NOTES ON EVIDENCE [1]

INTRODUCTION

I. Evidence is Primordially a Search For Truth

A. As a continuing human endeavor to seek answers for the purpose of knowledge; of uplifting or improving man's life; to explore and discover the unknown or to seek answers to the mysteries of life.

1. This may be through such disciplines as:

- **a.** Through the academic world
- **b.** Through philosophy
- **c.** Scientific studies such as astronomy, biology, medicine; mathematics, geometry and other fields
- **d.** Through religion
- **e.** Through the conduct of tests, experiments, explorations

2. To determine the truth and thereby obtain justice in actual controversies between people on matters affecting their lives, personal security, relations, beliefs, as well as their property, economic, political and other rights

B. Methods of determining the truth in actual controversies

1. Traditional Methods

- **a. Trial by Combat** – "might is right"
- **b. Trial by Ordeal-** "parties will undergo physical challenges- the one who comes less hurt is the one telling the truth."
- **c. Trial by Warfare**- people will group together, whoever emerges victorious is the one telling the truth.
- **d. Cultural practices**- ex. Sapata in Benguet Province (public declaration/avowal that you did not commit the crime), so that after doing so, then while you are walking you were swallowed by the earth, its means you are not telling the truth.

2. Trial by an Impartial Tribunal- started and developed by the Roman then perfected by the English Jurists.

- **a.** Rules of evidence were developed to govern what facts may be presented as proof, how they are to be presented, by whom are they to be proven or presented, what value is to be given to certain kinds of proof, as well as the development of safeguards against false proof . In short a systematic method of ascertaining or approximating truth was gradually developed and the power to determine was given to a third person or to a third body who was supposed to be impartial.
- **b.** The juridical system found its way in the ancient civilizations, then was developed by the Romans until they were eventually systematized and perfected by the English jurist. Various systems and variations later developed such as the trial by jury in the Americans.
- **c.** The juridical system in the Philippines is affected by both the American and English juridical system.

II. Rules of Evidence in the Philippines

A. Sources of the Rules

1. **The Principal Source:** Rules 128 to Rule 133 of the Revised Rules of Court

a). Origin: The rules are patterned and based on the rules of evidence as developed, applied and interpreted in the English and American Courts. Thus the rules on the disqualification of witnesses are pattered from the rules applied in the State of California. Our rules concerning confessions are patterned after American rules.

b). Decisions of the English and American Courts, as well as opinions and works of English and American jurists, such as Wigmore, Clark, Jones, and others, are given great weight.

2. The Philippine constitution particularly, its provisions on the Bill of Rights and the Article on the Supreme Court.

3. Special Laws passed by Congress which either create, amend or supplement existing rules of evidence. The most recent include (i) The Electronic Evidence Act and the (ii) The Child Witness Law.

4. Decisions of the Supreme Court (per Article of 8 of the Civil Code).
5. Circulars issued by the Supreme Court- ex. Judicial Affidavit

B. Power to Prescribe Rules of Evidence

1. The power is essentially legislative in that it is Congress which can enact laws concerning the presentation, admissibility, and weight of evidence. However the Supreme Court is not precluded from issuing adopting circulars and rules concerning the rules of evidence.

2. New laws maybe issued under the Principle that "No person has a vested right in the rules of evidence". Parties to a pending case cannot demand that a new rule of evidence should not apply to them because it will be adverse to their cause. Rules of evidence may be altered or repelled at anytime and will apply to pending cases even if the effect is adverse to a party therein. The exceptions are rules which partake of the nature of Ex post facto laws or Bills of Attainder.

- ✘ Meaning of vested right- a right that

[1] Review notes of Prosecutor Elmer M. Sagsago- SLU Baguio and supplemented by the Rules of Court and Riano's Lectures.

cannot be taken away from the individual.

- ✘ Meaning of Bills of Attainder-

C. Stipulation and Waiver of a Rule of Evidence

1. Generally parties cannot, either by agreement or by contract, stipulate what rules shall be binding upon the Court. But the parties may however stipulate on the effects of certain types of evidence on their contractual rights as long as the jurisdiction of the court is not affected.

2. As to waiver (to renounce/ give-up/ abandon):
   a. Rules intended for the protection of the parties maybe waived Examples: Rules on the Disqualification of Witnesses, the Privileged Communication Rule, The Best Evidence Rule.

   b. Rules grounded on public policy cannot be waived. Examples: The Rule on the Identity of State Secrets; the rule on the inadmissibility of Coerced Confessions and evidence resulting from illegal searches and seizures; the 2 witness rule on treason.

D. Classification of the Rules of Evidence

1. **Rules of Probative Policy**. These are rules the purposes of which are to improve the probative value of the evidence offered.
   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/ believable. 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/important (which is public policy). They may either be absolute or conditional.

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

E. Interpretation: The rules are to be liberally construed and hair-splitting technicalities are to be avoided.

RULE 128. GENERAL CONSIDERATIONS

Section 1: Evidence is <u>the means</u>, sanctioned by these rules, of ascertaining in a judicial proceeding, the truth respecting a matter of fact.

I. Dual Concept of Evidence:

1. As the very materials presented in court consisting of objects, documents or oral narration of witnesses.

2. As a system, process or methodology of proving a fact. Hence it would refer to providing answers to such questions as who may and who may not be witnesses , what may be allowed as proof, how they are to be presented; what requirements are to be observed, what weight and importance is to be given a certain evidence in relation to other pieces of evidence.

3. Section 1 stresses evidence as a system or methodology. But the rules often use one or the other concept. Thus which concept is followed depends upon the context in which the word "evidence" is used.

II. Definition explained:

1. **"The means sanctioned by these rules"-** The procedure for determining the truth is as provided for under Rules 128 to Rule 133, including the amendments thereto and their interpretation given by the Courts

2. **"Of ascertaining in a judicial proceeding"-** the rules or procedure is applicable only to controversies tried by the regular courts of law; the procedure or rules of evidence does not apply in quasi-judicial or administrative tribunals or to court martial. The latter may adopt the rules in their discretion.

3. **"The truth":**
   a) **The ultimate objective**- of the rules of

evidence is to render justice by arriving at the truth of a matter in dispute i.e by knowing the facts and the meaning of these facts.

b) **Factual or moral truth**- the truth which the court seeks to know.

c) **Judicial truth-** the truth as found by the courts based on the evidence presented to it.

d) **Ideal or perfect justice-** when the judicial truth is likewise the factual truth.

Where the two differ, still there is justice so long as the court observed both substantive and procedural due process.

Comment: the factual truth may not be the same as the judicial truth since judicial truth is dependent on the evidence presented. One maybe guilty as sin, but maybe acquitted based on the evidences presented where the court based its conclusion.

4. **"Respecting a matter of fact"-** the fact to be established or the point in controversy must be capable of being proven or ascertained by the rules of evidence. The rules do not apply and cannot be used to answer questions or controversies involving religion or faith; dogma, philosophy, literature, fantasy or fiction or those which are purely speculative.

III. Related Concepts: In the following instances the term "evidence" is understood in the sense of being the "materials presented in court" and not a methodology or proof.

1. **Evidence** from **Proof**- Strictly evidence is the medium of proof whereas proof is the result of evidence. Thus the materials consisting of the weapon used, the confession of the accused, the testimony of the complainant and witnesses, the result of the paraffin test, will constitute the evidence of guilt. Their combined effect will be Proof of guilt Beyond Reasonable Doubt. The two terms are often used interchangeably.

2. ***Factum Probandum* and *Factum Probans*.** All litigations, whether civil or criminal, involve the relationship between these two concepts.

   a. ***Factum Probandum*** refers to the ultimate fact to be proven, or the proposition to be established. That, which a party wants to prove to the court. E.g.: guilt or innocence; existence of a breach of contract; existence of an obligation; the fact of payment; the injury or damage incurred.

   b. ***Factum Probans*** refers to the evidentiary facts by which the *factum probandum* will be proved. **Examples:** the written contract; the promissory note to prove the existence of an unpaid debt.

IV. Classification of Evidence (referring to the materials presented in court)

A. Direct and Circumstantial

1. **Direct-** that which proves a fact in issue or dispute without the aid of any inference or presumption. It is evidence to the precise point. Example: The eye witness account; the scar to show the wound.

2. **Circumstantial-** proof of facts or fact from which taken singly or collectively, the existence of the particular fact in issue maybe inferred or presumed as a necessary or probable consequence.

   Important considerations on circumstantial evidence:

   a. This applies only in criminal cases and is governed under Rule 133(4) which for purposes of supporting a finding of guilt, requires:
      i. that there be more than one circumstance;
      ii. that the facts from which the inference are derived are proven;
      iii. The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

   b. **Per the Supreme Court:** it is essential that the circumstantial evidence presented must constitute an unbroken chain which leads one to a fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the guilty person.

   c. **Guidelines in the appreciation** of the probative value of circumstantial evidence:
      i. It should be acted upon with caution;
      ii. All essential facts must be consistent with the hypothesis of guilt;
      iii. The facts must exclude every other theory but that of guilt;
      iv. The facts must establish such a certainty of guilt as to convince the judgment beyond reasonable doubt that the accused is the one who committed the offense.

   Can a person maybe convicted based on circumstantial evidence? Yes provided that the requirements of law are met, e.i. there must be more than one circumstance.

B. Positive vs. Negative Evidence

a. **Positive-** evidence that affirms the occurrence of an event or existence of a fact, as when a witness declares that there was no fight which took place.

b. **Negative-** when the evidence denies the occurrence of an event or existence of a fact, as when the accused presents witnesses who testify that the accused was at their party when the crime was committed. Denials and alibi are negative evidences.

c. The **general rule** is that positive evidence prevails over negative evidence, or that a positive assertion is given more weight over a plain denial.

C. Primary (Best) vs. Secondary Evidence

a. **Primary**- that which the law regards as affording the greatest certainty of the fact in question. E.g.: the original of a contract is the best evidence as to its contents; the marriage contract as to the fact of marriage; a receipt as to the fact of payment; the birth certificate as to filiation.

b. **Secondary-** that which is necessarily inferior and shows on its face that a better evidence exists. E.g.: Xerox copies of documents; narration of witnesses as to a written contract.

D. Conclusive vs. Prima facie

a. **Conclusive –** may either be (i) that which the law does not allow to be contradicted as in judicial admissions or (b) that the effect of which overwhelms any evidence to the contrary as the DNA profile of a person as the natural father over a denial.

b. ***Prima facie*** (at first glance/ impression) - that which, standing alone and uncontradicted, is sufficient to maintain the proposition affirmed. In the eyes of the law it is sufficient to establish a fact until it has been disproved, rebutted or contradicted or overcome by contrary proof. Example: possession of stolen articles by one who is accused as a thieve.

E. Cumulative vs. corroborative

a. **Cumulative-** additional evidence of the same kind bearing on the same point. E.g.: testimonies of several eyewitnesses to the same incident.

b. **Corroborative** (to confirm/ to strengthen) - additional evidence of a different kind or character but tending to prove the same point. It is evidence which confirms or supports. Thus: (i) the medico legal certificate describing the injuries to have been caused by a sharp pointed instrument corroborates the statement that the accused used a knife to stab the victim (ii) the positive results of a paraffin test corroborates the allegation that the person fired a gun and (iii) the ballistics examination on the gun of the suspect corroborates the statement that he fired his gun at the victim.

What is the importance of knowing the difference of cumulative and corroborative evidence? The court can limit the presentation of cumulative evidence, but not corroborative evidence. And if the law requires the presentation of corroborative evidence, and there is no performance thereof, then it lessens the weight of the previously presented evidence.

F. As to effect (criminal case only)

a. **Exculpatory-** evidence that will acquit/ exonerate/ establish the innocence of the accused.
b. **Incriminating/ Incriminatory-** evidence that which tend to establish the guilt of the accused.
c. **Inculpatory- evidence that connect the accused to an event.**

G. As to form:

a. **Documentary-** paper based documents.
b. **object-** those consisting of evidence which are addressed to the senses of the court
c. **Testimonial-** evidence consisting the narration made under oath by a witness.

H. As to presentation

a. **Presentation in chief-** evidence presented during the stage they are allowed to present their evidence.
b. **Rebuttal-** evidence presented during the rebuttal stage.
c. **Sur-rebuttal-** evidence presented during the sur-rebuttal stage

I. As to weight or value

a. Relevant
b. Material
c. Immaterial

Sec. 2. Scope- 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.

General Rule: Section 2 provides the Rule on Uniformity in the Application of the Rules. 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.

Exceptions:

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

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 jump bail or 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 jump bail or waived his presence.

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.

7. The rule on circumstantial evidence: applicable only in criminal cases.

Section 3. Admissibility of evidence- Evidence is admissible when it is relevant to the issue and is not excluded by law or these rules.

I. Introduction.

A. Admissibility- the character or quality which any material must necessarily possess for it to be accepted and allowed to be presented or introduced as evidence in court. It answers the question: should the court allow the material to be used as evidence by the party?

B. Weight- the value given or significance or impact, or importance given to the material after it has been admitted; its tendency to convince or persuade. Hence a particular evidence may be admissible but it has no weight. Conversely, an evidence may be of great weight or importance but it is not admissible.

II. Conditions for admissibility (Axioms of admissibility per Wigmore)

A. RELEVANCY (None but facts having rational probative value are admissible). Per section 4, "Evidence must have such a relation to the fact in issue as to induce belief in its existence or non-existence".

1. The material presented as evidence must affect the issue or question. It must have a bearing on the outcome of the case. It requires both:

   a. **Rational or logical relevancy** in that it has a connection to the issue and therefore it has a tendency to establish the fact which it is offered to prove. The evidence must therefore have probative value.

   b. **Legal relevancy** in that the evidence is offered to prove a matter which has been **properly put in issue** as determined by the pleadings in civil cases, or as fixed by the pre-trial order, or as determined by substantive law. If so the matter has materiality.

   Illustration: (i). Criminal case: the fact that the crime was committed at nighttime is rationally or logically relevant to a killing at 12 midnight but evidence thereon would be not be legally relevant if nighttime was not alleged in the Information. It would be immaterial. (ii) Civil Case: In an action for sum of money based on a promissory note, evidence that the defendant was misled into signing the note would be rationally relevant but if fraud was never alleged as a defense, then evidence thereof would be legally irrelevant or immaterial.

What does it mean by "A fact was properly put in issue"- properly alleged (put) in the pleadings. Thus the issues raised in the pleadings limits the presentation of evidence. Any evidence presented which does not prove the issue is legally irrelevant or immaterial.

The **components of relevancy** are therefore probative value and materiality.

Evidence may be **logically relevant** but not necessarily **legally relevant**.

2. **Rule as to collateral matters**: "Evidence on collateral matters shall not be allowed, **except** when it tends in any reasonable degree to establish the probability or improbability of the facts in issue":

   a. **Collateral matters-** facts or matters which are not in issue. They are not generally allowed to be proven except when relevant.

   b. In **criminal cases,** the collateral matters allowed to be proven, being relevant include (need not be alleged in the information):

      i. **Antecedent Circumstances** or those in existing even prior to the commission of the crime. They include such matters as habit, custom, bad moral character when self-defense is invoked; or plan or design, conspiracy.

Aggravating circumstances- must be alleged in the information as provided by

law, so that it can be raised as a defense. It cannot be alleged collaterally.

ii. **Concomitant circumstances** or those which accompany the commission of the crime such as opportunity to do the act or incompatibility.

iii. **Subsequent circumstances** or those which occur after the commission of the crime, such as flight, escape, concealment, offer of compromise.

c. **Example: Motive** is generally irrelevant and proof thereof is not allowed **except:** when the evidence is purely circumstantial, when there is doubt as to the identity of the accused, or when it is an element of the crime.

B. **COMPETENCY**- All facts having rational probative value are admissible unless some specific law or rule forbids. In short the evidence is not excluded by law or rules.

III. Principles which exclude relevant or material evidence:

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.

1. The principle judges the admissibility of evidence based on HOW the evidence is obtained or acquired and not WHAT the evidence proves.

