient’s husband is not prohibited from testifying on a report prepared by his wife’s psychiatrist since he is not the treating physician (although it would be hearsay)
* A physician is not prohibited from giving expert testimony in response to a strictly hypothetical question in a lawsuit involving the physical or mental condition of a patient he has treated professionally.

**PRIEST/MINISTER- PENITENT PRIVILEGE**

***RULE: A minister or priest cannot, without the consent of the person making the confession, be examined as to any confession made to or any advice given by him in his professional character in the course of discipline enjoined by the church to which the minister or priest belongs.(Sec. 24 (d)***

1. ***Requisites in order that the privilege can be invoked by the person affected by the testimony.***

In order that the privilege can be invoked the following requisites must be present, to wit:

a) The witness is a priest or minister or similar religious personality;

b) The witness received the confession of a penitent;

c) The confession must have been made to the priest/minister in his professional character in the course of the discipline of the church to which the priest/minister belongs;

d) The confession must be confidential and penitent in character.

1. ***What is the general concept and purpose of the privilege?***

The privilege is often referred to as the “seal of the confessional”. A priest or minister or similar religious person cannot be compelled to testify and divulge matters which were revealed to him by way of a confession. The purpose is in recognition of religious freedom and to protect the practice of making confessions.

**PUBLIC OFFICER’S PRIVILEGE**

***RULE: A public officer cannot be examined during his term of office or afterwards, as to communications made to him in official confidence, when the court finds that the public interest would suffer by the disclosure. (Sec. 24(e)***

1. ***State the nature and purpose of the privilege.***

The privilege is based on public policy and public interest. The purpose of the privilege is to encourage citizens to reveal their knowledge about the commission of crimes; the protection of legitimate police operations against criminality and that of the safety of the informant and his family.

1. ***State the requisites for the privilege.***

a) There must be a confidential official communication.

b) The communication must have been made to a public officer.

c) The disclosure would affect public interest.

1. ***What is included in the term “official communication”? Public Officer?***

The term includes: -

1. All information concerning the circumstances of the commission of a crime such as the identity of the criminals, their whereabouts, their accomplices, the date, time and place of commission, their modus operandi

2. The identity of the recipient of the communication e.g. the undercover agent or handler; as well as the identity of the informant and official documents of diplomatic officials, ambassadors and consuls.

The public officer refers to those whose duty involves the investigation or prosecution of public wrongs or violations of laws. They pertain mostly to law enforcement agents and prosecutors, as well as those in charge of the enforcement of the law violated.

1. ***Aside from the foregoing restrictions are their statutory restrictions?***

The answer is yes. There are laws that prohibit the disclosure of certain acts which may be considered as privileged communications.

Such as the following:

1. Contents of a Ballot under the Election Code
2. The identity and personal circumstances of:
3. Minors who are victims of crimes under the Child Abuse Law
4. The records of cases involving Children in Conflict with the Law under the Juvenile Justice Law if:

(i) The case against them has been dismissed

(ii) They were acquitted or

(iii) Having been convicted and having undergone rehabilitation, they were eventually discharged.

1. Trade secrets under the Intellectual Property Law
2. Identities and whereabouts of witnesses under the Witness Protection Program
3. Identity of News Informants under R.A. 1477 (The Shield Law)
4. Bank Deposits under the Secrecy of Bank Deposits law except under the following:

a) Upon the prior written permission of the depositor

b) In case of impeachment of constitutional officers

c) When the deposit is the subject of the case

d) Upon Order of the Court

e) In cases involving public officers for offenses in relation to their office or for violation of the Anti Graft and Corrupt Practices Act

f) When the amount exceeds the limit set under the Anti Money Laundering Law

g) Compromise of taxes

h) Under the Anti-Terrorism Law/Human Security Law

1. Offers and admissions during Court Annexed Mediation proceedings under RA 9295.
2. ***Concept of Executive Privilege, basis and purpose.***

It is a power or right that the president or other officers of the executive branch assert when they refuse to give congress, the courts, or private parties, information or records which have been requested or subpoenaed, or when they order government witnesses not to testify before congress. It is essentially the exemption enjoyed by the President from disclosing information to congressional inquiries or the judiciary. ***(Senate of the Philippines vs. Ermita, April 20, 2006).***

It is based on the **principle of separation of powers**. It is recognized with respect to certain information the confidential nature of which is crucial to the fulfillment of the unique role and responsibilities of the executive or those instances where exemption from disclosure is necessary to the discharge of highly important executive responsibilities. It is premised on the fact that certain information must, as a matter of **necessity**, be held confidential in pursuit of public interest.

1. ***State the matters that are covered by the Executive Privilege we also call this*** the ***Principle of Confidentiality of Executive Deliberations.***

As a rule, information must be of such high degree as to outweigh public interest. The following are covered:

1. State secrets regarding military, diplomatic and other national security matters.

2. Closed Door cabinet meetings; presidential conversations, correspondence and discussions with the cabinet and presidential advisers.

3. Information in the investigation of crimes by law enforcement agencies before prosecution of the accused. ***(See the cases of Almonte vs. Vasquez (1995), Chavez vs. PCGG (1995), Chavez vs. Public Estates Authority (2002) and Senate vs. Ermita (2006)***

1. ***Executive Privilege; limitations***

The limitations as enunciated in the case of Senate vs. Ermita are:

1. It is not absolute. The privilege is recognized only in relation to certain types of information of a sensitive character. A claim is valid or not depending on the ground invoked to justify it and the context in which it is made.

2. A claim of privilege, being a claim of exemption from an obligation to disclose information, must be clearly asserted.

3. Only the President may personally assert it or claim it through the Executive Secretary.

Admissions and Confessions

***Section 26, Rule 130. The act, declaration, or omission of a party as to a relevant fact maybe given in evidence against him.***

1. ***Admission, concept***

Admission is the voluntary acknowledgement made expressly or impliedly by a party to a case or by another by whose statement the party is bound, against his interest, of the existence or truth of such fact in dispute, material to the issue. It means that a party to a case performed an act, made a declaration/statement whether oral or written, or omitted to do something, which is contrary to his cause of action or to his defense, and which may therefore be used as evidence against him.

1. ***State the distinctions:***

|  |  |
| --- | --- |
| Admission | Confession |
| St statement of an acknowledgment of guilt or liability | In involves acknowledgment of guilt or liability |
| M may be express or tacit | M must be express |
| M may be made by third persons, and in certain cases, are admissible against a party | Can be made only by the party himself, and in some cases, are admissible against his co-accused |

Admissions and Declarations against self-interest distinguished

|  |  |
| --- | --- |
| A ADMISSIONS (Sec. 38, RULE 130) | Declaration against Interest (Sec. 26) |
| N need not be, though will greatly enhance probative weight if made against the interest of the declarant | must have been made against the proprietary or pecuniary interest of the parties |
| M made by the party himself and is a primary evidence and competent though he be present in court and ready to testify | M must have been made by a person who is either deceased or unable to testify |
| can be made at any time | M must have been made *ante litem motam* |

*NOTE:* If a justification is alleged, it is merely an admission.

⮚Right against self-incrimination applies to the re-enactment of the crime by the accused

1. ***How may an admission be proved?***

An admission may be proved by the testimonies of those who heard the oral statement or to whom it was given, or who saw the act, and by presenting the written declaration itself.

1. ***What is a self-serving declaration? Is it admissible in evidence?***

It is declaration that is favorable to the interest of the declarant. It is not admissible in evidence as proof of the facts asserted. The assertion is basically hearsay in character and not trustworthy. To allow admission in evidence will promote perjury and fraud.

1. ***State the requisites of an admission by a party.***

The requisites for admissibility of an admission whether judicial or extrajudicial are:

* 1. Involves a matter of fact, not of law
  2. Categorical and definite
  3. Knowingly and voluntarily made, and
  4. Adverse to the interest of the one making the admission, otherwise, the evidence becomes self-serving and inadmissible as hearsay.
  5. It must be relevant to the fact in issue.

(Note: The evidentiary value of an admission is two-fold, they are used either: (a) As *Independent evidence* to prove a fact; or (b) For purposes of *impeachment.*

1. ***What is the concept of a Compromise?***

A compromise is a contract whereby the parties, by making reciprocal concessions, avoid litigation or put an end to one already commenced. (Article 2028 NCC). In civil cases an offer of compromise is not an admission of any liability, and is not admissible in evidence against the one making the offer. (Sec. 27, Rule 130)

In criminal cases, except in those cases involving quasi offenses or those allowed by law to be compromises, an offer of compromise may be received as an implied admission of guilt. (Ibid; see however Rule 118, Rules on Criminal Procedure re: plea bargaining)

1. ***State the reason why the law allows compromise in certain cases?***

It is the policy of the law to encourage the parties to settle their differences peacefully without need of going to the courts and in keeping with the trend to settle disputes through “alternative dispute resolutions”, as well as to unclog the docket of the courts.

1. ***State some statutory provisions that adopt the policy of allowing compromises?***

The following laws embody the policy of allowing compromises, to wit:

1. Local Government Code which established the Barangay Conciliation programs and require that certain cases be referred first to it for possible settlement before they are elevated in court;

2. The Pre-Trial Conference under the Rules of Court (Rule 18 and Rule 118) where one of the subject matter is the possibility of the parties arriving at an amicable settlement or where the accused is allowed to plead to lesser offense;

3. The provisions of the Civil Code and Family Code allowing for a “cooling-off” period between members of the family who are the parties involved;

4. R.A. 9295 on Compulsory referral of cases for Mediation. In Court-Annexed Mediation: this is a process of settling disputes with the assistance of an acceptable, impartial and neutral third party called a mediator. The mediator helps parties identify issues and develop proposals to resolve their dispute. Once the parties have arrived at a mutually acceptable arrangement, the agreement becomes the basis for the court’s decision on the case.

***Note: In the above circumstances, an offer to compromise is not admissible in evidence as an admission of liability or guilt if the same is not accepted.***

1. ***State the instances when an offer to compromise may be admissible in evidence against the offeror.***

The offer to compromise is admissible in evidence against the offeror under the following circumstances:

1. When the offer contains an admission of an independent fact.

2. When the offer contains an admission of liability, such as the existence and correctness of the amount.

1. ***Pedro sent a demand letter to Juan for the latter’s obligation. Juan writes back to Pedro offering to pay 30% of the obligation and the balance payable in three months because he will use part of his money to discharge an obligation in favor of Maria. Thereafter Maria sues Juan for sum of money arising from an obligation. May Maria use in evidence the letter of Juan to Pedro to show that Juan is indeed indebted to her?***

The answer is yes. This is an example of an offer that contains an admission of an independent fact. So that if Juan denies being indebted to Maria, the latter may use the admission of Juan in his letter to Pedro. As can be seen in the problem, Juan’s letter to Pedro in effect shows that he was indebted to Maria.

1. ***John and Marie entered into a contract of sale of jewelry. Thereafter John sued Marie for her failure to deliver the jewelry subject of the sale. During the pre-trial, Marie offered to deliver the jewelry after she has redeemed them from Don. The offer was accepted by John and the case was dismissed. Later Marie filed a criminal case for theft against Don. May Don validly use as a defense the admission of Marie in the civil case that was dismissed?***

The answer is yes. It must be noted that in the pre-trial conference, Marie in effect admitted that the possession of Don over the jewelry was legal. The fact that Marie declared during the pre-trial that she was going to redeem the jewelry from Don proves that the latter did not commit the crime against Marie.

1. ***Tony wrote a letter to Marsha asking for the return of his money and damages for the latter’s failure to deliver the goods subject matter of their agreement. Marsha promised to deliver the goods in a month’s time provided Tony will forego the damages. Additionally Marsha claims that the reason for the failure to make delivery was due to some unforeseen events. Marsha did not comply with her promise. Tony sues Marsha. May Tony use the offer of Marsha?***

The answer is yes. It must be noted in the problem that Marsha has, in effect admitted her liability to Tony by reason of her offer to make delivery and by asking for more time to comply with her obligation.

1. ***Liza had been renting the house of Zardo for the past seven years. Later she received a letter from the latter demanding her to vacate the premises and to pay her unpaid rentals amounting to P200, 000. Liza wrote Zardo asking for two months time to pay the rentals in arrears as her money from Saudi Arabia has not arrived. Lisa did not comply in spite of the lapse of the period granted her. Zardo sued her for unlawful detainer and recovery of the unpaid rentals. May Zardo use Lisa’s letter in evidence to prove that the latter has violated the lease agreement?***

The answer is yes. The letter of Lisa to Zardo contains an admission of her liability in favor of the latter. In fact, she admitted the correctness of the amount of her obligation to Zardo.

1. ***State the instances where an offer of compromise in criminal actions is not considered as an implied admission of guilt.***

An offer of compromise is not an implied admission of guilt in the following cases, wit:

1. Where the law allows a compromise:

a) Those cases covered by the Court-Annexed Mediation under R.A. 9295, where certain criminal cases are required to undergo the process of compulsory mediation wherein the parties are encouraged to find mutually satisfactory terms and conditions to put an end to their difference. A compromise is therefore allowed and maybe the basis for a dismissal of the criminal case. These criminal cases include:

(i) The civil aspect of a prosecution for B.P. 22;

(ii) The civil aspect of quasi-offenses;

(iii) Estafa, physical injuries, theft, crimes covered by the Rules on Summary Procedure and all others which are not expressly declared by law as not subject of compromise such as legal separation

b) Prosecutions under the NIRC

c) Genuine Offers to Marry by the accused in crimes against chastity

2. Quasi-offenses which do not involve any criminal intent

3. Under the “Good Samaritan law” an offer to pay for the medical and hospital bills and similar expenses occasioned by an injury. This is to encourage people to help those who need immediate medical attention and because of the possibility that the offer to help arose from humanitarian concerns and not from guilty conscience.

4. Those made pursuant to tribal customs and traditions

5. Those which were not authorized by the party or made in his behalf but without his consent and/or knowledge.

6. Those where the party was induced by fraud or force or intimidation

7. Those which did not arise from a guilty conscience

1. ***State the rule on “res inter alios acta”.***

The rights of a party cannot be prejudiced by an act, declaration or omission of another. (Sec. 28, Rule 130)

1. ***State the exceptions to the rule on res inter alios acta.***

The rule on res inter alios acta is applicable when the third party is a partner, an agent, co-conspirator, privy or joint owner or debtor or other person jointly interest with the party. (Sections 29-31, Rule 130)

***ADMISSION BY A CO-PARTNER OR AGENT***

***SECTION 29. Admission by co-partner or agent. — The act or declaration of a partner or agent of the party within the scope of his authority and during the existence of the partnership or agency, may be given in evidence against such party after the partnership or agency is shown by evidence other than such act or declaration. The same rule applies to the act or declaration of a joint owner, joint debtor, or other person jointly interested with the party. (26a)***

1. ***Reason for the rule.***

The admissions of a partner are received against another partner on the ground that they are identified in interest and that each is an agent of the other. The existence of the partnership must be however shown by evidence other than the admission of the partner and that such act or declaration is shown to have been made within the scope of the partnership.

1. ***After the dissolution of the partnership, P, one of the partners, was designated to do the winding up of the affairs of the partnership. May the act, declaration or omission of P be binding on the other partners?***

We have to qualify our answer. The act, declaration or omission of P may bind the other partners if his acts were done in relation to the winding up of the partnership affairs. Otherwise, the answer is no. ***(31 CJS 886)***

1. ***Pedro was charged before the RTC of Baguio for Rape. On one occasion, his lawyer filed a manifestation stating that Pedro was remorseful and intoxicated when he committed the rape and he will present evidence of intoxication, lack of intent in support of a plea of guilty. Are the manifestations conclusive upon Pedro?***

The answer is no. The authority of an attorney to bind the client as to any admissibility of fact is limited to matter of judicial procedure but not to admissions which operate as a waiver, surrender or destruction of the client’s cause. ***(People vs. Hermones, March 6, 2002)***

***Admission by a Conspirator***

***Rule: SECTION 30. Admission by conspirator. — The act or declaration of a conspirator relating to the conspiracy and during its existence, may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act of declaration. (27)***

1. ***State the requisites before the admission of a conspirator may be admitted in evidence against his co-conspirators.***

Before the act, declaration or omission of a conspirator can be admitted in evidence, the following requisites must be present:

1. Conspiracy is properly established by independent evidence;
2. The admission is made during the course of the conspiracy; and
3. The admission relates to some matter involved in the conspiracy itself.