2. 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.

Example: 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 be 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).

3. The phrase is attributed to Justice Felix Frankfurter of the U.S. Supreme and has its biblical reference to **Mathew 7: 17-20**.

Mathew 7: 17-20- "A healthy tree bears good fruit, but a poor tree bears bad fruit. A healthy tree cannot bear bad fruit, and a poor tree cannot bear good fruit. Any tree that does not bear good fruit is cut down and thrown in the fire. So then, you will know the false prophets by what they do."

B. **The Doctrine of the Fruit of the Poisoned Tree**

1. Evidence will be excluded if it was gained in an illegal arrest, unreasonable search or coercive interrogation, or violation of a particular exclusionary 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 a 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.

a. 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.

b. 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.

Illustration: 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.

C. **Exceptions to the two principles**- when evidence is still admissible despite the commission of an illegal arrest, search or interrogation, or violation of a

particular exclusionary law.

1. **Under the 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.

   Ex: there a shooting spree. The accused was arrested and the police officers ask him where he hid the gun. He told the location of the weapon. The weapon is admissible in evidence by way of exception since by normal investigation, the officers will inevitably locate the weapon.

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.

   Ex: in the example supra, a concerned citizen called the police and told that he saw the suspect hid the gun under the tree.

3. **Attentuation Doctrine:** ***General rule:*** clear connection of illegal act and the evidence- evidence is inadmissible. ***Exception:*** evidence is admissible if there is a thin or fragile or vague 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.

4. **Emergency Rule-** evidence is admissible even if obtained illegally due the immediate need to save life or property.
   Ex: terrorist…you need not advise a terrorist who already planted a bomb of his constitutional right to counsel due to the exigency of the situation.

D. Remedy in case incompetent evidence is offered: By filing a Motion to Suppress the Evidence.

IV. Evidence Excluded by the Constitution

A. Under **Article III of the Constitution** the following evidence are inadmissible:
   1. Evidence obtained in violation of the right against unreasonable search and seizure;
   2. Evidence obtained in violation of the privacy of communication and correspondence, except upon lawful order of the court or when public safety or order requires otherwise;
   3. Evidence consisting of extra-judicial confessions which are uncounselled, or when the confessant was not properly informed of his constitutional rights, or the right to counsel was not properly waived (waiver must be in writing) or when the confession was coerced;
   4. Evidence obtained in violation of the right against self-incrimination.

B. Principles:
   1. The exclusionary rule in all the foregoing provisions is TOTAL in that the inadmissibility or incompetency applies to all cases, whether civil, criminal or administrative, and for all purposes.

   2. The incompetency applies only if the evidence was obtained by law enforcers [include Barangay Tanods, but not soldiers since they are tasked to protect the state] or other authorized agencies of the government. It does not apply if the evidence was obtained by private persons such as private security personnel or private detectives even if they perform functions similar to the police whenever a crime was committed.

      a. Thus evidence obtained by the following are not covered by the exclusionary phrase of the constitution, but it will be covered by other appropriate principle on the admissibility of evidence:
         i. the security personnel or house detectives of hotels or commercial establishments or schools;
         ii. private security agencies even if they are guarding public or government buildings/offices;
         iii. Employers and their agents.

      b. However, by way of exception, the rule of incompetency applies if what are involved are the **private correspondence of an individual**. In Zulueta vs. CA (Feb. 1986) it was held that pictures and love letters proving the infidelity of the husband, kept by him in his private clinic, taken by the wife without the knowledge of the husband, are inadmissible as evidence for being obtained in violation of the husband's privacy of

communication and correspondence. "The intimacies between husband and wife do not justify anyone of them breaking the drawers and cabinet of the other and ransacking them for any telltale evidence of marital infidelity. A person, by contracting marriage, does not shed his or her integrity or his right to privacy as an individual and the constitutional protection is available to him or her".

Remedy: make the office of your husband your common office, since what is being protected is privacy. If the office becomes public then there is no privacy to be protected.

Eh panu kung ayaw ng asawa mo? Magduda ka na. Baka may ginagawang kalokohan ☺.

3. **Secondary evidence** resulting from a violation of the foregoing provisions is inadmissible under the Fruit of the Poisoned Tree Doctrine.

V. R.A. 4200 (The Anti-Wire Tapping Law) Exclusion as to evidence obtained through mechanical, electronic or other surveillance or intercepting devises. (Intercepted communications)

A. Coverage: R.A 4200 declares that evidence is inadmissible if obtained through any of the following ways:

1. By using any device (any device/technology that uses energy) 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.

   FACTS: Ramirez and Garcia had a confrontation in the office of Garcia. Ramirez secretly taped their verbal confrontation and used it as evidence in her action for damages against Garcia who in turn filed a criminal case against Ramirez for violation of R.A. 4200. Ramirez held that the taping by a participant to a conversation is not covered by the law.

   HELD: 1. 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. 2. The nature of the conversation is immaterial… What is penalized 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 must be sought. 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.

   c. Questions:

   i. Does this apply if the recording of the words was unintentional or inadvertent, such as conversations captured by a moving video camera? No! The taping must be intentional with the intention of recording the conversation.

   ii. Are conversations in a police entrapment included? No, since entrapment is authorized by law as one way of curbing criminals.
   iii. Is lip-reading included?
   iv. Are conversations captured in surveillance cameras included? No! It is the prerogative of the owner of private establishments to set up cameras. If you do not want your conversation to be heard then get out.
   v. Does this apply to secret taping through spy cameras purposely made to be aired in television programs, such as "Bitag", "XXX" and "Cheaters"? Yes.
   vi. Are the gestures, snores, laughs, weeping, included as communication or spoken words? No!
   vii. What about satellite discs and similar facilities? Google earth? Yes!

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.

   i. 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)

   ii. Does the Ganaan ruling apply to overhearing by telephone operators of hotels, schools, hospitals and similar

establishments? Yes, because you do it at your own risk.

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- there is already the enemy, it would be useless to ask for an authorization
   - **(b)** espionage
   - **(c)** provoking war and disloyalty
   - **(d)** Piracy and mutiny in the high seas
   - **(e)** sedition, inciting to sedition
   - **(f)** kidnapping
   - **(g)** 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, kidnapping, Trafficking in Persons, Rape, Murder.

2. 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.

VI. Exclusion by Certain Rules of Evidence

1. The rule excluding secondary evidence when the primary or best evidence is available;
2. The rule excluding hearsay evidence;
3. The rule excluding privilege communications

VII. Kinds of Admissibility

A. Multiple Admissibility: when a material is asked by a party to be admitted as evidence, the party presenting must inform the court of the purpose which the material is intended to serve and the court then admits the material as evidence. Multiple admissibility may mean either **(i)** the evidence is admissible for several purposes or **(ii)** an evidence is not admissible for one purpose but may be admitted for a different purpose if it satisfies all the requirements of the other purpose.

1. **Examples of the first concept**: (a) a knife may be admitted to prove the accused was armed with a deadly weapon; to prove the weapon is far deadlier than the weapon of the victim; to prove it was the weapon of the accused which cause the wounds and not some other instrument; to corroborate the statement of a witness who claims he saw the accused holding a bladed instrument.
2. **Example of the second concept:** (a). the extra judicial confession of one of several accused may not be admitted to prove there was conspiracy among them or to prove the guilt of the other co-accused but it maybe admitted to prove the guilt of the confessant (b) the statement of the victim may not be admitted as a dying declaration but as part of the res gestae.

B. Curative admissibility or **"fighting fire with fire"** or **"Opening the Door"**

1. This applies to a situation when improper evidence was allowed to be presented by one party, then the other party may be allowed to introduce or present similar improper evidence but only to cure or to counter the prejudicial effect of the opponent's inadmissible evidence.

2. The party presenting must have raised an objection to the improper evidence, for if he did not, then it is discretionary for the court to allow him to present curative evidence.

3. The evidence sought to be countered should not refer to those which are incompetent due to an exclusionary rule.

4. **Example:** P vs. D for sum of money. P was allowed to introduce evidence that D did not pay his debt as shown by his refusal to pay his indebtedness to X, Y and Z. Defendant may introduce evidence that he paid his debts to A, B and C.

C. Conditional Admissibility: An evidence is allowed to be presented for the time being or temporarily, subject to the condition that its relevancy or connection to other facts will later be proven, or that the party later submit evidence that it meets certain requirements of the law or rules. If the conditions are not later met, the evidence will be stricken from the record.

1. **Example:** A Xerox copy of a document may be allowed to be presented subject to the condition that the original be later presented.
2. **Example:** P vs. D to recover a parcel of land. P presents a document that the land belonged to X. If D objects to it as being irrelevant, P can state that he will later show that X sold the land to Y who in turn sold it to Z and then to P. The Court may admit the document conditionally.

VIII. Policy on the Admissibility of Evidence

A. General Rule: Policy of Liberality: In case a question arises as to whether or not a particular material should be admitted as evidence, Courts are given wide discretion what to admit and to be liberal in admitting materials offered as evidence, unless the material is clearly incompetent. The reasons are:

- **i.** so that it may have a **substantial range** of facts as basis for deciding the case and;
- **ii.** in case of appeal the appellate court may have before it all the evidence to determine whether the decision appealed from is in accordance with the evidence;
- **iii.** To minimize any adverse effect of the non-admission upon the party affected.

B. Exceptions: Limitations:

1. Evidence may be excluded even if relevant if its probative value is outweighed by the risk that its admission will cause:
   - **a.** undue or unfair prejudice
   - **b.** confusion of the issues
   - **c.** misleads the court
   - **d.** undue delay or waste of time

2. The court has the power to limit the presentation of additional evidences which are cumulative, or to prove points which a party has already well presented.

RULE 129. WHAT NEED NOT BE PROVED.

I. INTRODUCTION. Principles on the correlation between allegations, proof, and favorable judgment.

A. Each Party Must Prove His Own Allegation. Allegations in pleadings do not prove themselves. No party wins by having the most allegations, or that the allegation of causes of actions or defenses are crafted in the strongest and most persuasive language. All allegations remain but as allegations or propositions. Hence every party to a case, who desires that a favorable judgment be rendered in his favor, must present evidence to support his claim, cause of action or defense be it in the form of object evidence, documents, or testimonies of witnesses.

Likewise, the court limits itself to only such evidence as were properly presented and admitted during the trial and does not consider matters or facts outside the court.

B. A Party Can Not Prove What He Did Not Allege (*Non Alegata Non Proba*). General rule: A party however is not authorized to introduce evidence on matters which he never alleged. Hence plaintiff will not be permitted to prove a cause of action which is not stated in his complaint, and the defendant will not be permitted to prove a defense which he never raised in his Answer. In criminal cases, the Prosecution is not permitted to prove a crime not described in the Information or to prove any aggravating circumstance not alleged in the Information.

Exceptions: But a party may be relieved from presenting evidence on certain matters, such as on the following:

1. Matters or facts subject of **judicial notice;**
2. Matters or facts subject of **judicial admission;**
3. Matters or facts which are **legally presumed;**
4. Matters or facts **stipulated upon;**
5. Matters or facts which are **exclusively within the knowledge of the opposing party**;
6. Matters or facts which are **legally irrelevant/ immaterial**;
7. Matters or facts in **the nature of negative allegations** subject to certain exceptions.

JUDICIAL NOTICE

I. CONCEPT: Refers to the act of the court in taking cognizance of matters as true or as existing without need of the introduction of evidence, or the authority of the court to accept certain matters as facts even if no evidence of their existence has been presented. The action is often expressed thus "The court takes judicial notice of…"

II. Purpose: To save time, labor and expenses. It is based on expediency and convenience.

III. General Classification of Matters Subject of Notice.

A. Adjudicative Matters- those facts related to the case under consideration and which may affect the outcome thereof.

1. In a case where the accused set up denial and alibi being then in Manila, court may take judicial notice that normal travel time by bus from Manila to Baguio City is between 6 to 7 hours.
2. Where the accused set up accidental shooting, the court may take notice that a revolver does not fire accidentally because pressure must be applied to the trigger.
3. Where a witness claimed to have seen a person by the light of day at around 6:00 PM on December some 10 meters away, courts may take notice of the shortened days in December and that by 6:30 there is no more day light.

B. Legislative Matters- those facts which relate either to: (i) the existence of a law or legal principle (ii) the reason, purpose or philosophy behind the law or of a legal principle as formulated by the legislature or the court (iii) the law or principle itself.

The following are examples:

1. The need to protect Filipino OFWs as a primary reason behind the Migrant Workers Act or the increase in the incidence of drug related crimes as reason for the increase in the penalty for violation of the drug law;
2. That the passage of the Anti-Terrorism Law and the Anti-Money Laundering Law were influenced by the demands of the international community;
3. Taking notice of the increase in the age of criminal liability ;
4. That documents presented in the Register of Deeds are recorded according to the date and time of their presentation;
5. The policy of the law as regards bail in heinous crimes or of the policy of the state against the use of illegal means to obtain evidence;
6. Gun Ban during election period

IV. Limitations. The taking of judicial notice maybe abused and might unfairly favor a party who is unable to prove a material point. Conversely the non-taking notice of a fact might unduly burden a party where proof is not readily available or impossible to obtain and proof thereof is unnecessary, but still the court refuses to take notice of the fact.

A. As to what maybe taken notice of: the matter must be one covered/ enumerated by section 1 or is authorized under Section 2 of Rule 129, otherwise it should not be taken notice.

B. As to the procedure: there must be a prior hearing pursuant to Section 3.

SECTION 1. MATTERS THE TAKING NOTICE OF WHICH IS MANDATORY.

INTRODUCTION: If a fact falls under any of the matters enumerated, then the court may not compel a party to present evidence thereon and necessarily, it may not decide against the party for the latter's failure to present evidence on the matter. The enumeration is exclusive.

I. As to Foreign States: their existence and territorial extent; forms of government (monarchial, presidential, parliamentary, royalty), symbols of nationality (flag, national costume, anthem).

Limitation: However the recognition of a foreign state or government is subject to the decision of the political leadership (the country must be recognized by the Government of the Philippines to be taken judicial notice).

II. The Law of Nations: the body of principles, usages, customs and unwritten precepts observed by, and which governs, the relations between and among states.

Examples: (i). The Principle of Equality of States (ii) Sovereign Immunity of visiting Heads of States and the protocol observed for said visiting dignitary such as the 21 gun salute (iii) The Diplomatic Immunity of foreign diplomatic representatives (iv) recognition of piracy as a crime against humanity

III. The **Admiralty and Maritime Jurisdiction** of the World and their Seals- courts establish to cater to maritime cases and established their jurisdictions.

IV. The Philippine as a state

A. How did we develop as a state: Its constitution and political history: the political set up of the government
1. As a Spanish colony(333 years), American colony (33 years), Japanese colony (3 years), as a commonwealth, as a republic; Martial law years; the political upheavals such as the assassination of B. Aquino, EDSA I and II;
2. The cabinet system in the Office of the President;
3. Previous Presidents; the trial and conviction of Erap and his subsequent pardon;
4. The administrative division into regions, provinces, municipalities, cities, barangays and into sitios or puroks;
5. Manila as the capital and the capital towns of the provinces; the location of major rivers, lakes and mountains;
6. Contemporary political developments such as the ongoing communist rebellion and muslin secessionist movement; Wars in which the Philippines participated.

B. The official acts of the legislature, executive and judicial departments.
1. That congress is a bicameral body; the form of leadership in each house; the process of legislation; the committee system; laws which were passed;
2. State visits of the presidents; ratification of treaties; executive orders and decrees; declaration of state of emergencies;
3. Grants of amnesty;
4. Holding of peace negotiations with the rebels;
5. Membership in the UN and other regional organizations as well as the hosting of the ASEAN in Cebu;
6. Decisions of appellate courts

V. The Laws of Nature: Examples:
1. Laws relating to science which are so well known such as that the DNA of each person being distinct, or blood groupings as proof of filiation; or of finger prints and dentures being distinct and dissimilar from one person to another.
2. The law of gravity, mathematical equations, weights and measurements.
3. The solar system, the planets and stars.
4. The composition and decay of matter.
5. The birth and period of gestation of human beings.
6. The occurrence of natural phenomenon provided these are constant, immutable and certain, otherwise these occurrences are "freaks of nature"
   - **a.** the changing of the season
   - **b.** the cycle of day and night
   - **c.** the difference in time between places on earth
   - **d.** the variation in vegetation

VI. Measures of Time: into seconds, minutes, days, weeks months and years

VII. Geographical Division of the World such as the number and location of the continents, and the major oceans, the division into hemispheres; longitudes and latitudes.