1. ***What declarations, acts or omissions fall within the purview of the rule?***

This rule applies only to extrajudicial acts or declarations. It does not apply to testimony given in on the witness stand where the defendant has the opportunity to cross-examine the declarant.

1. ***A, B, C, and D are charged for rape before the RTC of Baguio City. The information contains allegations that all the accused conspired in the commission of the offense. At the arraignment, A and B pleaded guilty. May the plea of guilty of the said accused be used in evidence against C and D?***

Generally, a confession (such as plea of guilty) is admissible against the confessant alone and is considered as hearsay against his co-accused and a violation of the res inter alios acta rule. An exception is when the confession is to be used as a circumstantial evidence to show the probability of participation of said co-accused in the crime committed. ***(People vs. Tizon, et al. G.R. No. 133228-31, 2002 Jul 30, 1st Division)***

***Admission by Privies***

***Rule: SECTION 31. Admission by privies. — Where one derives title to property from another, the act, declaration, or omission of the latter, while holding the title, in relation to the property, is evidence against the former. (28)***

1. ***Privies, defined.***

Privies denotes not only the idea of succession in right of heirship or testamentary legacy but also succession by virtue of acts inter vivos, it includes any act whereby the successor is substituted in the place of the predecessor in interest.

1. ***Classify privies.***

Privies may be classified as follows:

1. privies in estate, such as the relation between donor and donee; lessor and lessee;
2. privies in representation, such as executors or administrators of estate of a deceased;
3. privies in blood, such as heirs to an ancestor;
4. privies in respect to contract;
5. Privies in respect to contract and estate altogether.

***Note: That the reason and basis of the rule on privity is the property subject matter of the cause and not the relation.***

1. ***H married W2 two years after the death of his first wife. Several thereafter, H also died.W2 filed a petition seeking several parcels of lands to place under her name as sole owner. A, B, C and D, the children of H by his first wife opposed the petition on the ground that they have a valid interest on the lands being the heirs of H. At the trial, A, B, C and D presented evidence to the effect that the lands were acquired by purchased by H and W2, hence they are entitled to a share in the lands. W2 presented evidence about a written declaration of H during his lifetime that the said lands were the exclusive property of W2, the latter having inherited the same from her parents and that the title to the lands were merely place in his name as representative of W2. Is such declaration binding against A, B, C and D?***

The answer is yes. This is a classic application of the rule on admission of a privy. It is evidence that the declaration of H is a declaration against his interest because it was a declaration that the lands did not belong to the conjugal partnership not to him individually.

***Admission by Silence***

***Rule-Sec. 32. Admission by Silence. — An act or declaration made in the presence and within the hearing or observation of a party who does or says nothing when the act or declaration is such as naturally to call for action or comment if not true, and when proper and possible for him to do so, may be given in evidence against him. (23a)***

1. ***State the factors to be considered in order that the rule may be made to apply.***

If a statement is made in the present of a person, in regard to facts affecting his rights, and he makes no reply, his silence may be construed as a tacit admission of the acts stated depending on:

1. whether he hears and understands the statement;
2. whether the truth of the facts embraced in such utterance is within his own knowledge;
3. whether the circumstance are such as to afford him an opportunity to act and speak freely; and
4. whether the statement is made under circumstances and by such persons as naturally to call for a reply.
5. ***Does the rule apply to written communications?***

The answer is yes. Where two parties have carried on correspondence in reference to a particular subject and one of the parties has written a letter to the other making statements concerning subjects, of which the latter has knowledge, and which he would naturally deny if not true and he has failed to answer such letter, his omission is evidence tending to show that the statements in the letter sent to him are true. However, the failure to reply to statement made in a letter which is not part of a mutual correspondence is not considered implied admission by the addressee of the truth of the statements made.

1. ***After the prosecution rested its case in a rape case, the defense presented evidence to negate the existence of the crime of rape by declaring that the act was consensual because the accused and the victim were long time sweethearts and that they had indulged in sexual intercourses. The complainant did not submit any rebuttal evidence to controvert the testimony of the accused. May the failure on the complainant be considered as admission by silence?***

The answer is yes. If private complainant in a rape case fails to rebut testimonies of defense witnesses that she and accused were sweethearts and that they had previous sexual encounters, she is deemed to have impliedly admitted the truth of the facts asserted by said witnesses.

**TESTIMONIAL KNOWLEDGE**

***SECTION 36.Testimony generally confined to personal knowledge; hearsay excluded. -- A witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception, except as otherwise provided in these rules. (30 a)***

**HEARSAY RULE and Its Exceptions**

1. ***Hearsay Evidence, it nature and concept.***

It that kind of evidence which derives its value, not solely from the credit to be given to the witness upon the stand, but in part from the veracity and competency of some other persons. It includes not only oral but also writing evidence. It is generally inadmissible in evidence. The rule is designed to preserve the right of parties to cross-examine the original witness or person claiming to have knowledge of the transaction or occurrence.

1. ***What is a self-serving declaration?***

It is a declaration that is favorable to the interest of the declarant and not ordinarily admissible in evidence under the hearsay rule. Entries in diaries fall within the term unless the entries or declarations are against the interest of the entrant.

1. ***X is charged of theft before the MTC of Baguio. At the trial, the complainant testified that on the day the article stolen was recovered; the husband of the accused told him that it was the wife of stole the article. Does the testimony fall under the hearsay rule?***

The answer is yes. Such testimony as to the husband telling the complainant is hearsay. Moreover, the same evidence is also not admissible because of the marital disqualification rule.

1. ***Dying declaration, its concept and nature.***

***SECTION37. Dying declaration. The declaration of a dying person, made under the consciousness of an impending death, may be received in any case wherein his death is the subject of inquiry, as evidence of the cause and surrounding circumstances of such death. (31 a)***

It is that declaration made by a person as to the material facts concerning the cause and circumstances surrounding his death and which is uttered under a fixed belief that death is impending and is certain to follow without opportunity for retraction and in the absence of hopes of recovery.

1. ***State the conditions for the admissibility of a dying declaration.***

The conditions for Dying Declarations to be admissible are:

1. Declaration must concern cause and surrounding circumstances of declarant’s death;

b) Declaration was made under consciousness of impending death;

c) Declaration was freely and voluntarily made;

d) Declarant’s testimony, if alive, would have been competent (e.g.: dying declaration would not be admissible if it consisted of hearsay or of the declarant’s opinion)

1. ***X was found suffering from gunshot wound on the chest. Before he was brought into the operating room, X told his wife that he was shot by Y because of a dispute over a parcel of land. The doctor stopped X from further talking as it would aggravate his situation X died on the operating table. Are the statements of X considered ante mortem statements?***

The answer is yes. The statement of the victim to his wife in the presence of the doctor is considered ante mortem statement as an exception to the hearsay rule. They were made by X under the consciousness of an impending death.

1. ***What is the so-called doctrine of completeness test regarding dying declarations?***

The application of the doctrine of completeness is here peculiar. The statement as offered must not be merely a part of the whole as it was expressed by the declarant; it must be complete as far it goes. But it is immaterial how much of the whole affair of the death is related, provided the statement includes all that the declarant wished or intended to include in it. Thus, if an interruption (by death or by an intruder) cuts short a statement which thus remains clearly less than that which the dying person wished to make, the fragmentary statement is not receivable, because the intended whole is not there, and the whole might be of a very different effect from that of the fragment; yet if the dying person finishes the statement he wishes to make, it is no objection that he has told only a portion of what he might have been able to tell. ***(People vs. Naag, G.R. No. G.R. No. 123860, 2000 Jan 20, 2nd Division)***

1. ***Pioquinto is known in the community where he resides as “Paqui”. One night Pedro went home to his grandmother’s house. Upon entering the house he saw his grandmother covered with blood. Holding his grandmother Pedro asked her: “Apo, apo, ano’ng nangyari?”(Apo, Apo, what happened)Her answer was “Si Paqui”, then she died. Can the declaration be considered as ante mortem declaration?***

The answer is no. Even if it is not disputed that "Paqui" is the nickname of appellant Pioquinto, the words "Si Paqui" do not constitute by themselves a sensible sentence. Those two words could have been intended to designate either (a) the subject of a sentence or (b) the object of a verb. If they had been intended to designate the subject, we must note that no predicate was uttered by the deceased. If they were designated to designate the subject of a verb, we must note once more that no verb was used by the deceased. In sum, the declaration does not comply with the completeness test of ante mortem statement as a dying declaration. ***(People vs. Naag, G.R. No. G.R. No. 123860, 2000 Jan 20, 2nd Division)***

***120-a. Form of a Dying Declaration and scope thereof***

A dying declaration may be oral or written or made by signs which could be interpreted and testified to by a witness thereto. Dying Declarations favorable to the accused is admissible.

Dying declaration may also be regarded as part of the res gestae as they were made soon after the startling occurrence without the opportunity for fabrication or concoction. Statements which consist of mere hearsay or opinion & conclusions of the declarant are not admissible as a dying declaration

***120-b. May a wife testify as to a declaration made by the husband under such circumstance?***

The wife of the declarant may testify as to the same, either for the prosecution or as a witness for the defense, and this does not violate the marital privilege as dying declaration is not considered a confidential communication between the spouses. Statements referring to the antecedents of the fatal encounter or opinion, impressions, or conclusions of the declarant are not admissible.

***120-c. How do we impeach a dying declaration?***

***To impeach a dying declaration*** admitted against him the defendant is entitled to show by experts the injuries sustained by the declarant were calculated to derange his mental faculties.

***120-d. Circumstances to be considered in giving weight to a dying declaration.***

The circumstances that should be taken into consideration in determining the weight to be given to dying declarations are:

1. Trustworthiness of the reporters;

2. The capacity of the declarant at the time to accurately remember the past;

3. His disposition to tell what he remembers; and

4. Such circumstances as may be attendant such as the fact that the declarations were the result of questions propounded by an attorney, the presence only of friends and prosecuting officers, the lack of belief of the declarant in a future life, rewards and punishment, the fact that the statements in the dying declarations are contrary to facts satisfactorily proven by other evidence, and the fact that the declaration might have been influenced by the passion of anger and vengeance, or jealousy. ***[People vs. Igting, 284 SCRA 344]***

***Declaration against Interest:***

***SECTION 38. Declaration against interest. — The declaration made by a person deceased, or 'unable to testify, against the interest of the declarant, if the fact asserted in the declaration was at the time it was made so far contrary to declarant's own interest, that a reasonable man in his position would not have made the declaration unless he believed it to be true, may be received in evidence against himself or his successors in interest and against third persons. (32 a)***

1. ***State the theory behind the admissibility of a person’s own declaration against his pecuniary interest.***

The theory under which declarations against interest are received in evidence notwithstanding they are hearsay is that the necessity of the occasion renders the reception of such evidence advisable and, further that the reliability of such declaration asserts facts which are against his own pecuniary or moral interest. ***(Parel vs. Prudencio G.R. NO. 146556, 2006 Apr 19,)***

1. ***Scope of the effect of the admissibility of such kind of declaration.***

The declaration may be received in evidence not only against the declarant but also his successors in interest & against 3rd persons. However, the interest must have been existing at the time the declaration was made and that they should not be in violation of his constitutional rights. (Note: the term “unable to testify” does not mean mere absence from the jurisdiction of the court) This exception contemplates a situation where the declarant is dead, mentally incompetent or physically incapacitated.

***SECTION 39.Act or declaration about pedigree. — The act or declaration of a person deceased, or unable to testify, in respect to the pedigree of another person related to him by birth or marriage, may be received in evidence where it occurred before the controversy, and the relationship between the two persons is shown by evidence other than such act or declaration. The word "pedigree" includes relationship, family genealogy, birth, marriage, death, the dates when and the places where these facts occurred, and the names of the relatives. It embraces also facts of family history intimately connected with pedigree. (33 a)***

***SECTION 40.Family reputation or tradition regarding pedigree. — The reputation or tradition existing in a family previous to the controversy, in respect to the pedigree of any one of its members, may be received in evidence if the witness testifying thereon be also a member of the family, either by consanguinity or affinity. Entries in family bibles or other family books or charts, engravings on rings, family portraits and the like, may be received as evidence of pedigree. (34 a)***

1. ***Pedigree, How proved:***

A person’s pedigree is proven:

1. Act or declaration of a person related to him, by birth or marriage OR
2. By the reputation or tradition existing in the family in respect to the pedigree of such person.

**(Note: The act or declaration will not be received when better evidence is available; or The act or declaration must have been done before the controversy arose)**

1. ***Requisites for admissibility of the evidence regarding pedigree:***
2. Declarant dead or unable to testify
3. Declarant is related to the person whose pedigree is in question
4. Made *ante litem motam*
5. Relationship between declarant and person whose pedigree is in question showed by evidence other than the declaration EXCEPT if claiming from the declarant, where the declaration itself is sufficient
6. ***Requisites of family reputation or tradition regarding pedigree***
7. Reputation or tradition exists in family of person whose pedigree is in question;
8. Reputation or tradition existed previous to the controversy;
9. Witness testifying thereon is a surviving member of that family, by either affinity or consanguinity

**(Note: Reputation as used in the rule must be that existing in the family & not in the community. A person’s statement as to the date of his birth and age, as he learned of these from his parents or relatives, is an ante litem motam declaration of family reputation.)**

***126. Distinctions between Sections 38 and 40:***

|  |  |
| --- | --- |
| **Section 38** | **Section 40** |
| --Act or declaration about PEDIGREE; | --Family reputation or tradition regarding pedigree; |
| --Witness need not be a member of the family; | --Witness is a member of the family; |
| --Testimony is about what declarant, dead or unable to testify, has said concerning the pedigree of the declarant’s family. | --Testimony is about family reputation or tradition covering matters of pedigree. |

***SECTION 41.Common reputation. — Common reputation existing previous to the controversy, respecting facts of public or general interest more than thirty years old, or respecting marriage or moral character, may be given in evidence. Monuments and inscriptions in public places may be received as evidence of common reputation. (35)***

***127. Matters that may be established by common reputation.***

The following may be established by common reputation:

1. Matters of public interest more than 30 yrs. old;

2. Matters of general interest more than 30 years old;

◙ respecting marriage or moral character and related facts

◙ Individual moral character

***128. Requisites of Common Reputation.***

1) Facts to which the reputation refers are of public or general interest

2) Reputation is ancient (or more than 30 years old) (Note**: HOWEVER, if the reputation concerns marriage or moral character, the requisite that the reputation must be ancient does NOT apply)**

3) Reputation must have been formed among a class of persons who were in a position to have some sources of information and to contribute intelligently to the formation of the opinion

4) Reputation must exist *ante litem motam*

***129. Common reputation, defined:***

**It is** the definite opinion of the community in which the fact to be prove is known or exists. It means the general or substantially undivided reputation, as distinguished from a partial or qualified one, although it need not be unanimous.As a general rule*,* the reputation of person should be that existing in the place of his residence; it may also be that existing in the place where he is best known.

***130. Evidence of Negative Good Repute, meaning of***

Where the foundation proof shows that the witness was in such position that he would have heard reports derogatory to one’s character, the reputation testimony may be predicated on the absence of reports of bad reputation or on the fact that the witness had heard nothing against the person.