Section 2. Matters the taking of which is discretionary.

I. This section authorizes a court to take judicial notice of certain matters in its discretion. The matters fall into three groups:
1. Those which are of **public knowledge**;
2. Those which are **capable of unquestionable demonstration**; and
3. **Matters ought to be known to judges** because of their judicial functions.

II. First Group: Matters of Public Knowledge.

A. These are matters the truth or existence of which are accepted by the public without qualification, condition or contenton.

B. Requirements:

1. Notoriety (notorious) of the Facts in that the facts are well and publicly known. The existence should not be known only to a certain portion of the community;
2. The matter must be well and authoritatively settled and not doubtful or uncertain;
3. The matter must be within the limits of the **territorial** jurisdiction of the court.

C. Examples:

1. The existence and location of hospitals, public buildings, plazas and markets, schools and universities, main thoroughfares, parks, rivers and lakes.
2. Facts of local history and contemporary developments including political matters. For example: the creation of the city or town, previous and present political leaders or officials; the increase in population; traffic congestion in main streets. The existence and location of the PMA in Baguio City.

Second Group: Matters Capable of Unquestionable Demonstration

A. These are matters which, even if not notorious, can be immediately shown to exist or be true so as to justify dispensing with actual proof.

B. Examples:

1. That poison kills or results to serious injury
2. That boiling water scalds
3. Striking the body with a sharp instruments results to rupturing the skin and to bleeding
4. Shooting on the head kills
5. Hunger results to a weakened physical condition
6. Vehicles running at top speed do not immediately stop even when the brakes are applied and will leave skid marks on the road

III. Third Group: Matters Ought To Be Known to Judges because of their Judicial Functions

A. These are matters which pertain to the office of the Judge or known to them based on their experience as judges.

B. Examples:

1. The behavior of people to being witnesses such as their reluctance to be involved in cases thus requiring the issuance of subpoenae to them; the varied reaction of people to similar events.
2. Procedures in the reduction of bail bonds.

IV. Principles Involved

A. The matter need not be personally known to the judge in order to be taken judicial notice of, as in fact the judge maybe personally ignorant thereof.

B. Personal knowledge by the Judge of a fact is not necessarily knowledge by the Court as to be the basis of a judicial notice.

Example: Plaintiff: I fell into a manhole, but did not prove it….the judge cannot say that I take judicial notice of the existence of the manhole since I passed by that area every evening. The manhole is not of a common knowledge.

C. As to whether a party can introduce contrary proof:

1. If the matter is one subject of mandatory judicial notice, contrary proof is not allowed;
2. If the matter is one which the court is allowed to take notice in its discretion, the prohibition applies to civil cases only, but in criminal cases, the accused may still introduce contrary proof as part of his right to defend himself.

What is the remedy if the court takes judicial notice of facts which should not be? Wait for the decision and appeal the same pointing the act of the court as one of the error. If you won, nevermind questioning it!

V. Judicial Notice of Certain Specific Matters

A. As To Foreign Laws.

1. As a **general rule,** Philippine Courts cannot take judicial notice of the existence and provisions/contents of a foreign law (*it is a question of fact*), which matters must be alleged and proven as a fact. If the existence and provisions/contents were not properly pleaded and proven, the Principle of **Processual Presumption** applies i.e. the foreign law will be presumed to be the same as Philippine Laws and it will be Philippine Laws which will be applied to the case.

2. **Exceptions** or when Court may take judicial notice of a foreign law:
   - **a.** When there is no controversy among the parties as to the existence and provision of the foreign law.
   - **b.** When the foreign law has been previously ruled upon by the court as to have acquired actual knowledge of it. For example: Knowledge of the Texan law on succession based on the Christiansen cases; notice of the existence of the Nevada Divorce Law.
   - **c.** The foreign law has been previously applied in the Philippines e.g. the Spanish Penal Code (*Codigo Penal*).
   - **d.** The foreign law is the source of the Philippine Law e.g. the California Law on Insurance, the Spanish Civil Code (*Codigo Civil*).
   - **e.** When the foreign law is a treaty in which the Philippines is a signatory it being part of the Public International Law (**Why?** Because it is the law of nations and taking judicial notice of the law of nations is mandatory).

B. Domestic Laws, Administrative Rules and Regulations

1. As to laws, rules and regulations of national applications, their passage and effectivity and provisions are governmental matters which must be noticed mandatorily. [**Why?** Because it falls on the mandatory of taking judicial notice relative to the Philippines as a state].

2. As to laws of local application:

a. **For lower Courts (**RTC & MTC- direct action**):** they may take notice of ordinances, resolutions and executive or administrative orders enforced within the town or city where they sit.
b. **For the RTCs:** they may do so only when a case has been appealed to them and the lower court has taken notice thereof.
c. **For appellate courts:** on appeal and all those enforced within any town or city in the Philippines.

C. Decisions of Courts

1. **Decisions of appellate courts** must be taken notice of mandatorily by trial court.
2. As to the **records of cases pending or decided by other courts**: these may not be taken judicial notice of.
3. As to **Records of Other Cases Pending Before the Same Court:**

   a. As a **general rule**, courts are not authorized to take judicial notice of the contents of records of other cases tried or pending in the same court, even when these cases were heard or actually pending before the same judge.

      This is important for purposes of filing a motion to dismiss based on res judicata or litis pendentia.

   b. However, this rule admits of exceptions,
      i. As when reference to such records is sufficiently made without objection from the opposing parties. Reference is by name and number or in some other manner by which it is sufficiently designated or
      ii. When the original record of the former case or any part of it, is actually withdrawn from the archives by the court's direction, at the request or with the consent of the parties, and admitted as part of the records of the case then pending (Calamba Steel Center Inc. vs. Commissioner of Internal Revenue. April 28, 2005)

D. Commercial Usages and Practices: those pertaining to business, occupation or profession. Notice may be taken only of those which are well known and established. Examples:

1. The closure of banks on Saturdays and Sundays and of the banking hours being until 3:00 P.M.
2. Practice of considering checks as sale if not presented within 6 months.
3. The establishment of ATM machines to facilitate the opening of accounts and withdrawal of money.
4. The practice of requiring tickets for persons to enter theaters and movie houses or to ride in public transports.
5. The holding of graduation exercises by schools and universities every end of the semester.
6. The public auction of unredeemed articles by pawn shops.
7. Courts take judicial notice that before a bank grants a loan secured by a land, it first undertakes a careful examination of the title, as well as a physical and on-the-spot investigation of the land offered as security. Hence it cannot claim to be a mortgagee in good faith as against the actual possessor of the land (Erasustada vs. C.A., 495 SCRA 319).
8. **That no official receipts are issued by sidewalk or market vendors.**

E. Customs, Habits and Practices of People: Notice may be taken only of those which are generally known and established and uniformly acted upon, and within the territorial jurisdiction of the court. **Particular customs** and those peculiar only to certain people must be established as a fact.

Examples:

1. Variations in handwriting.
2. The instinct of self-preservation.
3. Sleeping habits of people in the barrios.
4. Rituals digging and cleansing of bones of buried loved ones among certain tribes and other tribal practices, must be proved as a fact.
5. What about the natural shyness of the Filipina woman?

F. As to religious matters: Courts may take notice of the general tenets or beliefs of a particular group including their organizational structures, but not as to specific practices, tenets and dogmas. Examples:

1. Thus notice maybe taken of the belief Catholics consider Jesus as God, whereas the INC do not but as a man, and the Muslims regard Him merely as a prophet lesser in stature to Mohammed.

2. That the Pope is the titular head of the Catholic Church while the Dalai Llama is head of the Tibetan Monks; Mecca is the Holiest City of the Muslims; the Muslim belief in Ramadan; the belief in reincarnation among the Hindus and Buddhists while the Christians believe in resurrection after death; whereas Christians believe in heaven the Buddhist have their Nirvana. Notice is proper of the Christian Bible and the Muslim Koran as their respective Holy Books.

SECTION 3. WHEN HEARING IS NECESSARY

I. When and How Notice is taken.

A. By the Trial Court: either *motu proprio* or upon motion by a party .Generally this is during the trial or presentation of evidence, but it maybe made thereafter but before judgment and only upon a matter which is decisive of the issue.

B. By the appellate court: before Judgment

II. Need for Hearing

A. If *motu proprio*, the Court must announce its intention and give the parties the opportunity to give their view on whether or not the matter is a proper subject of judicial notice.

B. If on motion of a party, the opposing party must likewise be given the opportunity to comment thereon.

JUDICIAL ADMISSIONS

Sec. 4: An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission maybe contradicted only by a showing that it was made through palpable mistake or that no such admission was made.

General rule: judicial admissions are conclusive and binding to the party making it and he cannot later on present evidence to contradict it.

Exceptions: The judicial admission maybe contradicted only by showing that it was made though:

1. Palpable mistake; and
2. No such admission was made

Meaning of palpable mistake:

- Hayagang kamalian.
- Example: Santiago Wakas declared in open court…ako si Brad Pitt, ay nangangakong… ☺ this can be later on contradicted by Santi kasi ito ay hayagang kamalian or in ilokano…agdadata a biddot! ☺☺☺

Meaning of "no such admission was made"

- It does not mean na dini-deny mo na sinabi mo… like- "hindi ko sinabi yan!"- this is not what is contemplated by law.

- ***Rather it goes this way***: "may sinabi ako na ako'y nagkasakit, kaya hindi ako nakasipot sa araw na yon kasi ako ay nagkasakit"- sasabihin ng kalaban oh admitted na siya ay nagkasakit- ang pinupuntirya ay ang admission ng salitang "sick." – Defense: sinabi ko iyon kasi ang ibig kong sabihin ay "I am tired and not physically sick."
- In other words, the meaning of "no such admission was made" is your statement was taken out of context! Or hindi iyon ang ibig mong sabihin… kaya nga meron ang word na SUCH, kasi pag wala un, plain denial lang ang mangyayari.

I. CONCEPT- The act or declaration of a party in voluntary acknowledging or accepting the truth or existence of a certain fact. The admission maybe Judicial or Extra Judicial and in either case, they may be oral or written.

A. Judicial- those made in the course of the proceedings of the case in which they are to be used as evidence. This is governed by section 4. If the admission is used as evidence in the case where it was made, then it is judicial admission.

B. Extra-Judicial- those made elsewhere but not in the course of the proceedings where they are to be used as evidence. It was not made in the case where it is being used.

Purpose of judicial admission- to limit the opponent's defense.

III. Effect of Judicial Admissions:

A. Upon the party making the admission: The party making the admission is bound by it. The admission is conclusive as to him. He will not be permitted to introduce evidence which will vary, contradict or deny the fact he has admitted.

1. "The exception is found only in those rare instances when the trial court, in the exercise of its discretion and because of strong reasons to support its stand, may relieve a party from the consequences of his admission"
2. All such evidence to the contrary are to be disregarded by the court even in the absence of an objection by the adverse party.

3. Examples:
   - **a.** "The rule on judicial admissions found its way into black-letter law only in 1964 but its content is supplied by case law much older and in many instances more explicit than the present codal provision. In the early case of Irlanda vs. Pitarque (1918) this court laid down the doctrine that acts or facts admitted does not require proof and cannot be contradicted unless it can be shown that the admission was made through palpable mistake. The rule was more forcibly stated …in the 1918 decision in Ramirez vs. Orientalist Co. "an admission made in a pleading cannot be controverted by the party making such admission, and all proof submitted by him contrary thereto or inconsistent therewith should simply be ignored by the court, whether objection was interposed by the opposite party or not" (Heirs of Clemenia vs. Heirs of Bien, 501 SCRA 405).

   - **b.** Joshua Alfelor vs. Hosefina Halasan (March 31, 2006):

     Facts: The spouses Telesforo and Cecilia Alfelor died leaving behind several heirs. One of the children was Jose who himself died leaving behind children and a wife named Teresita. In1998 the heirs filed a complaint for partition of the estate of their deceased parents. A certain Hosefina Halaan filed a Motion for Intervention claiming she is the legal wife of Jose. Teresita and the other petitioners filed a Reply in Intervention where Teresita stated she knew of the previous marriage of Jose; that Hosefina left Jose in 1959 and there had been no news of her since

then; that Jose revealed he did not annul his marriage to Hosefina because he believed in good faith to Hosefina. During the hearing of the Motion for Intervention, Teresita admitted several times she knew of the previous marriage of Jose to Hosefina. Since Hosefina did not appear during the hearing to support her claim, of being the first wife her motion was denied.

Issue: Was there need to prove the existence of the first marriage?

Held: No. The admission in the Reply in Intervention and the testimony of Teresita as to the previous marriage qualifies as a Judicial Admission.

A party who judicially admits a fact cannot later challenge that fact as judicial admissions are waiver of proof; production of evidence is dispensed with. A judicial admission also removes an admitted fact from the field of controversy. Consequently, an admission made in the pleading cannot be controverted by the party making such admissions and are conclusive as to that party, and all proof to the contrary or inconsistent therewith should be ignored, whether objection is interposed by the party or not. The allegation statements or admissions are conclusive against the pleader. A party cannot subsequently take a position contrary to or inconsistent with what was pleaded.

B. Upon the opposite party: He need not introduce any evidence on the matter which was admitted.

IV. Sources of Judicial Admissions:

A. Voluntary Admissions

1. Admissions contained in the allegations in the pleadings

a. In a civil case: The plaintiff is bound by the statement of causes of actions in his Complaint including the number, nature and circumstances thereof, as well as the statement of facts in support thereof. The defendant is bound by the facts alleged in the Complaint which he expressly admits in his Answer; by his own statement of facts; by the nature, number and circumstances of the defenses contained in his Answer. They are similar bound by the allegations of facts in their Reply, Comment or Rejoinder to each other's pleadings.

b. As to amended pleadings: one view holds that the original pleadings ceased to be part of the records and cease to be judicial admissions. If at all they may constitute extra-judicial admissions which will have to be formally offered in evidence. Another view, as that of Justice F. Regallado says amended pleadings are still covered by section 4.

c. In a **criminal case**, the narration of facts in the body of the Information are deemed admissions by the Prosecution

2. Admissions and Stipulations made during the Preliminary Conference and/or Pre-Trial which are reduced into writing and signed by the party and his counsel.

a. But in criminal cases, there can be no stipulation as to circumstances which qualify a crime or increase the penalty to death.
b. Example: In criminal cases of theft or robbery there can be stipulation as to the ownership or possessor of the property, the value thereof; the arrest or surrender of the accused; identity of the accused

3. Admissions and stipulations made during the course of the trial itself, which need not be reduced in writing.

4. Compromise agreements, which thus can be the basis of a judgment which is immediately executory.

5. Admissions by way of responses or answers to requests for admissions or interrogatories pursuant to Rule 26 (Modes of Discovery).

B. Involuntary Admissions (Implied admissions): those where it is the law which declares that a party is deemed to have admitted a fact.

Section 8 of Rule 8 directs that

a. Failure to specifically under oath (*you should specifically state your reasons why you are denying the allegation*) an actionable document is an admission of its genuineness and due execution- effect: cannot present any evidence that will assail the genuineness and due execution of the document.
b. Failure to specifically deny the material averments of the Complaint is an admission of the truth thereof [conclusions of fact need not be denied].

What are the matters that must be specifically denied? Material allegations

Illustration:
The complaint reads: the defendant acted recklessly and negligently. Do you need to deny the allegations?