***SECTION 42. Part of the res gestae. — Statements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as part of the res gestae. So, also, statements accompanying an equivocal act material to the issue, and giving it a legal significance, may be received as part of the res gestae.***

***131. Res Gestae, meaning and scope of:***

**Res gestae** is a Latin phrase which literally means “things done.”

As an exception to the hearsay rule, it refers to those exclamations and statements by either the participants, victims, or spectators to a crime immediately before, during or immediately after the commission of the crime, when the circumstances are such that the statements were made as spontaneous reactions or utterances inspired by the excitement of the occasion, and there was no opportunity for the declarant to deliberate and fabricate a false statement ***(Capila vs. People, G.R. No. 146161, 2006 Jul 17)***

***132. Reason for the rule for its admissibility***

The reason for the rule is human experience. It has been shown that under certain external circumstances of physical or mental shock, the state of nervous excitement which occurs in a spectator may produce a spontaneous and sincere response to the actual sensations and perceptions produced by the external shock.

As the statements or utterances are made under the immediate and uncontrolled domination of the senses, rather than reason and reflection, such statements or utterances may be taken as expressing the real belief of the speaker as to the facts he just observed. The spontaneity of the declaration is such that the declaration itself may be regarded as the event speaking through the declarant rather than the declarant speaking for himself. (***Capila vs. People, G.R. No. 146161, 2006 Jul 17)***

***133. Reasons for admission:***

For the admission of the res gestae in evidence, the following requisites must be met:

(1) that the principal act or the res gestae be a startling occurrence;

(2) the statement is spontaneous or was made before the declarant had time to contrive or devise, and the statement is made during the occurrence or immediately or subsequent thereto; and

(3) the statement made must concern the occurrence in question and its immediately attending circumstances. (***Capila vs. People, G.R. No. 146161, 2006 Jul 17)***

***134. Types of Res Gestae:***

The two types of Res gestae are:

1. Statements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof (SPONTANEOUS STATEMENTS)

2. Statements accompanying an equivocal act material to the issue, and giving it a legal significance (VERBAL ACTS).

***135. Requisites of Admissibility of SPONTANEOUS STATEMENTS:***

1. There must be a startling occurrence;

2. The statement must relate to the circumstances of the starling occurrence

3. The statement must be spontaneous

***136. Factors to be considered to determine spontaniety of statement:***

1) Time that elapsed between occurrence and the making of the statement

2) Place where statement was made

3) Condition of the declarant when he made the statement

4) Presence or absence of intervening occurrences between the occurrence and the statement

5) Nature and circumstances of the statement itself

***137. Requisites for admissibility of VERBAL ACTS:***

1. The act or occurrence characterized must be equivocal

2. Verbal acts must characterize or explain the equivocal act

3. Equivocal act must be relevant(independently material) to the issue

4. Verbal acts must be contemporaneous with(accompany) the equivocal act

***138. Distinctions between:***

|  |  |
| --- | --- |
| **VERBAL ACTS** | **SPONTANEOUS STATEMENTS** |
| the res gestae is the equivocal act | the res gestae is the startling occurrence |
| verbal act must be contemporaneous with or must accompany the equivocal act | statements be may be made prior, while or immediately after the startling occurrence |

***139. Distinctions between :Res gestae and Dying Declarations distinguished:***

|  |  |
| --- | --- |
| **Res Gestae** | **Dying Declarations** |
| Statement of the killer himself after or during the killing, or that of a third person (e.g., victim, bystander) | Can be made only by the victim |
| Statement may precede, accompany or be made after the homicidal act was committed | Made only after the homicidal attack has been committed |
| Justified by the spontaneity of the statement | Trustworthiness is based upon its being given under awareness of impending death |

***SECTION 43.Entries in the course of business. — Entries made at, or near the time of the transactions to which they refer, by a person deceased, or unable to testify, who was in a position to know the facts therein stated, may be received as prima facie evidence, if such person made the entries in his professional capacity or in the performance of duty and in the ordinary or regular course of business or duty. (37 a)***

***SECTION 44.Entries in official records. — Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are prima facie evidence of the facts therein stated. (38)***

***140. Distinction between:***

*Entries in the course of business and Entries in official records*

|  |  |
| --- | --- |
| Entries in the course of business | Entries in official records |
| Sufficient that entrant made the entries pursuant to a duty either legal, contractual, moral or religious, or in the regular course of business or duty | entrant is a public officer in performance of duty, or if a private individual, must have acted pursuant to a specific legal duty (specially enjoined by law) |
| The person who made such entries must be dead or unable to testify | there is no such requirement for admissibility, precisely because the officer is excused |

***141. Requisites of:***

|  |  |
| --- | --- |
| Entries in the course of business | Entries in official records |
| * 1. 1. Entrant is deceased or unable to testify   2. Entries made at or near the time of the transaction to which they relate   3. Entries made by entrant in his professional capacity or in the performance of a duty   4. Entries were made in the ordinary or regular course of business   5. Entrant must have been in a position to know the facts therein stated   *(see the case of Heirs of Conti vs. CA* - baptismal certificates are admissible as entries in the ordinary course of business, even absent the testimony of the officiating priest or official recorder | * 1. Entry was made by public officer of the Philippines or by a person especially enjoined by law to make such entry   2. Entry was made in the performance of entrant’s duty   3. Entrant must have been in a position to know the facts therein stated * Baptismal certificates or parochial records are not public or official records and are not proof of relationship or filiation of the child baptized. |

***SECTION 45. Commercial lists and the like. — Evidence of statements of matters of interest, to persons engaged in an occupation contained in a list, register, periodical, or other published compilation is admissible as tending to prove the truth of any relevant matter so stated if that compilation is published for use by persons engaged in that occupation and is generally used and relied upon by them therein. (39)***

***SECTION 46. Learned treatises. — A published treatise, periodical or pamphlet on a subject of history, law, science or art is admissible as tending to prove the truth of a matter stated therein if the court takes judicial notice, or a witness expert in the subject testifies. that the writer of the statement in the treatise, periodical or pamphlet is recognized in his profession or calling as expert in the subject. (40 a)***

***SECTION 47. Testimony or deposition at a former proceeding. — The testimony or deposition of a witness deceased or unable to testify, given in a former case or proceeding, judicial or administrative, involving the same parties and subject matter, may be given in evidence against the adverse party who had the opportunity to cross-examine him. (41 a)***

***142. Requisites of Testimony or Deposition in former proceeding***

* 1. Witness whose testimony is offered is dead or unable to testify
  2. Party against whom the evidence is offered, or his privy, was a party to the former case or proceeding, judicial or administrative
  3. Testimony or deposition relates to the same subject matter
  4. Adverse party had opportunity to cross-examine
* Testimony given during preliminary investigation where the defense had the opportunity to cross-examine the unavailable witness is admissible in the criminal case. Actual cross examination of the witness at the former proceeding is not a prerequisite to admissibility. It is enough that there was opportunity to cross examine.
* The testimony of a witness at a former case or proceeding may always be presented in a subsequent case or proceeding for the purpose of impeaching his credibility.
* It is not essential that there should be a physical identity of the parties.

a substantial identity is sufficient

***143. Are testimonies given before a legislative hearing or a committee of the legislature admissible under this rule?***

Testimony given before a legislative committee is not admissible. The rules on evidence are not binding and applicable on the said committees.

In addition to the exceptions to the hearsay rule, the SC by virtue of Adm. Matter No. 004-07-SC that took effect on Dec. 15, 2000 known as the

Rule on Examination of Child Witness, the following are the highlights:

* A statement made by a child describing any act or attempted act of child abuse NOT otherwise admissible under the hearsay rule, may be admitted in evidence in *any* criminal or non-criminal proceeding *subject* to the following rules:
  1. Before such statement may be admitted, its proponent shall make known to the adverse party the intention to offer such statement and its particulars to allow him an opportunity to object.
  2. **If the child is available**

🡪 The court shall require the child to be present at the presentation of the hearsay statement for cross-examination by the adverse party.

* 1. **If the child is unavailable**

🡪 The fact of such circumstance must be proved by the proponent.

* 1. In ruling on the admissibility of such hearsay statement, the court shall consider the time, content and circumstances thereof which provide sufficient indicia of reliability. It shall consider the following factors:

1. Whether there is a motive to lie
2. The general character of the declarant child
3. Whether more than one person heard the statement
4. Whether the statement was spontaneous
5. The timing of the statement and the relationship between the declarant child and witness.
6. Cross-examination could not show the lack of knowledge of the declarant child.
7. The possibility of faulty recollection of the declarant child;
8. The circumstances surrounding the statement are such that there is no reason to suppose the declarant child misrepresented the involvement of the accused.
   1. The child witness shall be considered unavailable in the following situations:

a) Is deceased, suffers from physical infirmity, lack of memory, mental illness or will be exposed to severe psychological injury;

b) Is absent from the hearing and the proponent of his statement has been unable to procure his attendance by process or other reasonable means.

**d.** When the child witness is unavailable, his hearsay testimony shall be admitted only if corroborated by other admissible evidence.

**OPINION RULE**

**(Section 48. Rule 130)**

***144. General on Opinion Evidence.***

A witness can testify only as to facts & it is left to the courts to draw inference & conclusions & to form opinions from the facts to which the witness testified. Opinion testimony involving questions of law or the ultimate fact in issue is not admissible. As a rule the opinion of a witness is not admissible. This rule admits the following exceptions, to wit:

**EXCEPTIONS:**

1. On a matter requiring SPECIAL knowledge, skill, experience or training which he is shown to possess – EXPERT WITNESS (**Sec. 49**);

2. The identity of a person about whom he has adequate knowledge (**Sec. 50[a]**);

3. A handwriting with which he has sufficient familiarity (**Sec. 50 [b]**);

4. The mental sanity of a person with whom he is sufficiently acquainted (**Sec. 50 [c]**);

5. The witness’ impressions of the emotion, behavior, condition or appearance of a person (**Sec. 50 [d**]);.

OPINION OF A WITNESS

1) **EXPERT** – special knowledge, skill experience or training

a. The matter to be testified to is one that requires expertise

b. The witness has been qualified as an expert

►It is not enough that a witness who is being presented as an expert belongs to the profession or calling to which the subject matter of the inquiry relates.

►He must further show that he possesses special knowledge to the question on which he proposes to express an opinion.

**2) REQUISITES – opinion of expert witness.**

1.The subject matter under examination requires the aid of knowledge or experience of experts on such field.

2. The expert witness must be qualified

3. The subject matter is put in issue.

***145. Is the testimony of an expert witness conclusive upon the courts?***

The testimony of expert witnesses, although meriting attention, is **not conclusive** upon the courts, BUT is to be weighed and its probative value determined in connection with other proofs adduced. The opinion is merely advisory in character.

***146. May the opinion of an ordinary witness be admissible in evidence?***

The opinion of an ordinary witness may be admissible in evidence under the following circumstances:

* 1. Identity of person about whom he has adequate knowledge
  2. Handwriting, if with sufficient familiarity
  3. Mental sanity, if sufficiently acquainted
  4. Impressions on emotion, behavior, condition or appearance which he has observed
  5. Ordinary matters common to all men of common perception

**CHARACTER EVIDENCE**

1. ***General rule on the admissibility of character evidence.***

Sec. 51, Rule 130 expressly provides that evidence of character is generally not admissible in evidence. Character evidence is confined to the general reputation the person sustains in his community in which he is known and also in his place of work

1. ***State the exceptions to the general rule.***

**a) In CRIMINAL CASES:**

* + Accused may prove his good moral character which is pertinent to the moral trait involved in the offense charge.
  + The prosecution may not prove bad moral character of the accused unless in rebuttal when the latter opens the issue by introducing evidence of his Good moral character.
  + As to the offended party, his good or bad moral character may be proved as long as it tends to establish the probability or improbability of the offense charged.

**(Note: Character is never an issue in a criminal case UNLESS the accused elects to make it one. Only after he has introduced evidence of his good character may the prosecution rebut but such claims by introducing evidence of his bad character. When character evidence is introduced into a criminal case it must be limited to the traits and characteristics involved in the type of offense charged.)**

**b) In CIVIL CASES:**

►The moral character of either party thereto cannot be proved unless it is pertinent to the issue of character involved in the case.

**c) AS TO WITNESSES**:

**Both criminal and civil -** the bad moral character of a witness may always be proved by either party (Sec. 11, Rule 132) but not evidence of his good moral character, unless it has been impeached. (Sec. 14)

1. ***In sum, the following rules are to be applied in proving character:***

1. Personal Opinion as to the moral character of the accused- EXCLUDED

2. Reputation in the community-ADMISSIBLE

3. Specific conduct of the party exhibiting character- EXCLUDED

**Rule 131**

**Burden of Proof and Presumptions**

1. ***Burden of proof, concept of:***

BURDEN OF PROOF or RISK OF NON-PERSUASION is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law. It is the obligation imposed upon a party who alleges the existence of facts necessary for the prosecution of his action or defense to establish the same by the requisite presentation of evidence.

🡪 In civil cases, it is on the party who would be defeated if no evidence is given on either side; in criminal cases, the prosecution has the burden of proof.

🡪 Does not shift; remains on party upon whom it is imposed

Determined by pleadings filed by party

1. ***Effect of the Legal presumptions on the burden of proof.***

Effect of a legal presumption on Burden of Proof: The effect is to create the necessity of presenting evidence to meet the prima facie case created by the presumption; and if no proof to the contrary is offered, the presumption will prevail. **The legal presumption does not shift the burden of proof**. The burden of proof remains where it is, but by the presumption, the one who has the burden is relieved, for the timebeing, from producing evidence in suuport of his averment, because the presumption stands in place of evidence.

1. ***Degree of proof required in the prosecution of actions.***

The degree of proof that satisfies the burden of proof depends upon the nature of the action, in—

A. **CIVIL CASES**

> Preponderance of evidence

B. **CRIMINAL CASES**

*To sustain conviction-*Evidence of guilt beyond reasonable doubt

*Preliminary investigation-*Engender a well founded belief of the fact of the commission of a crime.

*Issuance of warrant of arrest-*Probable cause, i.e. that there is reasonable ground to believe that the accused has committed an offense.

1. ***The principle on equiponderance of evidence:***

The rule simply means that the party having the burden of proof must rely on the strength of its own evidence and not on the weakness of the evidence of the other party. When there is equiponderance of evidence or when after the parties have presented their evidence the same stands on the balance, judgment must be rendered against the party having the burden of proof.

1. ***Distinctions between:***

|  |  |
| --- | --- |
| **BURDEN OF PROOF** | **BURDEN OF EVIDENCE** |
| Does not shift | Shifts from party to party depending upon the exigencies of the case in the course of the trial; |
| Generally determined by the pleadings filed by the party | Generally determined by the developments of the trial, or by the provisions of substantive law or procedural rules which may relieve the party from presenting evidence on the facts alleged. |

***Note: BURDEN OF EVIDENCE—in both civil and criminal cases, the burden of evidence lies on the party who asserts an affirmative allegation. Burden of evidence shifts to one party when the other has produced sufficient evidence to be entitled as a matter of law to a ruling in his favor. It is determined by:***

***🡪Determined by developments at trial or by provisions of law (presumptions, judicial notice, admissions;***

***🡪 In criminal cases, a negative fact must be proven if it is an essential element of the crime.***

1. ***Presumptions may either be:***

Kinds of Presumptions:

(1) presumption *huminis or* what we call presumption of fact;(they are those on the experience of mankind has shown to be valid and founded on general knowledge and information

(2) presumption *juris* or law.(those which the law requires to be drawn from the existence of established facts in the absence of contrary evidence. Presumption *juris* or law is divided into *conclusive and disputable presumptions.*

1. ***Concept of presumptions of fact.***

This refers to presumptions or those matters that attaches probative value to specific facts or directs that an inference be drawn as to the existence of a fact, not actually known or established.

1. ***Purpose of:***

The purpose of this kind of presumption is to aid the parties in the presentation of their respective cause. It may take the place of evidence relating to certain matters. It may stand as evidence of fact it remains not rebutted. It rests on ascertained facts and not on assumptions, probabilities or inferences.