No, eventhough it is material but it is not an allegation but a conclusion. And the law provides that conclusions need be denied.

Actionable documents:
1. Must be specifically denied; and

2. It must be under oath.

Note: if a person is not a party to the actionable document, he need not deny it under oath but he should deny it specifically.

RULE ON USURY

- It must be specifically denied and under oath, if a case was filed for the recovery of a usurious interest.
- If usury was used as a defense no need to deny it under oath.

C. Effect of a Withdrawn Plea of Guilt: A plea of guilty is an admission of the factual allegations of the Information but not conclusions of law. The former plea is not an admission because the accused has the right to change his plea of guilty to not guilty.

I. By Whom Made:

A. By the parties themselves

B. By the counsel under the principle of agency: exceptions:

In civil cases

i. when the admission amounts to a surrender, waiver, or destruction of the client's cause (example: in the answer the defense is that "I am not the Father", however in the pre-trial the lawyer admits that the defendant is the father- this is not allowed since by doing so the lawyer had virtually surrendered the defenses of his client, hence it will not be binding to the client).

ii. if the compromise is for an amount less than that demanded by the client

iii. those which are due to the gross and inexcusable ignorance or negligence of counsel

In criminal cases:

1. **Example:** PP. vs. Hermones (March 6, 2002). FACTS: In a prosecution for rape the counsel for the accused filed a manifestation stating that the accused is remorseful and was intoxicated when he raped his foster daughter and he will present evidence of intoxication, plea of guilt and lack of intent. Are these conclusive upon the accused? HELD: No. The authority of an attorney to bind his client as to any admissibility of fact is limited to matters of judicial procedure but not to admissions which operate as a waiver, surrender or destruction of the client's cause.
2. **Offer of compromise in a criminal case-** compromise is an implied admission.

RULE 130. ADMISSIBILITY OF EVIDENCE

II. INTRODUCTION:

A. While Rule 128 declared the two general requirements for admissibility of evidence, Rule 130 spells out the particular requirements in order that certain kinds of materials be admitted as evidence.

B. Sources of Knowledge or Evidence

1. Those derived from the testimony of people whether oral or written
2. Those obtained from circumstances
3. Those obtained through the use of the senses
   - **a.** These are the coverage of Section 1 and are presently referred to as "Object Evidence". Formerly they were referred to as "autoptic or demonstrative evidence"
   - **b.** They occupy the highest level because nothing is more certain than the evidence of our sense. "Physical evidence is a mute but eloquent manifestation of truth and rates highly in the hierarchy of trustworthy evidence"

OBJECTS AS EVIDENCE

Section 1. Object as evidence. Object as evidence are those addressed to the senses of the court. When an object is relevant to the fact in issue, it may be exhibited to, examined or viewed by the court.

I. COVERAGE: The definition covers any material that may be seen, heard, smelled, felt, or touched. See the judge as the personification of the court. They are the "sensual evidence" and are grouped into:

A. Those exhibited to the Court or observed by it during the trial.

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

B. Those which consists of the results of inspections of things or places conducted by the court (ocular/site 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. **Forensics or Microanalysis:** the application of scientific principles to answer questions of interest in the legal system. Applied most often in the examination of Trace Evidence to solve crimes based on the Principle of Contact.
   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

III. REQUIREMENTS FOR ADMISSIBILITY

A. Inherent Requirements: Proof of 1. Relevancy and 2. Competency

B. Procedural Requirement: Proof of Authentication

1. The process of proving that the object being presented in court is the very object involved in the event.
2. 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.
3. Important component elements of the process of Authentication:

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

      i. the markings placed by the witness upon the object, such as his initials, his pictures in the digital camera, or
      ii. 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 (*movement of the object from one person to another)* 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.

      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 and Custody 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.

4. **Effect 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. Example: there was conflicting testimony by the policemen as to the description of the bag allegedly containing the drug. The conviction was reversed.

5. **Authentication (the act of proving the accuracy) as applied to certain evidences:**
   a. As to pictures and photographs, maps, diagrams, the authenticity refers to proving the accuracy of the things, persons, things or places depicted in the photographs which may through the testimony of: (i) the photographer or (ii) anyone who is familiar with the persons, things, places shown therein.

   b. **As to tape recordings**: (Torralba vs. Pp., Aug. 22, 2005)

      FACTS: The accused was convicted of libel. One of the evidence was a tape recording of the radio broadcast which recording was made by the daughter of the complainant, but the daughter was not however presented as a witness. Question: Was the tape recording properly admitted?

      HELD: The person who actually recorded should be presented in order to lay the foundation for the admission of the tape recording. Before a tape recording is admissible in evidence and given probative value, the following requisites must first be established:
      i. a showing that the recording devise was capable of taking testimony;
      ii. a showing that the operator of the device was competent;
      iii. establishment of the authenticity

and correctness of the recording;

iv. a showing that changes, alterations, or deletions have not been made;

v. a showing of the manner of the preservation of the recording;

vi. identification of the speakers;

vii. a showing that the testimony elicited was voluntarily made without any kind of inducement.

c. **As to X-rays and cardiograms, motion pictures:** same requirement as to tape recordings.

IV. LIMITATIONS to the admission of Objects as evidence in addition to the inherent limitations of relevancy and competency.

A. The admission must not cause undue prejudice to the court, such as those intended.

B. The admission is subject to the demands of decency and propriety, unless the admission is extremely necessary.

1. Exhibition of the private parts in sex cases;
2. Presentation of the corpse or body parts;
3. Re-enactment of violent or offensive acts;
4. Examples:
   - **a)** The case of the old man accused of rape who had to show his private parts to prove he is incapable of committing the crime;
   - **b)** Case of William Alford charged of shooting a lawyer. He claimed self-defense in that he shot the victim who was beating him with a cane while the accused was lying down on the ground. Prosecution witness claimed the bullet had driven downward. Earl Rogers demanded that the intestine of the victim be brought to court and by the testimony of an expert, showed that the bullet traveled upward while the victim was bending over, thereby confirming the claim of the accused.

C. Exclusion of objects which are offensive to man's sensibilities or repulsive objects:

1. Waste matters, human excreta.
2. Carcasses of dead animals
3. Killing of an animal to prove a substance is poison

D. The procurement, presentation or inspection must not cause inconvenience or unnecessary expenses out of proportion to the evidentiary value of the object evidence.

E. The admission must not violate the right against self-incrimination

Handwritings: the **general rule** is that a person may not be compelled to produce a sample of his handwriting as basis for determining his criminal liability as the author of a certain written document. This is because writing is not a mere mechanical act but involves the application of the intellect. However, **(exception)** if the accused testifies in his own behalf and denies authorship, he maybe compelled to give a sample of his handwriting.

F. In cases of **ocular inspections:** (i) the condition of the thing or place must not have been altered (ii) there be prior notice of the date, time and place given to the parties because the inspection is still part of the trial.

V. NECESSITY OF PRESENTATION OF OBJECTS IN COURT

A. The best proof that an object exists is to present it to the court

B. The presentation is not necessary:

1. Where the existence of the object is not the very fact in issue, but is merely a collateral fact, of are merely used as reference. Thus: (i) when a witness testifies that the accused was drinking a bottle of gin when he threatened to shoot the witness, it is not necessary to produce the bottle. (ii) the witness claims the accused threw a stone at his car, the presentation of the stone is not necessary.
2. Where the article has not been recovered or is outside the jurisdiction of the court. Examples: stolen articles which are not recovered or brought elsewhere; unrecovered weapons used in crimes.

C. In crimes the gist of which is the illegal possession of an article, a distinction has to be made:

1. Where **the article is common or familiar article** such that it can readily be identified by sight, its presentation is not necessary, its existence may be shown by testimony of witnesses.

   Example: In a Prosecution for Illegal Possession of Firearms, the accused may still be convicted even without the presentation of the gun in court.

   - **a. PP. vs. Taguba** (342 SCRA 199): In cases involving illegal possession of firearms the prosecution has the burden of proving (a) the existence of the subject firearm and (b) the fact that the accused does not have the corresponding permit to possess. As to the first requisite, the existence can best be established by the presentation of the firearm … (but) there is no requirement that the actual FA itself must be presented in court… Its existence can be established by testimony… thus the non-presentation is not fatal to the prosecution of an illegal possession.

b. **PP. vs. Taan,** (506 SCRA 219, Oct. 30, 2006) "The non-presentation of the subject firearm is not fatal for the prosecution as long as the existence of the firearm can be established by testimony"

2. Where the articles however are not common or familiar to ordinary persons and cannot be identified by sight, they must be presented in court. Example: drugs and contraband items

VI. RESULTS OF SCIENTIFIC TESTS AS OBJECT EVIDENCE

A. Forensics: application of scientific principles to answer questions of interest in the legal system. This is applied most often in the examination of Trace Evidence to solve crimes based on the Principle of Contact

1. **Trace Evidence-** evidence found at a crime scene in small but measurable amounts such as hairs, fibers, soils, botanical materials, explosive residue
2. **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

B. Requirements for Admissibility

1. The **Daubert Test:** The U.S. Supreme Court, in the case of Daubert vs. Menell Dow Pharmaceuticals (1993) came up with a test of reliability and directed that trial judges are to consider four factors when determining the admissibility of scientific evidence, to wit:
   a. whether the theory or technique can be tested;
   b. whether the proffered work has been subjected to peer review;
   c. whether the rate of error is acceptable;
   d. Whether the method at issue enjoys widespread acceptance.
2. This Daubert Test was adopted by the Philippine Supreme Court when it finally accepted the result of DNA testing as admissible evidence.

C. Scientific Tests that are Judicially Accepted:

1. **Paraffin Tests** although they are not conclusive that a person did or did not fire a gun
2. **Lie Detection Test:** The result is not admissible as evidence in the Philippines
3. **Firearms Identification Evidence** or **Ballistic Test** to determine whether a bullet was fired from a particular gun
4. **Questioned Document Test** and Handwriting Analysis
5. **Drug Tests** on a Person
6. **Toxicology** or Test of Poison
7. **Psychiatric examination**
8. **Voice Identification Test**
9. **Finger Printing**
10. **Identification through Dentures**
11. **Genetic Science** such as DNA or Blood Test

VII. ILLUSTRATION OF SCIENTIFIC EVIDENCDE: DNA EXAMINATION

A. Important terms involved in DNA Testing (or protocol) (PP vs. Vallejo, May 9, 2002; PP. vs. Yatar, 428 SCRA 504

1. **DNA** (Deoxyribonucleic acid) is a molecule found inside all living cells which carries the genetic information that is responsible for all cellular processes. Except for identical twins, each person's DNA profile is distinct and unique.
2. **DNA TYPING-** the process of extracting and analyzing the DNA of a biological sample taken from an individual or found in a crime scene.
   a) **Evidence Sample-** material collected from the scene of the crime, from the victim's body or that of the suspect/subject
   b) Reference Sample- material taken from the victim or subject
3. **DNA PROFILE**: the result of the process which is unique in every individual except as to identical twins
4. **DNA MATCHING-** the process of matching or comparing the DNA profiles of the Evidence Sample and the Reference Sample. The purpose is to ascertain whether an association exists between the two samples
5. **DNA TEST RESULTS**
   a. **Exclusion:** the samples are different and must have originated from different sources. This conclusion is absolute and requires no further analysis or discussion.
   b. **Inconlusive:** it is not possible to be sure, whether the samples have similar DNA types. This might be due to various reasons including degradation, contamination or failure of some aspect of the protocol. Various parts of the analysis might then be repeated with the same or different samples to attain a more conclusive result.
   c. **Inclusion:** the samples are similar and could have originated from the same source. In such case the analyst proceeds to determine the statistical significance of the similarity.

B. Admissibility and Weight of DNA Profile

1. **PP vs. VALLEJO** (May 2002) and PP vs. YATAR (428 SCRA 504), adopting the Dauber Test settled the admissibility of DNA tests as object evidence this wise:

   "Applying the Dauber Test… the DNA evidence

appreciated by the court a quo is relevant and reliable since it is reasonably based on scientifically valid principles of human genetics and molecular biology".

This was reiterated in HERRERA vs. ALBA on June 11, 2005.

2. As to the **weight and probative value**, it depends on the observance of certain requirements known as the Vallejo Guidelines. To wit:
   - **a.** How the samples (both evidence and reference) were collected
   - **b.** How they were handled
   - **c.** The possibility of contamination of the samples
   - **d.** The procedure followed in analyzing the samples
   - **e.** Whether the proper standards and procedures were followed in conducting the test
   - **f.** The qualification of the analyst who conducted the test

3. There is **no violation of the right against self-incrimination**
   - **a.** "The kernel of the right is not against all compulsion but against testimonial compulsion. The right against self-incrimination is simply against the legal processes of extracting from the lips of the accused an admission of guilt. It does not apply where the evidence sought to be excluded is not an incrimination but as part of object evidence. As for instance: hair samples taken from an accused. Hence a person may be compelled to submit to finger printing, photographing, paraffin, blood and DNA as there is no compulsion involved (PP. vs. Yatar):
   - **b.** The right is directed against evidence which is communicative in character which is taken under duress (Herrera vs. Alba)

C. Where Used:

1. To identify potential suspects or exclude persons wrongfully accused

   DNA Typing may either result in "Exclusion" or "Inclusion"
2. To identify victims of crimes or catastrophes
3. To establish paternity and family relations and genealogy

VIII. Demonstrative Evidence:

Tangible evidence i.e physical objects, which illustrate a matter of importance to the case but are not the very objects involved in the case. They merely illustrate or represent or emphasize, visualize or make more vivid what a party desires to emphasize. (visual aids)

1. **Examples:** movies, sound recordings, forensic animation, maps, drawings, sketches, graphs, simulations, models or modules of the human body.
2. **Importance:** their use is very helpful as they provide a stronger impact and lasting effect on the court.

DOCUMENTARY EVIDENCE

Comment:

- **Not all objects are object evidence, and not all documents are documentary evidence**. Thus, when you use a document to prove the existence of a contract (that an exchange of consideration happened), then the document is use as object evidence, but if you use the object to prove the price of the contract, then it is documentary evidence.

- **Why do we need to know the distinction between documentary and object evidence?** Because if the document is use as object evidence, the best evidence rule, parole evidence rule, hearsay evidence rule will not apply.

- Best evidence rule will not also apply if the one shown was the replica of the object evidence- kaya wag mong sabihin "objection not the best evidence rule (they will all die laughing at you); yong sabihin mo lang ay "objection, not the real thing!"

Illustration:

- Santiago Wakas, was charged of act of lasciviousness. He was presented in court. He is an object evidence; however, if the issue turns to the content of his tattoo on the chest, whether it is born to love or born to live, then Santi becomes a documentary evidence, kaya kailangan niyang maghubad para makita ang nakasulat sa tattoo niya.

Sec. 2. Documents as evidence consist of writing or any material containing letters, words, numbers, figures or other modes of written expressions offered as proof of their contents.

I. Kinds of Documentary Evidence

A. Writings or **Paper Based Documents**
Conventional paper based writings.

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 right 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. (It includes the print out of the electronic document).

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 (transient) electric communications. They maybe proved 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 (Nuez vs. Cruz-Apao 455 SCRA 288).

II. Rules governing the admissibility of documents include the Best Evidence Rule and the Parole Evidence Rule.

SECTION 3. BEST EVIDENCE RULE

Note: failure to specifically deny under oath an actionable document is a waiver of the best evidence rule. Why? Best evidence rule requires that the original document must be presented in court. The effect of failure to specifically deny under oath an actionable document is that its due execution and genuineness is admitted. Thus, a party cannot question the document presented if it is a photocopy since he admitted its due execution and genuineness, the very reason of the best evidence rule.

Requirements:
1. There must be a document;
2. An inquiry was made regarding the contents of the document.

Illustration:
Atty.: Mr. X, how do you come to know Mr. Y?
Mr. X: because we have a lease contract
Opposing Atty.: objection, not the best evidence rule

Comment: *objection will be overruled since the question does not refer to the contents of the lease contract!*

Atty.: was that contract of lease oral or written?
Opposing Atty.: objection, not the best evidence rule!

Comment: *objection will be overruled since the question does not refer to the contents of the lease contract.*

Atty.: How much is the consideration for that contract?
Opposing Atty.: objection, not the best evidence rule!

Comment: *objection will be sustained since the question refers to the contents of the lease contract.*

THE GENERAL RULE: "IF THE SUBJECT OF INQUIRY IS THE CONTENTS OF A DOCUMENT THERE CAN BE NO EVIDENCE OF THE CONTENTS OTHER THAN THE ORIGINAL OF THE DOCUMENT."

I. Section 3 states the general rule when the original of a document is to be presented and the four exceptions to the rule. Hence the best evidence rule is often referred to loosely as the "the Original Document rule". It is thus a rule of preference in that it excludes secondary evidence once the original is available.

II. When the Original Is to Be Presented:

A. "If the subject of inquiry is the contents of the document". This means the **cause of action** or **defense** is based on what are contained in the document *(the cause of action or defense was created under a written document)* i.e. the terms and conditions, the entries, data or information written on the document. This means the plaintiff is either enforcing a right based on, or created, by a document or a party is seeking non-liability by virtue of the contents of a document. Examples:
1. Enforcement of a contract, collection of money based on (on the contents of) a promissory note, damages for failure to comply with the terms of a written agreement
2. Defense of release, payment, novation, condonation, as embodied in a written document
3. **In criminal cases**: where the act complained of is:
   - **i.** made (created) upon or contained (e.g. libel); or
   - **ii.** Evidenced by a document such as in falsification, perjury, bigamy (first and

second marriage contract must be presented), malversation, estafa, issuance of a watered check, concubinage.

B. When a testimony of a witness refers to the <u>contents</u> of a written document.

C. When the rule does not apply even if an existing and available original document is involved:

1. Generally if the contents were never disputed as in the following:
- **a.** when the question refers to the external facts about the document such as whether it exists or not, whether it was executed, sent, delivered or received;
- **b.** when the writing is merely a collateral fact, as when a witness refers to a writing of a conversation which he heard and then jotted down or when the writing is used merely as a point of reference;
- **c.** when the contents were admitted;
- **d.** the writing is treated as an object;

2. When there was failure to deny specifically under oath the due execution and genuineness of the document (Consolidated Bank vs. Del Monte Motors, July 29, 2005).

3. Waiver by the adverse party.

III. Justifications for the rule.

1. To ensure accuracy and to avoid the risk of mistransmission of the contents of a writing arising from:
- **i.** the need of precision in presenting to the court the exact words of a writing specially in operative or dispositive instruments such as deeds, will and contracts, since a slight variation in words may mean a great difference in rights ;
- **ii.** substantial danger of inaccuracy in the human process of making a copy and;
- **iii.** As respect oral testimony purporting to give from memory the terms of writing, there is special risk of error.

2. To prevent the possibility of the commission of fraud or perjury, or substitution.

IV. Illustrations

1. The **Marriage Contract** as to the date, place, the parties and solemnizing officer.

2. The **Insurance Contract/Policy** as to the coverage of the insurance.

3. The **deed of sale** as to the consideration, terms and conditions of the sale.

4. The **lease contract** as to the terms thereof.

5. The **sworn statement** as to perjury.

6. In case of libel based on a published article, the newspaper containing the article.

7. The certified copy of the original judgment of conviction to prove the prior conviction to constitute recidivism or habitual delinquency.

V. The Gregorio Doctrine: In criminal cases of falsification, it is indispensable that the judge have before him the document alleged to have been simulated, counterfeited or falsified unless:

1. The original is in the possession of the adverse party/accused who refused to deliver or present the same despite demand;

2. The original is outside of the Philippines and which, for official reasons, cannot be brought to the Philippines. Example: The originals are US Treasury Warrants which are with the US Treasury Department in which case Photostat copies are admitted.

VI. The Rule may be waived expressly or by failure to object.

EXCEPTIONS: WHEN SECONDARY EVIDENCE MAYBE PRESENTED

Condition before presenting secondary evidence: Before one can present secondary evidence he must lay the basis/ lay the foundation thereof.

Illustration:
Atty: Mr. X you had just testified while ago that you executed a deed of sale with the defendant in relation to a 1 hectare land?
Mr. X: Yes sir.

Atty: Can you show this to us for identification? Is this the original?
Mr. X: It is a photocopy.

Atty.: What happen to the original?
Mr. X: It was lost sir.

Atty.: That's all for the witness your honor.

During the offer of evidence, can the counsel present secondary evidence based on the question and answer? No. Why? The justification for presentation of secondary evidence was not properly made. If you want to present secondary evidence you must lay the basis/ lay the foundation/ justify why you cannot present the original.

Defect in question and answer: the counsel just simply said that it was lost. It did not present how it was lost without its fault, or it was duly executed.

Atty.: Mr. X, what your relationship with the plaintiff Santi?
Mr. X: I was an instrumental witness to his transaction with Guillermo involving the latters land.

Atty.: Is there any documents that will prove their transaction?
Mr. X: yes, I signed a deed of sale sir.

Atty: Was it notarized?
Mr. X: Yes sir.

Atty: how many copies?
Mr. X: I only signed one copy, sir.

Atty: Where is it?
Mr. X: It is in Metrobank. But Metrobank was flooded and

the document was destroyed.

Atty.: what then are the contents of the deed of sale?
Mr. X: that Santi will pay 1 million pesos in favor of Guillermo's 1 hectare of land.

Now, during the offer, the counsel can present secondary evidence, since the basis for non-presentation of original evidence was duly laid.

I. Secondary Evidence: refers to any evidence to prove the contents of a document other than the original of the said writing. It maybe oral or written.

II. 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**" (not due to intentional act/ fault/ negligence) 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: *Laying the Foundation:*** This must be proved before a secondary evidence will be presented: (i) existence (ii) execution (iii) loss and (iv) contents. Thus:
   - **i. 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 (not necessarily a notary public), or to whom its existence was narrated.
     - ✘ **Exception:** Ancient documents.
   - **ii. Proof of the fact of loss or destruction** of the original through the testimonies of (a) 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) any who made a diligent search in the places where the original was expected to be in custody and who failed to locate it (c) 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.
   - **iii.** Proof of lack of bad faith on the part of the offeror.
   - **iv.** Proof of the **contents by secondary evidence according to the Order of Reliability/ Order of Preference** (means that the secondary evidence must be presented in this way- which kind of secondary evidence is preferred?) i.e.:
     - **a.** By a **copy** whether machine made or handmade so long as it is an exact copy. It need not be a certified copy. When do you consider a document a copy? When it contains all the contents of the original. – (*Thus, we admit that this copy is a faithful reproduction of the original or we do not admit this copy since it is not the exact reproduction of the original… and not "no comment.")*
     - **b.** By its **Recital (Summary/ reference) 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.
     - **c. 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 accurate as long as the substance is narrated.

5. **Failure to object the presentation of secondary evidence:** 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.

   Illustration: *PP. vs. Cayabayab* (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 a primary evidence and deemed admitted and the other party is bound thereby.

III. **Second Exception:** When the original is in the adverse party's custody and control.
   - **A. 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.

   - **B. Effects of refusal or failure to produce:**
     1. The adverse party will not be permitted later to **produce the original** in order to contradict the other party's evidence;
     2. The refusing party maybe deemed to have admitted in advance the accuracy of the other party's evidence;
     3. The admission of secondary evidence and its evidentiary value is not affected by the subsequent presentation of the original.

        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 as 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

   - **C. Proof of the contents** is by the same secondary evidence as in the case of loss.

IV. **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 therefrom is only the general result of the whole**. (The court is not interested on the content of each document, but the general result of these documents).
   - **A.** This is based on practical convenience
   - **B.** The Foundation includes:
     1. Proof of the voluminous character of the original documents.
     2. Proof the general result sought is capable of ascertainment by calculation or by a certain process, procedure or system.
     3. Availability of the original documents for inspection by the adverse party so that he can inquire into the correctness of the summary.
   - **C.** 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.
   - **D. Illustrations:**
     1. 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.
     2. A general summary of expenses incurred maybe embodied in a summary to which are attached the necessary supporting receipts witness.
     3. The state of health of an individual maybe established through the testimony of the physician
     4. The published financial statement of SLU as appearing in the White and Blue.

V. **Fourth Exception:** When the original is a public record in the custody of a public official or is recorded in a public office.
   - **A.** 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.
   - **B. Reason:** The Principle of Irremovability of Public Records i.e. public records cannot be removed or brought out from where they are officially kept.

Reasons: (i) the records should be made accessible to the public at all times (ii) the great inconvenience 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.

C. **Exception to the exception** (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.

D. Secondary evidence allowed:

1. 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;
2. An official publication thereof (applicable where the law allows something to be published)

Section 4. Meaning of the term "Original"

A. One the contents of which, is the subject of inquiry as determined by the issues involved: Which document is it that the contents of which is in question?

Thus in case of libel and the issue is who be the author of the libel as published? Then the original is the letter sent to the media. But if the question is whether the letter is libelous, then the original is the letter.
If X Xeroxed a letter by Ana to Juan and X changed the contents by inserting libelous matters against Juan, then the original would be the Xeroxed letter.

B. **Duplicate Originals.** Two or more copies executed at or about the same time with identical contents.

Examples: carbon originals, blue prints, tracing cloths. Copies mass produced from the printing press or from the printer of computers.

C. **Entries** repeated in the regular course of business one copied from the other at or near the time of the transaction to which they relate, all are considered as original.

1. Examples are entries in the Books of Account which are copied from one book/ledger and transferred to another
2. Entries in receipts for the sales for the day which at night are recorded in a ledger and which in turn are recorded in the sales for the week and then entered in the ledger for the sales of the month.
3. Scores in the examination booklets which are recorded in the teachers record which then are recorded in the official grade sheet submitted to the dean's office.

THE PAROL EVIDENCE RULE

Comment:

- Do not apply the parol evidence rule if the contact is in its oral stage since this rule applies only to written contracts.
- The only document where there is no agreement but parol evidence applies is a will.
- Tingnan mo ang kasulatan- parole
- Tingnan mo ang orihinal na kasulatan- best evidence

How to escape objection due to parol evidence and to show parol evidence- Put in issue in your pleading the contents of the document, like the amount of the contract price. The rule provides: "however, a party may present evidence to modify, explain or add to the terms of the written agreement if he **puts in issue in his pleading**:

1. An intrinsic ambiguity, mistake or imperfection in the written agreement;
2. The failure of the written agreement to express the true intent and agreement of the parties thereto;
3. The validity of the written agreement; or
4. The existence of other terms agreed to by the parties or their successor in interests after the execution of the written agreement.

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.

I. **Essence of the Rule:** It forbids or prohibits any attempt to vary, contradict, or modify the terms of a written agreement by the use of testimonial/oral evidence.

III. **Basis and Reason:** The Principle of Integration (consolidate/ combine) of Jural Acts (agreements). 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.

IV. **Purposes:** (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/parol 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.

V. Distinguished from the Best Evidence Rule. Both refer to a written document but they differ in the following aspects:

1. **As to what is prohibited:** the BER prohibits the introduction of inferior evidence when the best evidence is available whereas the PER prohibits the introduction of oral testimony to vary the terms of a written agreement.
2. **As to scope:** the BER applies to all kinds of written documents while the PER is limited to contracts and wills.
3. **As to the substance of the evidence:** the BER goes to the form of the evidence while the PER goes to the very substance of the evidence.
4. **As to who may invoke:** the BER may be invoked by any party to a case while the PER 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 a written agreement.
5. **As to the issue:** BER is to the contents

VI. Requirements for the Application of the Rule

1. That there is 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.
   - **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. (Not covered by the parol evidence rule thus, you can introduce evidence to prove that thing).
   - **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. (Why? Because it is them whose right were violated).

VII. Exception to Parol Evidence: When Contemporaneous/prior agreements maybe proved without violating the Principle of Integration of Jural Acts: These refer to Contemporaneous or prior agreements which, even if they affect or relate to the contract, may still be proven by the parties by oral testimony.

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.

VIII. STATUTORY EXCEPTIONS TO THE PAROL EVIDENCE RULE

CONCEPT: When 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** *(non alegata non proba)* by the party concerned.

A. That there is an intrinsic 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.

2. **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.

a) 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.

b) **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 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.

3. **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. (No amount of evidence will clear the ambiguity).
   a. 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.
   b. **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".

4. **Intermediate Ambiguity** – where the ambiguity consists in the use of equivocal (capable of several interpretations) words/terms/phrases or descriptions of persons or property. Parol evidenced is admissible to ascertain which sense or meaning or interpretation was intended by the parties.
   Examples: (i). the use of the word "dollar" (which dollar are you referring to?) (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.
      a) Must be of a fact and is mutual to both the parties (if one party knows the mistake, he cannot present evidence to contradict the document and assail the mistake because the principle of estoppel applies to him).
      b) **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.
   3. **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- 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.

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.
   2. Parties are free to change or modify or abandon their written agreement in which case it is the latter which should be given force and effect

(NOTE: THE RULES IN THE INTERPRETATION OF CONTRACTS TO BE SKIPPED)

TESTIMONIAL EVIDENCE

I. CONCEPT: This is the third kind of evidence as to

form. It is evidence consisting of the narration of a person, known as a witness, made under oath and in the course of the judicial proceedings in which the evidence is offered.

II. WITNESS: A **witness** is a natural person who testifies in a case or one who gives oral evidence under oath before a judicial tribunal. Evidence obtained through the presentation of animals is treated as object evidence.

A. Necessity of Witnesses: Objects and documents do not explain themselves. Their relevance, meaning and significance, can only be known through the testimony of a witness. Likewise, events, as well as persons involved in an event, can only be known through the narration of a witness.

B. Duty to Testify is a Legal Duty (obligated to go and testify either voluntarily or compelled) and not just a matter of civic consciousness. This may be enforced by the imposition of sanctions by the court, such as a citation for contempt and consequent payment of a fine or imprisonment.

C. The following may not compelled to testify as witnesses:

1. The President while in Office; (Rationale- not to violate the principle of separation of powers- to prevent embarrassment).
2. Justices of the Supreme Court;
3. Members of Congress while Congress is in Session; (Separation of powers)
4. Foreign Ambassadors to the Philippines; (Immune from legal processes of the receiving state)
5. Consuls and other foreign diplomatic officials if exempted by a treaty;
6. The accused in a criminal case. (inorder not to violate the right against self-incrimination)

III. QUALIFICATION OF WITNESSES. Section 20 provides. "All persons who can perceive and perceiving can make known their perception to others, may be witnesses".

A. Four Qualities of a Witness

1. Testimonial Quality of Perception

a) Capacity to perceive means to be able to observe by the use of the senses including the ability to receive impressions from the outside world and to grasp or understand these impressions.
b) This must exist at the time of the occurrence of the event to which the witness is testifying even if it is lost at the time of testifying.

2. Testimonial Quality of Memory

a) The ability to retain the impressions received or observations made and to recollect them in court.
b) This must exist at the time of testifying.
c) The recollection need not be necessarily perfect. Selective memory or lapses in memory affect merely credibility.

3. Testimonial Quality of Narration or Communication

a) The ability to interpret, explain, relate or communicate in a manner which can be understood by the court, either through spoken words, writings, or sign language. [Talk in a language where the court can understand].
b) It must exist at the time of testifying.

4. Testimonial Quality of Sincerity

a) The awareness of both a duty to tell the truth and to be liable in case of intentional lies, or the recognition of the obligation of an oath.
b) The willingness to be placed under oath or affirmation.

Riano: qualities of a witness-
1. One who can perceive;
2. One who can make known his perception to others;
3. Can take oath.

B. Additional Requirement in cases under the Rules on Summary Procedure: The intended witness must have

i. Executed a sworn statement;
ii. Submitted beforehand to the court and;
iii. Is present in court and is available for cross-examination by the adverse party.