1. ***Evidentiary value of presumptions,***

1. Presumptions cannot substitute for evidence. They are to be indulged in only when there is no evidence as to the fact in issue or there is great difficulty in obtaining direct evidence of the fact in issue

2. Once there is evidence of the fact in issue, the presumption ceases

3. The role and importance of presumptions is to relieve a party of the difficulty of complying with the burden of proof.

1. ***Rule in case of conflicting presumptions:***

In case of Conflicting Presumptions or whenever several presumptions arise from the same set of facts, the rule is: (1) that which has the weightier reason prevails otherwise all will be considered as equal and therefore all will be disregarded;(2) Constitutional prevails over statutory presumptions.

When there is a presumption of law, the onus probandi (burden of proof) generally imposed upon the State, is now shifted to the party against whom the inference is made to adduce satisfactory evidence to rebut the presumption and hence, to demolish the prima facie case. Such prima facie evidence, if unexplained or uncontroverted, can counter balance the presumption of innocence to warrant a conviction ( Wa-acon vs. PP)

1. ***The conclusive presumptions:***

**The following are instances of conclusive presumptions .**

1**. Estoppel in Pais:** whenever a party has, by his own declaration, act or omission, intentionally and deliberately led another to believe a particular thing to be true, and to act upon such belief, he cannot in any litigation arising out of such declaration, act or omission, be permitted to falsify it.

Requisites of this kind of estoppel are:

a). **As to the party estopped:**

(i). a conduct amounting to false representation or concealment of material facts

(ii). an intention that the conduct be acted upon or that it will influence the other party and

(iii) knowledge of the true facts

b). **As to the party claiming estoppel**:

(i) an absolute lack of knowledge or of the means of knowledge as to the true facts, not lack of diligence

(ii) reliance in good faith upon the conduct of the other party and

(iii) the action or inaction resulted to his damage or injury

**2. Estoppel Against a Tenant**: the tenant is not permitted to deny title of his landlord at the time of the commencement of the relation of landlord and tenant between them.

**Note: Estoppel in General**: a principle which bars a person from denying or asserting anything to the contrary of that which has been established as the truth arising from his own acts or representations. It may be:

(1). Estoppel in Pais or equity

(2).By deed i.e. document and

(3). By Record or Judgment i.e. those found and established as true by a court of competent jurisdiction

**Presentation of Evidence**

**Rule 132**

1. ***Principle of Use Immunity and Transactional Immunity (Witnesses)***

1. Use immunity

* Prohibits use of the witness' compelled testimony and its fruits in any manner in connection with the criminal prosecution of the witness;
* Where the statute grants only use immunity, merely testifying and/or producing evidence does not render the witness immune from prosecution despite his invocation of the right against self-incrimination;

2. Transactional immunity

● Grants immunity to the witness from prosecution for an offense to which his compelled testimony related;

1. ***Rights and duties of a witnesses:***
   * + To be protected from irrelevant, improper, or insulting questions, and from harsh or insulting demeanor;
     + Not to be detained longer than the interests of justice require;
     + Not to be examined except only as to matters pertinent to the issue;
     + Not to give an answer which will tend to subject him to a penalty for an offense unless otherwise provided by law;
     + Not to give an answer which will tend to degrade his reputation, unless it be to the very fact at issue or to a fact from which the fact in issue would be presumed. But a witness must answer to the fact of his previous final conviction for an offense.
2. ***How examination of a witness done.***

The examination of witnesses presented in a trial or hearing shall be done in open court and under oath or affirmation. Unless the witness is incapacitated to speak, or the question calls for a different mode of answer, the answers of the witness shall be given orally. It is usually given orally, in open court.

Therefore, generally the testimonies of witness cannot be presented in affidavit. One instance when the testimonies of witnesses may be given in affidavits is under the rule on summary procedure.

1. ***Purpose of the rule requiring testimony in open court.***

The purpose is to enable the court to judge the credibility of the witness by the witness’ manner of testifying their intelligence and their appearance. Thus, the testimony cannot be considered as self-serving because the adverse party is given the opportunity to cross-examine and be heard.

1. ***Leading questions, when allowed:***
   * On cross
   * On preliminary matters
   * Difficulty in getting direct and intelligible answers
   * Unwilling or hostile witness
   * Adverse party or an officer, director or a corporation or partnership which is an adverse party;
2. ***Effect of non-objection to a misleading question.***

*A misleading question,* though not objected to, will not be evidence of the fact assumed by the improper question;

1. ***Effect when a party offers the testimony of a witness.***

One who voluntarily offers a witness’ testimony is bound by such (*i.e*. cannot impeach or contradict), *except*:

* Hostile witness
* Adverse party or rep. of adverse party
* Not voluntarily offered but required by law (*e.g.*, subscribing witnesses to a will)

1. ***Impeaching a witness.***

**(1)Impeaching witness of adverse party**

* 1. Contradictory evidence from testimony in same case
  2. Evidence of prior inconsistent statement
  3. Evidence of bad character/general reputation for truth, honesty, integrity
  4. Evidence of bias, interest, prejudice or incompetence;
  5. Evidence showing impossibility or improbability of his testimony;
  6. Evidence showing that the testimony is opposed to physical and natural facts and laws.

**(2) Impeaching own witness**

General Rule: Party not allowed to impeach own witness

*Exceptions:*

1. Unwilling or adverse witness so declared by the court
2. Witness who is also an adverse party
3. Witnesses required by law (*e.g.,* subscribing witnesses to a will)

May be impeached in all respects as if called by other party, EXCEPT by evidence of bad moral character

1. ***Laying the predicate for impeachment.***

**Laying the predicate in impeachment of witnesses:**

Before a witness can be impeached by evidence that he has made inconsistent statements at other times with his present statement, the testimony must be related to him with the circumstances of the times and place and persons present and he must be asked whether he made such statements and must be allowed to explain such inconsistency.

**Laying the foundation if the inconsistent statement was in writing:**

The witness sought to be impeached must be shown and allowed to examine the document subject of the examination for impeachment. Thereafter he is asked if he made such statement.

*Exception:*

1. *dying declarations are admissible by reason of necessity;*
2. *declaration as to attesting witnesses regarding the declaration of the deceased;*
3. ***Effect of death of a witness before cross-examination.***

Effect when a witness dies before cross-examination:

When a witness who is partly cross-examined dies, his direct examination cannot be expunged from the record.

1. ***Requisites of:***

**Revival of present memory:**

Memorandum has been written by him or under his direction; and

Written immediately thereafter; or;

At any other time when the fact was fresh in his memory and he knew that the same was correctly recorded;

**Revival of Past Recollection**

Witness retains no recollection of the particular facts;

But he is able to swear that the record or writing correctly stated the transaction when made.

1. ***Distinctions between:***

**Revival of present memory and Revival of past recollection**

|  |  |
| --- | --- |
| Present Recollection Revived | Past Recollection Recorded |
| Applies if the witness remembers the facts regarding his entries | Applies where the witness does not recall the facts involved |
| Entitled to greater weight | Entitled to lesser weight |

**OFFER AND OBJECTION**

**Offer of Oral evidence:**

It is defined as a proposal made to the court by counsel, at the trial of a cause to put in as evidence the testimony of witnesses on matters relevant to the issue under inquiry. It is usually done before the witness start giving his testimony.

**Offer of documentary or object evidence:**

A party offering a document, instrument or object as evidence during the course of the trial, must specify the purpose for which the document or instrument is offered; he must describe and identify the document or instrument and he must offer it as an exhibit. A document, instrument or object for identification is not considered evidence unless formally offered; and the opposing party has been given the opportunity to object or to cross-examine any witness called to prove or identify it.

Evidence that has not been formally offered in the trial court cannot be considered by the appellate court.

***Court cannot consider evidence not formally offered.***

The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

***Exception:*** If there was repeated reference thereto in the course of the trial by adverse party’s counsel and of the court, indicating that the documents were part of the prosecution’s evidence.Two requisites must concur (People vs. Napta)

a. The document must have been duly identified by testimony duly recorded.

b. The document must have been incorporated to the records of the case.