IV. COMPETENCY OF A WITNESS

1. Distinguished from credibility: Competency is the legal fitness or legal capacity of a person to testify as a witness. Competency involves a determination of whether the person offered as a witness has all the qualifications prescribed by law and is not among those disqualified by law or by the rules of evidence. (Note: One who is not qualified is loosely termed as "incompetent" which is not the accurate term)

Credibility goes to the character of the witness to be believable or not. This goes to the truth of the testimony. It includes the ability of the witness to inspire belief or not [induce belief to the court]. [This is based on one's reputation in the community].

Hence a witness maybe competent but is not credible.

2. Presumption of Competency: When a person is offered as a witness, he is presumed to be competent. He who claims otherwise has the burden of proving the existence of a ground for disqualification.

a. The Method of questioning the competency is by raising an objection to the presentation of the witness or to his continued testimony.
b. The time to raise an objection is as soon as the ground becomes apparent which may either be**: (i)** at the time the person is offered and presented to be a witness and before he actually testifies or **(ii).** At the time he is actually testifying.

V. DISQUALIFICATION OF A WITNESS

A. Who Are Disqualified: *General Rule*: Only those expressly covered under the enumerations by law maybe disqualified from testifying

B. Exclusivity of The Grounds for Disqualification: The grounds are limited exclusively and restrictively to those enumerated by the law. The following are not grounds:

- **i.** Interest in the outcome of a case
- **ii.** relationship to a party, as both affect merely credibility
- **iii.** Sex
- **iv.** race (ethnic/ color)
- **v.** creed (religion)
- **vi.** property or
- **vii.** Prior conviction of a crime.

C. Kinds of Disqualification

1. **Total or absolute** - the person is disqualified from being a witness due to a physical or mental cause.
2. **Partial or relative-** the witness is disqualified from testifying only on certain matters but not as to others facts.

D. *Voir Dire* Examination: the examination conducted by the court on the competency of a witness whenever there is an objection to the competency of the witness and is usually made before the witness starts with his testimony. The party objecting maybe allowed to present evidence on his objection or the court itself may conduct the questioning on the witness.

> The phrase ***"voir dire"*** is French; in modern English it is interpreted to mean **"speak the truth"** and generally refers to the process by which prospective jurors are questioned about their backgrounds and potential biases before being invited to sit on a jury.
>
> *Voir dire* can include both general questions asked of an entire pool of prospective jurors, answered by means such as a show of hands, and questions asked of individual prospective jurors and calling for a verbal answer.
>
> In a common trial, "Voir Dire" can also mean a motion to cross-examine an expert witness during opposing counsel's direct examination to establish the credibility of said witness before damaging evidence is brought to court through this witness who may not be credible. This saves possibly not only days of testimony and wasted time for a court, but also insures any prejudicial evidence is brought through by a credible, expert witness.

SECTION 21. DISQUALIFICATION BY REASON OF MENTAL INCAPACITY OR IMMATURITY.

I. These are the two grounds for absolute incapacity.

II. Mental Incapacity: those whose mental condition at the time of their production for examination, is such that they are incapable of intelligently making known their perception to others.

A. They include the following:

1. **Medically Insane persons** unless they are testifying during their lucid intervals.
   - **a.** Sanity is presumed, it is the opponent who must prove this ground.
   - **b.** However, the party presenting the witness must prove sanity in these two instances: (i) if the witness has been recently declared as of unsound mind by the court or by a competent physician (ii) is an inmate in an asylum or mental institution.
2. Persons medically sane may be considered as legally insane if at the time they are to be presented as witness, they are incapable of testifying truthfully or of being aware of the obligation to testify. Included here are drunks, those under the influence of drugs or alcohol, or suffering from some temporary mental disability.
3. Mental defectives such as idiots, imbeciles or morons and other mental retardates are not disqualified by this reason alone although this may affect their credibility.
4. Deaf mutes are not disqualified so long as they are able to communicate in some manner which can be understood and, in case of the use of sign-language, the interpretation thereof can be verified.

III. Mental Immaturity: these refer to children of tender age (7 years and below) whose mental maturity is such as to render them incapable of perceiving the facts respecting which they are examined and of relating them truthfully.

- **A.** Age is not the criterion but the intelligence and possession of the qualities of a witness.
- **B.** The credibility of Children as witness take into account two possibilities: (i) children are prone to exaggerate and influenced by suggestions from adults and (ii) lack of motive to testify falsely.
- **C.** Under the Rule On Examination of a Child Witness, it is provided that:
  - **a)** Every child is presumed to be qualified to be a witness.
  - **b)** The court may however conduct a competency examination (voir dire examination) *motu proprio* or on motion of a party, when it finds that substantial doubt exists regarding the ability of the child to perceive, remember, communicate, distinguish truth from falsehood, or appreciate the duty to tell the truth in court.

Marital Disqualification	Privilege Disqualification
a. Marital	**a.** Privilege is

disqualification is applicable only when one or both spouses are parties. b. Marital disqualification applies to testimony on any fact. c. Marital disqualification ceases after dissolution of marriage. d. Even if the communication is not confidential, the marital disqualification may still be invoked. e. Marital disqualification is more concerned with the consequences. If the rule is not there, perjury and domestic disunity may result.	applicable regardless of whether the spouses are parties or not. **b.** The privilege applies to testimonies on confidential communication only. **c.** Privileged communication lasts even after the death of either spouse. **d.** The communication must be confidential. **e.** Privilege protects the hallowed confidences inherent in marriage b/w husband and wife and therefore guarantees the preservation of the marriage and further the relationship between the spouses as it encourages the disclosure of confidential matters without fear of revelation.

SECTION 22. DISQUALIFICATION BY REASON OF MARRIAGE OR THE MARTIAL DISQUALIFICATION RULE

I. Statement of the Rule: During the marriage neither spouse (i.e. the witness spouse) may **testify for** or **against** the other (i.e. the Party spouse) without the consent of the affected spouse (i.e. the party spouse).

II. Reason for the Rule

- **a. Identity of Interest:** hence compelling a person to testify against the spouse is tantamount to compelling the witness to testify against himself.
- **b.** To avoid the danger of admitting perjured testimony and to prevent the witness spouse from being liable for perjury.
- **c.** As a matter of public policy of preserving the marital relationship, family unity, solidarity and harmony.
- **d.** To prevent the danger of punishing the party spouse through hostile testimony, especially in cases of domestic troubles between the spouses.

IV. Requisites for Applicability

- **A.** A married person is a party to a case, whether civil or criminal, singly or with other third persons.
- **B.** The spouses are validly married. These include voidable marriages as well as those where there is a presumption of a valid marriage in the absence of a marriage contract. [The reason for marriage is immaterial]
  - **1.** Bigamous marriages and common-law relationships are excluded.
  - **2.** The reason behind or purpose behind the marriage is immaterial, as when the marriage was intended precisely to prevent one from testifying
- **C.** The marriage is subsisting at the time one is called to testify against the other in that it has not been dissolved by death or by law. Thus the prohibition is not perpetual.
- **D.** The case is not one against the other.
- **E.** The consent of the party spouse has not been obtained nor has he waived the rule in any other way.

V. Form of Prohibited Testimony or When a Violation Exists

- **A.** When the spouse is actually called in court to testify as a witness to facts, and there is no consent from the party spouse.
- **B.** When the witness is asked to submit objects, or documents or other evidence in court even if not actually called to testify. [Even if the spouse did not actually testify, it suffice that he/she was ask to do something which may prejudice the party spouse].
- **C.** When a third person is presented as a witness and is asked to divulge declarations or information revealed to the third person by the spouses, which declarations or information affect the liability of the party spouse. [Why? Because indirectly we are using your testimony against your husband, through the mouth of the third person-witness].
  - **1.** The revelation must be in confidence.
  - **2.** If the declaration was made in the presence or hearing of another person, then there is no violation of the rule.

VI. Waiver of the Rule

- **A. Expressly**, or when the party spouse give consents
- **B. Impliedly:** (i) as when the party spouses interposes no objection to the presentation of the witness spouse (ii) when the party-spouse presents his/her spouses as his/her own witness (iii) When the party-spouse imputes the wrong doing to the other spouse, the latter may testify to rebut the imputation.

VII. EXCEPTIONS: WHEN SPOUSES MAY TESTIFY AGAINST EACH OTHER

- **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 (i) committed 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.

C. 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, nor peace and tranquility which maybe 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)

Justification: ***ratione cessat lex, lex cessat*** - when the reason for the law ceases, the law ceases.

CASE: A filed a complaint against husband and wife for annulment of a contract by reason of fraud. (H&W both defendants). A subpoenaed the wife to be his hostile witness which is allowed in civil cases. When the wife received the subpoena, the husband filed a motion in court for the quashing of the subpoeana, on the ground that there is a violation of the rule on marital disqualification/spousal immunity. A told the court that this is not a case where the wife will be giving testimony as an adverse witness in favor of the plaintiff. So the rule on spousal immunity does not apply. **Ruling of the Court:** Spousal immunity applies. If the wife was allowed to testify as an adverse witness for the plaintiff, she might give testimony that he will harm her interest and that of her husband. So that there will be a violation of the spousal immunity.

A conceded. A told the court now that if he cannot compel the wife to be an adverse witness, then he should be allowed to get the deposition of the wife, because under the Rules of Court when the deposition of a person is taken, it does not necessarily mean that the deponent will be used as a witness in court, since it is only a mode of discovery. **Ruling of the Court:** Even if the purpose is just to get the deposition of the wife the rule on spousal immunity applies.

CASE: A son filed a complaint against his own father for recovery of property or some assets. The son asked her mother to testify in his favor. SC held that there will be a violation of the spousal immunity rule.

Note: As long as there is a case **INVOLVING** the husband **OR** wife, the disqualification is absolute.

SEC. 23. DISQUALIFICATION BY REASON OF THE DEATH OR INSANITY OF THE ADVERSE PARTY.

"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."

I. CONCEPT. This is also known as the Dead Man's Statute or Suvivorship Disqualification Rule.

A. The disqualification is merely relative as it is based on what the witness is to testify on.

B. 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.

II. APPLICABILITY

A. The case must be a civil case where the defendant is the executor, administrator or representative of the deceased person of unsound mind. But the rule will not apply to a counter-claim against the plaintiff [since the defendant becomes the plaintiff in the counterclaim].

B. The subject is a claim or demand i.e. one that affects the real or personal properties:

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.

C. The subject of the testimony is as to a matter of fact occurring before the death or insanity. The testimony is the only evidence of the claim or demand.

1. The death/insanity maybe before or during the pendency of the case so long as it was before the death/insanity.
2. The matters prohibited are those made in the presence and hearing of the decedent which he might testify to if alive or sane, i.e. adverse to him, and not to those which maybe known from other sources.

D. 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. Acts amounts to a crime, tort (quasi-delict).
4. To mere witnesses.
5. Stockholders/members of a juridical entity testifying in cases filed by the juridical entity.
6. Claims favorable to the estate.

III. The rule maybe waived expressly or by failure to object or by introducing evidence on the prohibited matter.

DISQUALIFICATION BY REASON OF PRIVILEGED COMMUNICATIONS.

I. INTRODUCTION. ***Claim of Privilege.*** Witnesses may refuse to testify on certain matters under the

principle that the facts are not to be divulged or that they are privileged communications. These are facts which are supposed to be known only between the communicant and the recipient.

A. Distinguished from 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.

B. Purpose of a Privilege: 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.

C. Privileges are to be strictly construed.

D. Who may claim the privilege: it 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.

II. SOURCES OF PRIVILEGED COMMUNICATIONS

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.

SECTION 24: DISQUALIFICATION BY REASON OF PRIVILEGED COMMUNICATIONS

INTRODUCTION: The communications are privileged provided they took place within the context of the relationship protected by the rule and the person for whose benefit the rule may be invoked, has not revealed the communication to a third person.

1. THE MARITAL PRIVILEGED COMMUNICATION DISQUALIFICATION RULE (SPOUSAL PRIVILEGE)

I. 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.

II. PURPOSE: same as the Marital Disqualification Rule as well as to encourage honesty and confidentiality between spouses.

III. REQUISITES:

1. The **witness** is a lawfully married person, or is a party to voidable marriage or one which enjoys the presumption of validity.
2. The case is not between the witness and the latter's spouse.
3. The subject of the testimony is a communication made by and between the witness and the latter's spouse.
4. The communication was made during the marriage.
5. 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.
   - **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: (i). is a minor child (ii). 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.

IV. FORMS OF COMMUNICATION: To "communicate" is to make known, to convey an idea or to inform of a message. The privilege thus extends to all modes of communications whether oral, written or through conduct, which were intended by a spouse to convey a message. They include the following:

1. Those which are in the form oral expressions made directly and personally, or through some mechanical device such as through the phone; or written as in conventional letters or through the use of secret codes or through the internet or text messages.
2. The sending of packages or things of items symbolic of a meaning or intended to send a message, such as sending of b-day greeting cards, or of flowers.
3. Passive or silent acts or conduct intended to convey a message such as a nod or shake of the head, a finger put to the lips.
4. Silent or passive communications referring to facts or information which came to the knowledge of the witness-spouse by reason of the confidentiality of the marriage. Example: (i). a spouse cannot be made to divulge that in his presence and observation the husband cleaned a gun, or washed bloody clothes or counted wads of money, even if the husband did not explain his actions (ii). a married person cannot be made to divulge tattoos on the body of the spouse or of his mannerism or habits.

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.

V. MISCELLANEOUS

1. The privilege may be claimed by either spouses, i.e. the communicating or recipient spouse (some opine it is only the receiving spouse who can claim).

2. The exceptions are the same as in the Marital Disqualification Rule.

3. The duration is perpetual.

4. Distinctions from the Marital Disqualification Rule:

a) As to whether or not a spouse is a party to the case

b) As to the scope of the prohibition

c) As to the duration

d) As to who can claim the protection of the rule

5. The waiver of the Marital Disqualification Rule does not include a waiver of the Marital Privilege Communication Rule.

2. BETWEEN LAWYER AND CLIENT

I. 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"

II. REASON: 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.

III. REQUIREMENTS

A. There must be a lawyer-client relationship

1. The term "lawyer" refers to:

b. A member of the Philippine Bar in good standing acting in such a capacity, whether in active practice or not.

c. Non-lawyers allowed by law to appear as counsel pursuant to section 7 of Rule 118. (But in localities where such members of the bar are not available, the court may appoint any person, resident of the province and of good repute for probity and ability, to defend the accused.)

d. Non-lawyers who misrepresent themselves as members of the bar in order to obtain the confidence of a person and believed as such by the latter.

2. Government prosecutors are not included but they are prohibited from making disclosures under penal laws, such as The Revised Penal Code under its provisions on Revelation of Private Secrets.

3. Lawyers of government agencies created to render legal assistance to the public are included, such as lawyers from the PAO and the CHR.

4. The relationship maybe created by mutual consent at the initiative of the client, or is created by Order of the Court as in the case of a counsel de officio.

a) The relationship exists whenever the client consults with a lawyer in relation to a matter which needs the professional services of the lawyer be it for advice or representation in a future or present legal action.

b) It does not matter that no fee was paid, or that the lawyer later refused to represent the client or that he withdrew from the action.

c) however the rule does not cover situations where the lawyer was consulted merely as a notary.

B. There must be a communication by the client to the lawyer or advice given thereon by the lawyer.

1. The communication must be for the purpose of creating a lawyer-client relationship or was given in the course of such relationship.

2. The term communication includes 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.

Thus 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.

The identity may not be disclosed in the following situations:

a. Where a strong probability exists that revealing the client's name would implicate the client in the very activity for which he sought the lawyer's advise.

b. Where the disclosure would open the client to civil liability

c. Where the government prosecutors have no case against the client and compelling the lawyer to reveal his client's name would furnish the only link that would form a chain of testimony necessary to convict the client of a crime.

d. Where it is the identity of the client which is sought to be confidential (Regala vs. Sandiganbayan: 262 SCRA 122)

f. Those covered by the "Doctrine of Work Product". The pleadings prepared by the lawyer or his private files containing either 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 therefore testify that his client, charged with theft of silver coins, paid him with silver coins.

3. 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.

C. The communication was confidential

D. The consent of the client to the disclosure was not obtained

IV. Duration and Waiver

A. The duration is perpetual even after the lawyer-client relationship has already ceased.

B. The rule maybe waived by the client alone, or by his representatives in case of his death, expressly or by implication.

1. If he is a party to a case and his lawyer was called as a witness by his opponent: (a) by failure of the client to object to the questions concerning the privileged communications or (b) having objected on direct, the client cross-examines on the privileged communications.

2. When the client presents evidence on the privileged communication, the opposing party may call on the lawyer to rebut the evidence.

3. When the client calls on the lawyer to testify on the privileged communication

4. In case of a suit by and between the lawyer and the client, the rule does not apply

5. When the lawyer is accused of a crime in relation to the act of the client which was the subject of their professional relationship, he may reveal the privileged communications to prove he had nothing to do with the crime.

C. If the lawyer, as witness to a case which does not involve the client, divulges confidential communication without the prior consent of the client, he may be liable criminally, civilly and administratively.

3. PHYSICIAN-PATIENT

I. 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.

1. PURPOSES: (a). To inspire confidence in patients and encourage them to make a full disclosure of all facts, circumstances or symptoms of their sickness, without fear of their future disclosure, so that a physician can form an opinion and be enabled to safely and effectively treat the patient. (b).To protect the patient's reputation.

2. REQUIREMENT

A. The case is a civil case
- **1.** Public policy looks to the maintenance of peace and order, upholding the law, the acquittal of the innocent and punishment of the guilty, as more important than the purposes of the privilege.
- **2.** It is not required that the patient is a party to this case.

B. The witness presented is a person authorized to practice medicine, surgery or obstetrics.
- **1.** The witness maybe a general practitioner or a specialist in any of the fields of medicine.
- **2.** Included are psychoanalysts, psychologist, psychotherapists. Dentists and mid-wives are not included, so also with nurses unless they acted as agents or assistants of the physician.
- **3.** Where the person is not authorized but represented himself to be so and which was believed by the witness, it is believed that the privileged may also be claimed.
- **4.** The relationship of physician-patient may have been created by mutual consent between him and the patient or with any person acting in behalf of the patient, or was created by exigent emergencies as when services were rendered to a patient in extremis.

C. The physician-witness is asked to divulge a communication by and between him and the patient.
- **1.** The communication was made while the witness was acting in his professional capacity i.e he was attending to a person as a patient and to whom the physician-witness rendered curative, palliative or preventive treatment.
- **2.** The privileged communication include:
  - **a)** All information divulged by the patient or by one acting for the patient, if these were essential for the physician to act in a professional capacity, but matters which are not essential but believed in good faith by the patient to be essential and divulged in good faith are covered.
  - **b)** All facts learned by the physician from his own interviews, observations, diagnosis, examinations or operation conducted upon the patient.
  - **c)** the nature of the treatment given, his opinion or advice given to the patient, including oral prescriptions (written prescriptions for medicines are intended to be read by pharmacist and third persons and are not confidential)
  - **d)** The clinical records, x-ray plates, radiographs, and other documents pertaining to the treatment, diagnosis, illness or process of ascertaining the illness of the patient.

D. The communication is confidential and was not intended to be known by third persons except to agents of the physician.

QUESTIONS: 1. Are communications confidential if these were heard by third persons by reason of lack of privacy of the clinic or hospital facilities? 2. Is the fact still confidential if a patient's body part or blood was sent by the physician for examination and study by a specialist/technician in a laboratory? (I submit that that the specialist acts as agent of the physician and he may not also be compelled to disclose his findings).

E. If disclosed the information would blacken the reputation of the patient. It causes disgrace or embarrassment or puts him in a bad light. Example: disclosure that the patient is a sexual pervert, or suffers from delusions or from a disease.

3. NON-APPLICABILITY OF THE RULE

A. Criminal cases
B. When the person testifying is not the physician. However the patient himself cannot be compelled to testify on the privileged communications.
C. Where the physician is presented merely as an expert and is testifying upon hypothetical questions.
D. Autopsies conducted to ascertain the cause of death of a person
E. Court ordered examinations
F. When the patient, as party to a case, testifies as to his own illness or condition, he opens the door for the opposing party to rebut the testimony by calling on the physician.

G. When the patient, as party to a case, calls on the physician as his own witness.

H. In a malpractice suit against the physician by the patient.

I. Where there is a Contractual Waiver in that the patient agreed to undergo an examination and make known the result thereof as a condition to the grant or enjoyment of a privilege, benefit or employment. Examples are the medical examinations required to enter the AFP or to obtain an insurance policy.

J. Communications made in the presence of third persons.

K. Communications to commit or to conceal a crime as when a patient undergoes a face lift to mislead the police or the victim in identifying him.

4. PRIEST/MINISTER- PENITENT

I. 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.

II. CONCEPT and PURPOSE: This 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.

III. REQUIREMENTS:

A. The witness is a priest or minister or similar religious personality.

1. The term "priest or minister" should not be given a restrictive meaning but should include any religious personality of the same or similar stature as a priest or minister.

2. Question: As worded the rule applies only to religious personalities of the Christian religion. Should the rule be interpreted to include non-Christians? Thus in Buddhism, confessing one' sins to a superior is part of the Buddhist practice.

B. The witness received the confession of a penitent

1. A confession is the revelation of acts or omissions considered as sins or violations of religious laws/ belief or teachings, and which may at the same time be considered as violation of laws of the state, which may subject the confessant to criminal or civil liability or both.

2. The revelation of wrong doings must therefore be penitential in that the purpose is to seek spiritual absolution, spiritual assistance, or healing of the soul. If the purpose is otherwise, then it is not privileged, as when all that the person was to unburden himself from guilty feelings.

3. The confession was made in obedience to some supposed duty or obligation.

4. The court may inquire preliminarily from the priest /minister as to the state of mind of the confessant i.e whether it is penitential or not.

5. The confession is one given directly and personally to the priest/ minister and in secrecy. Public avowals are not included.

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.

- The church or denomination must recognize the practice of making "confessions" and authorizes said priest/minister to receive and hear confessions.

IV. Observations:

1. Must the confessant belong to the same church as the priest/minister?

2. If the penitent consents, may his confession be divulged?

5. PUBLIC OFFICER.

I. 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.

II. PURPOSES:

- To encourage citizens to reveal their knowledge about the commission of crime
- To protect legitimate police operations against criminals
- To protect the safety of the informant and his family

III. REQUIREMENTS

A. There must be a confidential official communication, which 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.

3. The identity of the informant.

4. It has been held that official documents of diplomatic officials, ambassadors and consuls are included.

B. The communication must have been made to a public officer.
- 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.

C. The disclosure would affect public interest.

IV. RULE ON THE INFORMER'S IDENTITY

A. Concept of the "Informant's Privilege"- a privilege granted to the government to withhold from disclosure, the identity of confidential informants. The purpose is to protect the government's sources of information and in this way facilitate law enforcement by preserving the anonymity of individuals willing to furnish information.

B. Informant's covered (informers are also called coordinating individuals (or CIs), citizens, or assets; in American police parlance they are called nose, snitch, or stool pigeons)
1. Walk-in or phone-in informants e.g. those who report crimes in person or by calling police hot lines or individual police officers
2. Deep Penetration Agents or those "embedded" who actually join criminal organizations/gangs by pretending to be one of them but are secretly gathering information which they secretly relay to the law enforcement agents
3. Stool pigeons or snitches among prisoners
4. Regular informants or those who regularly report on suspected criminals and their activities. They may be acquaintances, neighbors or friends of the criminals themselves. They are known only to their agent handler.

C. When the informant may be compelled to be presented in court or when his identity maybe revealed
1. Per the American case of Roviero vs. U.S (353 U.S. 53) in 1957 which ruled thus:" when it appears from the evidence that the informer is also a material witness, is present with the accused at the occurrence of the alleged crime, and might also be a material witness as to whether the accused knowingly and intentionally delivered drugs as charged, his identity is relevant and maybe helpful to the defendant", it may said that disclosure is proper in the following situations:
   - **a)** when his identity is known to the accused not necessarily by name but by face and other physical features, unless he is being also used in another operations
   - **b)** when it is relevant and helpful to the defense and is essential to a proper disposition of the case
   - **c)** when it is claimed that there was an entrapment where he participated as a "decoy" or "agent provocateur" and the said entrapment cannot be established without his testimony

2. If the informant disclosed his identity to persons other than the law enforcement agents, this maybe basis for the accused to demand disclosure.

STATUTORY PRIVILEGED COMMUNICATIONS

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
5. Trade secrets under the Intellectual Property Law
6. Identities and whereabouts of witnesses under the Witness Protection Program
7. Identity of News Informants under R.A. 1477 (The Shield Law)
8. 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
9. Offers and admissions during Court Annexed Mediation proceedings under RA 9295.
10. DNA Profiles and all the results or other information obtained from DNA testing which testing was court- approved / ordered, subject to certain exceptions (Sec. 11 of the Rule on DNA Evidence promulgated by the Supreme Court and effective on October 15, 2007)

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PRIVILEGED COMMUNICATIONS UNDER JURISPRUDENCE

I. EXECUTIVE PRIVILEGE.

A. This is of American Origin but was adopted by the Supreme Court when it decided the case of Senate of the Philippines vs. Eduardo Ermita (April 20, 2006)

B. Concept: 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.

C. Purpose and basis. 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.

D. Matters Covered: As a rule, information must be of such high degree as to outweigh public interest. Based on Philippine Jurisprudence (Almonte vs. Vasquez (1995), Chavez vs. PCGG (1995), Chavez vs. Public Estates Authority (2002) and Senate vs. Ermita (2006), 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 under the principle of Confidentiality of Executive Deliberations
3. Information in the investigation of crimes by law enforcement agencies before prosecution of the accused.

E. Limitations to the Claim (Per Senate of the Pres. Vs. Ermita)

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.

i. CONFIDENTIALITY OF JUDICIAL DELIBERATIONS

1. The working papers of a judge, such his personal notes and researches on cases heard by him, his written instructions to the staff, are considered his personal or private property and may not be compelled to be disclosed.
2. Discussions among members of a collegial court are likewise confidential

TESTIMONIAL PRIVILEGE

I. RULE: Sec. 25. Parental and Filial privilege. - No persons may be compelled to testify against his parents, other direct descendant, children or other direct descendants.

- The privilege maybe claimed only by the witness in any case whether civil or criminal but it may be waived as when he volunteers to be a witness. B. However, by way of an exception, Article 215of the Family Code provides that a descendant may be compelled to testify against his parents and grandparents, if such testimony is indispensable in prosecuting a crime against the descendant or by one parent against the other.

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SOURCES OF A PARTY'S EVIDENCE

Generally the evidence of a party are those obtained and/or supplied from his own side. However evidence may be taken from the opposite party especially those which the latter does not voluntarily present because they are adverse to him. They are in the form of (i) Admissions (ii) Confessions and (iii) Declarations against Interest.

ADMISSIONS

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

I. Concept of Admissions. 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. By this meant 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.

II. Kinds

A. As to where it is made: (i). Judicial (if made in the proceedings of the case where it is to be

used as evidence) or (ii). extra judicial (if made outside the proceedings of the case)

B. As to how made: (i) Express or (ii) Implied

C. As who made the admission: (i) By the party to the case either as the offended party or accused; or as the plaintiff or defendant (ii) Third person due to the principle of Vicarious Admissions or Adoptive Admissions.

D. As to form: (i) By an act or conduct (ii) Declaration either oral or written or (iii) through an omission

E. As to their effect: (i) Against Interest or (ii) Self-serving admissions

III. Reason for the Rule: Presumption of truth in the admission in that no person would do an act or declare something which is contrary to his own interest unless such act or declaration is true.

IV. Requirements for Admission

1. It must be relevant to the issues in the case

2. It must be express, certain, definite and unequivocal. A declaration which goes: " I am not sure if I still owe money to X" or " I do not recall having uttered those words or did the act", " Maybe I was in error", are not admissions.

3. Must be an admission of a fact, not an expression of an opinion

4. Must not be self-serving (Self-serving admissions are those made to favor a declarant) because:

(a) they are hearsay i.e. they are testified to by person who have no personal knowledge of the truth of the declarations

(b) they are inherently untrustworthy

Examples are those where a person disclaims liability or creates a right or a defense in his own favor.

© It would open the door to fraud, fabrication of testimony and commission of perjury.

Examples: Affidavits; entries in diaries; self-praises

5. It must have been made freely and voluntarily

V. Evidentiary Value: 1. either as independent evidence to prove a fact or 2. For purposes of impeachment

- **Example:** Defendant files an Answer claiming he has fully paid his obligation. Plaintiff presents W to testify that Defendant borrowed money from him to purposely pay off defendant's debt to plaintiff, such testimony by W is either to prove: (i) the existence of an unpaid money to plaintiff and/or (ii) to destroy defendant's credibility as to his defense.

VI. How to prove. 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.

VII. Examples of Admission By Conduct:

- An employee's act of tendering her resignation immediately after the discovery of the anomalous transaction is indicative of her guilt as flight in criminal cases. Resignation is not a way out to evade administrative liability.
- Flight is indicative of guilt: "The guilty fleeth while no man pursueth but the innocent is as bold as a lion (Proverbs)" but the reverse is not true: i.e. that non-flight is indicative of innocence.
- Disguise or sudden unexpected change of address, are admissible to prove guilt.
- Unexplained delay is an admission of lack of merit as in: (a) claim of self-defense (b) of a cause of action or defense
- Sending/giving an apology (gift-offerings), asking for forgiveness, are admissible as proof of guilt or fault
- But repair of vehicles involved in a collision is an exercise of a right and not an admission of fault.
- The act of a lessor in repairing the leased tenement is an implied admission that he is the party with the obligation to make repairs and not the lessee.

OFFER OF COMPROMISE

I. CONCEPT: It is in the nature of a proposal to give or make concessions to another in exchange for the withdrawal or dismissal of a pending case, or to prevent a litigation from arising. It is most often called "Areglo" or" Out of court settlement".

II. RULE IN CIVIL CASES per Section 27. "An offer of compromise is not an admission of liability or that anything is due and is not admissible in evidence".

A. Reason: 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.

B. The following embody this policy.

1. Under the Local Government Code which established the Barangay Courts and requires that cases be referred first to it for possible settlement before they are elevated in court.

2. The Pre-Trial where one of the subject matter is the possibility of the parties arriving at a an amicable settlement.

3. The provisions 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

- This is called Court-Annexed-Mediation: which 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.

C. Exceptions: When the offer is admissible in evidence

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

Examples:

a) X writes Y demanding payment of a debt. Y answers and offers to pay half and the other half within an extended period plus an additional interest, if X foregoes suing him because he also has to pay off his debt to Z. In a suit by Z against Y, such offer of Y to X may be used in favor of Z if Y denies liability.

b) X sues Y for failure of Y to deliver the jewelry subject of a sale. Y offers during the Pre-Trial that he will deliver the jewelry in two months after he has redeemed them from Z and if the case is withdrawn, he will pay additional damages to X. If Y later files a theft case against Z over the jewelry, his offer in the civil case is admissible.

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

Examples:

a) P demands of D to return money received by D as consideration for goods which D did not deliver. D offers to deliver within a certain period of time provided P foregoes with the damages. D claims he has no intention of fooling P as he suffered temporary business reveres. The offer is admissible against D.

b) P demands P to leave the house for unpaid rentals. P asks he be given 3 months extension to pay as his money has not yet arrived. He later denies having unpaid rentals.

III. RULE IN CRIMINAL CASES: "An Offer maybe received in evidence as an implied admission of guilt."

A. Offers contemplated: are those which are made out of consciousness of guilt, where the accused acknowledges doing the act or incurring the omission and desires to escape punishment by offering to buy off the complainant. Those made to **avoid embarrassment**, or **inconveniences**, or to **buy peace of mind**, are **not implied admissions of guilt**.