***Note:***

The evidence to be offered may either be oral, documentary or object evidence.

Oral evidence may be offered by the proponent before the witness starts with the direct testimony. The purpose of his testimony is made also before the direct testimony.

Documentary evidence as well as object evidence may be offered during the course of the proceeding. The proponent must specify the purpose for which the document or object is offered. By way of aside, the description and identity of such document or object must also be done and offered as an exhibit.

1. ***Evidence formally introduced by party cannot be unilaterally withdrawn.***

A party who has introduced evidence is not entitled as matter of right to withdraw it in finding that it does not answer his purpose; *BUT* he may withdraw an offer of an exhibit any time before the court has passed on its admissibility.

1. ***Time to:***

|  |  |
| --- | --- |
| **Offer** | **Time to Object** |
| Offered orally | Made immediately after the offer is made |
| Question propounded in the course of the oral examination of a witness | Shall be made as soon as the grounds thereof shall become reasonably apparent |
| Offer of evidence in writing | Shall be objected to within 3 days after notice of the offer *unless* a different period is allowed by the court. |

1. ***Motion to strike out answer, when proper.***
2. When the witness answered the question before the counsel has a chance to object
3. Where a question which is not objectionable may be followed by an objectionable unresponsive answer
4. Where a witness has volunteered statements in such a way that the party has not been able to object thereto
5. Where a witness testifies without a question being addressed to him
6. Where a witness testifies beyond the ruling of the court prescribing the limits within which he may answer
7. When a witness dies or becomes incapacitated to testify and the other party has not been given the opportunity to cross-examine the witness.

***Note: There must be an objection first before a motion to strike. If the party slept on his right to object, he cannot later on avail a motion to strike to exclude the evidence.***

1. ***Motion to strike out improper.***
   1. A party cannot insist that competent and relevant evidence be stricken out for reasons going to his weight, sufficiency or credibility
   2. One cannot move to strike it out because it proves unfavorable to him
2. ***Remedy when admissible evidence is improperly excluded by the court.***

If court improperly excludes otherwise admissible evidence, remedy is to tender the excluded evidence, also known as offer of proof:

1. Documentary – by attaching the document or making it part of the record;
2. Testimonial – by stating the personal circumstances of witness and the substance of proposed testimony

**Note:** ***If the evidence that is rejected by the court is documentary or object, the proponent may, under the rules, still put on record that the same be attached thereto as part of the record of the case. (The reason being that the same may still be considered in the appeal of review of the case by the appellate court)***

**Renewal of Offer of excluded evidence:**

Where evidence is inadmissible when offered and excluded but thereafter becomes admissible, it must be re-offered, unless the court indicates that a second offer is not needed. Failure to make a re-offer of the evidence would be deemed a waiver on the party of the party. The re-offer must be done before the presentation of evidence is closed.

**OBJECTIONS TO EVIDENCE**

Objections to evidence may either be general or specific. A general objection is done without specifying the specific portion of the testimony or evidence is objectionable. Specific objection is done by stating why or how the evidence is considered irrelevant or incompetent.

***Grounds for objection.***

a. question is irrelevant

b. question is vague

c. question has already been answered

d. multiple question

e. witness is incompetent

f. witness is not qualified

g. question has no basis

h. question requires an answerwhich is privileged

i. question is leading

j. question calls for hearsay evidence

k. witness is asked to testify on what is already alleged in the pleadings

1. Question is self-incriminatory

m. when the proper foundation has not been laid

n. when opposed is impeaching his own witness

o. question calls for opinion of the witness

p. immaterial evidence

***Note: An objection to evidence must not be raised for the first time on appeal***

***Even if the questions were asked by the judge, the party has a right to object to evidence which he considers not admissible. The trial judge may object to a question propounded to a witness on cross-examination since he may on his own motion deal with offered evidence, however, this is not ordinarily to be commended.***

***The rule on continuing objection.***

A continuing objection may be interposed by the counsel for the adverse party if the other party keeps on asking incompetent questions or when the answers elicited are hearsay, etc. The counsel for the adverse party shall manifest before the court that he is interposing a continuing objection. **It** therefore means that even if the adverse party's lawyer does not say "objection', thequestions of the other counsel are deemed objected to.

This rule admits of some EXCEPTIONS TO THE RULE

1. subsequent evidence is not of the same kind. Thus, in an action to probate a will

destroyed by the testatrix allegedly of unsound mind, based on facts dissimilar from those supporting other witness' opinions, could not excuse failure to objection other witnesses.

1. When the question has not been answered. When? When they are once objected to and not answered are later repeated and answered without objection, the objection is waived.
2. Where incompetency of evidence is shown later.
3. Where evidence is apparently competent
4. when it is admitted over objection but it’s incompetency is made apparent by testimony which follows, the objection must be repeated, followed by a motion to strike out, or it is waived.
5. Where objection to evidence was sustained but reoffered at a later stage of trial.
6. Where evidence admitted on condition and the condition is not fulfilled. E.g. the condition that its competency or relevancy will be shown by further evidence and the condition is not fulfilled, the objection must be repeated.
7. Where the court reserves the ruling on the objection.

(Note: Objection to evidence may be waived expressly or impliedly. The failure of a party to make a timely objection at the proper time is deemed an implied waiver. The subsequent use of evidence similar to evidence already objected to is deemed a waiver; the same rule applies to a prior use of similar inadmissible evidence.

***Weight and sufficiency of Evidence***

1. ***Factors considered in the determination of preponderance of evidence.***
   * + 1. **Facts and circumstances of the case** - court studies all angles
       2. **Intelligence of the witness** - not IQ but the ability of the witness to answer into straightforward manner. Did he correctly see the incident in question? Can he convince the Court that he is narrating the truth on what he saw, observed and heard?
       3. **Manner in which the witness testifies -** in order to determine whether or not the witness is telling the truth, the behavior of a person when testifying, to determine whether he is lying or telling the truth- ( perspiring, fidgeting. Tense
       4. **Nature of the facts on to which the witness testifies**
       5. **Personal Credibility of the Witness -** refers to the reputation of a witness
       6. **Means and opportunity of knowing what the witness is testifying on -** manner of observation; i.e., if he was only a few feet from the crime scene
       7. **Probability or Improbability of their testimony** - through human experience, the court can determine whether or not the witness is exaggerating his testimony. The testimony must not only come from a credible witness. But the testimony must be credible in itself. Is the story in accordance with human experience?
       8. **Number of witnesses.** It is the substance of the testimony of a witness that should be considered not their number or quantity. EXCEPT in cases of:
          1. **conflicting testimonies** *-* here number of witnesses is to be considered
          2. **in case of treason** *-* two witnesses must testify to the same overt act in open court
       9. **Interest or Want of Interest of Witness in the case** - refers to the witness' bias, prejudice or motive because the person for whom he is testifying is his friend, etc.

• Relationship per se does not affect the credibilityof a witness. Proof of existence of bias and prejudice must be present.

1. ***Principle of “falsest in onu est falsus in omnibus”***

False in one, false in all. Hence, when part of the testimony of a witness is untrue, all or the whole of his testimony shall not be believed.

1. ***Role of circumstantial evidence.***

**Sufficient to** Warrant **Conviction** if:

a. there is more than one circumstance

b. the facts from which the inferences are derived are proved

c. a combination of all circumstances is such as to producea conviction beyond reasonable doubt. EXCEPT: In Homicide Cases:

1. Accused was seen running away from the scene of the crime with a bolo.

2. Two days before the killing, accused was heard to take revenge against the victim

3. After the killing, the accused went into hiding.

4. CIRCUMSTANTIAL EVIDENCE IS APPLICABLE WHEN THERE IS NODIRECT EVIDENCE TO THE COMMISSION OF THE CRIME.

1. ***When proof of motive necessary.***

It is necessary when there is insufficiency of evidence regarding the identity of the accused. But when the identification of the accused is positively established, motive becomes immaterial.

1. ***Steps to be taken in perpetuation of testimony.***

1. File a Petition in court, stating the witness’ inability to testify

2. Court will set a date to take the witness testimony.

***END OF THE LECTURE***