B. Reason for the Rule

1. As a matter of public policy, it is to discourage the accused from preventing the prosecution of crimes and punishment of the guilty. The object of criminal prosecutions is to uphold the law and discourage people from violation of the law which objectives may not be realized if the parties are permitted to decide when to pursue or not to pursue a criminal case. This refers to the penal liability of the accused.

2. But as to his civil liability, the parties may enter into a compromise.

C. Exceptions: where an offer of compromise is not an implied admission of guilt

1. Where the law allows a compromise:

a) Those cases covered by the Court-Annexed Mediation under R.A. 9295 (Embodies the policy to encourage Alternative Dispute Resolution). There are certain criminal cases which must 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

© 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 any act constituting violence against women and their children.

b) Prosecutions under the NIRC where payment of the compromise penalty will be a ground for the non-filing of a criminal case.

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

D. A withdrawn plea of guilty is not an implied admission of guilt. An offer to plead guilty to a lesser offense, if rejected, is not also to be considered as an admission. Both actions are rights provided by law and no unfavorable inference is allowed to be made there from.

ADMISSIONS BY THIRD PERSONS

RULE: Section 28. Admissions by a third party. "The rights of a party may not be prejudiced by the act, declaration or omission of another".

I. INTRODUCTION. "RES INTER ALIOS ACTA RULE"

A. Meaning: Every act or omission results to corresponding consequences which may be beneficial or harmful. The rule answers the question: Who are bound by an admission and who must bear the adverse consequences? It embodies the first part of the so called Res Inter Alios Acta Alteri Nocere Non Debet Rule (Things done between strangers ought not to injure those who are not parties to it, or transactions between two persons ought not to operate to the prejudice of third persons). The effects and consequences of an act or omission should be the sole responsibility of the actor himself and should not affect third persons who did not participate in the act or omission. A man's life, rights, fortune and property should not be affected by what other people's conduct.

B. Reason: (i) Fairness and (ii) Acts of third persons are irrelevant to the case involving the act of a party which is the subject of the case.

C. Exceptions: when the conduct of a third person is admissible as evidence against a party to a case

1. In case of vicarious admissions

2. Under the Principle of Admission by Adoption

FIRST EXCEPTION: VICARIOUS ADMISSIONS

I. CONCEPT: These are admissions by one who, by virtue of a legal relationship with another, maybe considered as acting for and in behalf of the latter. These are acts, omissions or declarations by a person who is not a party to a pending case, but are however admissible as evidence against one of the parties. Their admissibility as evidence is based on the identity of interest between the stranger and the party concerned.

II. KINDS: They are enumerated under Section 29 to 31.

A. Admission by a co-partner, an agent, joint owner, joint debtor or one jointly interested. (Rule 29)

1. The **rule as to co-partners** is based on the identity of interest among the partners such that each partner is an agent of the other partners. The requirements are:

a) The existence of the partnership must first be established by evidence other than the act or declaration. Proof includes formal documents such as: (i) the Articles of Partnership or registration papers filed with the appropriate government agency such as the SEC or DTI, (ii) by the contract of partnership, or (iii) by the acts of the partners, (iv). by the principle of estoppel.

b) The act or declaration must refer to a matter within the scope of the authority of the partners, or that it relates to the partnership. Such as:

i. Obtaining a credit or loan or incurring of a liability for the partnership, such as borrowing money to add to the capital.

ii. Execution of a promissory note or execution of a similar contracts.

iii. Statements as to the financial condition of the partnership.

iv. declarations as to the ownership of partnership properties

c) It was made during the existence of the partnership.

2. Rule as to Agent-Principal. The agent is deemed an extension of the principal such that the act of the agent is the act of the principal.

a) The requirements are similar to that among partners.

b) The relationship include:

i. Those expressly created by virtue of a grant of a General or Special Power of Attorney, or Letters of Administration and similar formal documents, or when professional services have been retained as in the case of a lawyer-client.

ii. Agency by Estoppel

iii. "Agency by Referral": when one party expressly refers another to a specific third person in regard to a matter in dispute, the declaration of the third person binds the party who made the referral. In effect he made the third person his agent.

- Example: When the seller referred the buyer to a real estate agent/realtor/appraiser concerning the value of the property to be sold, then he is bound to sell at the price quoted by the agent/realtor/appraiser.

3. As to Joint Owners, they need not be equal owners. Joint debtors refer to solidary debtors. The requirements are similar to that among partners, agent-principal.

B. Admission by a Co-conspirator. " The act or declaration of a conspirator **relating to the conspiracy**, and **during its existence**, maybe given in evidence against the conspirators after the conspiracy is shown by evidence other than such act or declaration" (Section 30).

1. The conspiracy has reference to conspiracy as a mode or manner of committing a crime which presupposes that a crime has actually been committed by two or more persons and the issue is whether these two or more persons maybe held equally liable. It therefore becomes relevant to determine whether the act or declaration by one can be used as evidence against a co-accused. The conspiracy includes both the anterior conspiracy and spontaneous /instantaneous conspiracy.

2. The act or declaration refers to those made extra-judicially and not to acts or declarations by a conspirator during the trial.

3. Requirements:

a) The existence of the conspiracy among the accused must first be established.

i. May be by direct proof or circumstantial evidence showing Unity of Intention or Purpose and Unity of Action.

ii. The act or declaration may be presented first subject to the rule on conditional admissibility i.e. proof of the conspiracy be presented latter, or the act or declaration may be admitted to prove the guilt of the declarant and not to prove the conspiracy.

b) The act or declaration must relate to the conspiracy or common objective, such as:

i. The participation of each in the commission of the crime.

ii. The manner of achieving the objective.

iii. Defenses to be made or relating to the escape

iv. Ensuing the successful execution of the plan.

- Ex: The killing of an approaching policeman by the look-out in a robbery, even if not agreed upon, but was necessary to prevent the discovery, is the liability of all the robbers.

c) The act or declaration was made while the declarant was engaged in carrying out the conspiracy in that the conspiracy must still be in existence, and not when the conspiracy has ceased.

A conspiracy ceases: (i) when the

crime agreed upon has already been committed (ii) the accused were apprehended (iii) as to one who left the conspiracy and did not participate in its execution (iv) when the plan was abandoned.

Thus: statements by one of the accused while in custody; acts done upon the arrest of the several accused, do not anymore bind the other. Examples: Statements given to the media after arrest binds only the declarant. The act of one in killing an arresting officer in order to escape binds him alone.

4. **The rule applies to a "Conspiracy by Adoption":** When one joins a conspiracy after its formation and he actively participates in it, he adopts the previous acts and declarations of his fellow conspirators which are admissible against him.

C. Admission by Privies "When one derives property from another, the act declaration, or omission of the latter, while holding title, in relation to the property is evidence against the former" (Section 31).

1. Privies are those who have mutual or succession of relationship to a property either by: (a) law, such as heirship or hereditary succession, or purchase in a public sale, or (b). by the act of the former owner, such as instituting an heir, legatee, or devisee, or naming a donee; or by (c). mutual consent between the former and present owner, such as by deed of sale.

2. **Concept of the Rule:** The present owner of a property acquires the property subject to the same burdens, obligations, liabilities or conditions which could have been enforced against the previous owner.

3. Illustrations of acts of the prior owner which bind the present owner:
   - **a)** The previous acts of the owner alienating a portion of the property, or creating a lien in favor of a third person.
   - **b)** Contracts of Lease, mortgages.
   - **c)** Statements by the prior owner that he obtained the property by fraud, or that he has only a limited interest in the property

SECOND EXCEPTION: ADOPTIVE ADMISSIONS

I. CONCEPT: This refers to a party's reaction to a statement or action by another person when it is reasonable to treat the party's reaction as an admission of something stated or implied by the other person. The adoption may either be by positive conduct or by silence/ inaction.

- **Effect:** By adoptive admission, a third person's statement becomes the admission of a party embracing or espousing it. The statement or conduct by the third person is evidence against the party concerned.

II. Adoption by Positive Conduct arises when a party either:
- **a)** Expressly agrees to or concurs in an oral statement by another
- **b)** Hears a statement and latter essentially repeats it
- **c)** Utters an acceptance or builds upon the assertion by another
- **d)** Replies by way of rebuttal to some specific points raised by another but ignores further points to which he or she has heard the other make
- **e)** Reads and signs a written statement made by another (Republic vs. Kendrick Development Co., 498 SCRA 220)

Example: Estrada vs. Arroyo 356 SCRA 108; 353 SCRA 452: In said case Estrada's lack of objection or comment to the statements, proposals by Sen. Angara concerning Erap's leaving Malacanang, (as narrated in the so called Angara Diaries serialized in the Phil Inquirer) such as the negotiations with the Arroyo camp, the points/conditions of his leaving the palace, were considered as evidence admissible against Erap to prove he acquiesced to his removal and that he voluntarily relinquished the presidency. The court further expounded on admission by adoption as being:
- **(a)** By conduct manifesting a party's belief in the truthfulness of the statement of a third person by expressly or implicitly concurring with it; or responding in such a way that manifests a the adoption of the statement
- **(b)** By a party's refusal to refute an accusatory statement that a reasonable person would refute under the same or similar circumstances

III. Adoption by Silence/Inaction

A. Rule: An act or declaration made in the presence or 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." (Section 32)

B. REASON: This is based on the human and natural instinct to resist, rebut, deny or object to untrue statements about one's life, family, rights, property or interests. The failure to do so is an implied admission of the truth of the

statement. "QUI TACET CONSENTIRE VIDDETUR".

Hence, he who remains silent when he ought to speak cannot be heard to speak when he should be silent.

C. REQUISITES for the application of the Rule.

1. That the party heard and understood the statement.

a) The party must be at the place where the statement or act was made and must be within hearing distance or proximate to where the act was done, such that, in the event the party claims otherwise, it may reasonably be said that the party must have heard the statement, or that he saw the act.

b) Hence if the party was intoxicated, or in a state of shock, or a deaf mute, or if the statement is muted by noise, or inaudible, or in a language not understood, or when the party was distracted, or his view was obstructed, then the rule will not apply.

2. The party was at liberty to interpose an objection. There was no duress or intimidation or fear of immediate harm arising from his objection.

3. The statement was in respect to a matter affecting his rights or in which he is interested and calling naturally for a comment.

a) The statements or acts impute some wrongdoing or creates a liability against him, or subjects him to suspicion, or it would result to a diminution or injury to his rights or property, or reputation, or to his person or that of his family.

b) Example: A party is caught in a very compromising situation or flagranti delicto with a person not his spouse, and is asked; "what is the meaning of this?", but he makes no reply, then his silence will be evidence of wrong doing.

4. The facts are within his knowledge as a person is not expected to comment or react to matters about which he is ignorant.

5. The fact admitted or the inference drawn from the silence is material to the issue.

- Thus the silence of a man caught in possession of stolen articles is not admissible in a prosecution for physical injuries.

D. Instances when silence is not an admission

1. Silence by a suspect who is under custody of law enforcement agents
2. Upon advice of counsel
3. When to comment would disturb a solemn proceeding such as a mass, a meeting, or court trial
4. When the circumstances of time, place, and occasion does not make it proper and appropriate for a party to comment.
5. When the matter is privileged.
6. There is no good reason to comment.
7. When the party is in a state of shock or in some similar mental state.
8. The comment is made by strangers.

E. Other Examples of Admissions by silence.

1. Failure to reply to letters of Account is an admission of (a) the existence of the account and (b) the correctness of the account.
2. Failure to call an important witness is an admission that his testimony would be adverse.
3. But the failure of a witness to report immediately and to describe the malefactor at the earliest opportunity merely affects the accuracy but not the veracity of a witness

CONFESSIONS

I. CONCEPT/RULE: The voluntary acknowledgement by a person of his guilt of the offense charged or of any offense included therein, may be given in evidence against him. (Section 33)

A. Compared with Admissions.

1. As to concept and coverage: An admission is broader as it covers any fact so long as its adverse to the interest of the party. A confession is limited to the act of an accused acknowledging that he committed or participated in the commission of a crime. A confession is a species of admissions.
2. As to form: An admission may be in the form of an act, declaration or omission, expressed or implied. A confession is always in the form of written or oral declaration, and is always expressed.
3. As to where admissible. An admission is admissible in evidence in both civil and criminal cases whereas a confession is admissible only in criminal cases.
4. As to the author: an admission may be made by a party or by third persons. A confession is made only by the accused personally

B. Evidentiary value:

1. Confessions are admissible against the confessant. They are evidence of a high order for the reason that no person in his right senses would admit his guilt or participation in the commission of a crime, knowing that it would subject him to punishment. He must be prompted by truth.
2. But for purposes of conviction, the confession must be corroborated by evidence of corpus delicti (body of the crime) pursuant to Section 3 of Rule 133.
    - Corpus delicti, or the fact that a crime was committed, has two elements: (i) an injury or harm which was suffered by a person and (ii) the cause or origin thereof must be criminal in nature
3. As to oral extra-judicial confessions, they afford no conclusive proof of that which they state but merely present a prima facie case. It may still be proved they were uttered/made in ignorance, or levity or mistake.

II. CLASSIFICATION OF CONFESSIONS

A. Judicial: when the accused pleads guilty during the arraignment, or when the accused testifies and admits the offense.

B. Extra Judicial which may either be custodial or non-custodial, written or oral.

1. **Custodial:** includes all situations where a person is under the custody of, or deprived of personal liberty by, public officials whose functions include the apprehension of criminals and/or investigation of crimes, who are often the law enforcement agents, as well as those tasked to enforce the law violated.
    - **a)** The person may have been lawfully arrested by virtue of a warrant of arrest
    - **b)** The person was arrested lawfully without a warrant
    - **c)** The arrest is illegal
    - **d)** The person voluntarily surrendered
    - **e)** The rule applies whether or not a formal charge has already been filed in court, or a crime is still being investigated and the person is merely a suspect.

2. **Non-custodial:** either the confessant is not in the custody of any person or is custody but the custodians are private persons, private security agencies, or of their employers, or even of public officials but who are not law enforcement agents, such as the Mayor or the Barangay Captain.

III. REQUIREMENTS FOR ADMISSIBILITY

A. That the confession must be voluntary i.e it was given freely, knowingly and intelligently.

1. This requirement applies to all kinds of confessions
2. The accused gave the confession of his own free will, with full understanding and knowledge of its consequences and that he was not coerced, pressured, forced, intimidated or improperly influenced, or subjected to third degree.
    - The force or intimidation need not be applied personally to the confessant but to a third person so long as the purpose is to affect the will of the confessant and the giving of the confession is the condition for the force to stop.

3. The Test of Voluntariness involve two aspects:
    - **a)** The susceptibility of the suspect to be influenced by fear or force considering his: (i) background (ii) intelligence (iii) education (iv) prior experience with the system (v) physical condition (vi) mental condition and (vii) coping skills.
    - **b)** Environment and Method of Investigation used which include considering (i) the location of the setting (ii) length of the questioning (iii) intensity (iv) frequency of the questioning (v) food and sleep deprivation and (vi) intimidating presence of officers

4. In the event the confession was due to an inducement, consideration, promise or exhortation, the following rules govern:
    - **a)** The confession is voluntary if due to religious exhortation
    - **b)** Voluntary if due to given due to material considerations or promise or reward of material or financial or any form of gain
    - **c)** In case of a promise of immunity, it is involuntary if the promise was made by one who is in a position to fulfill the promise, such as the investigating officer or the complainant. But a promise by the police that he will get a lower penalty does not make the confession involuntary.
    - **d)** But if the accused gave a confession as a condition for being discharged as a state

witness but he later refused to testify, his confession is voluntary

e) Involuntary if due to a promise or offer of a pardon by one who is in a position to work for it.

5. Admissibility of Confession obtained by Trickery or Deceit

1. The general rule is that the use of artifice, trickery or fraud in inducing a confession will not alone render the confession inadmissible as evidence. For examples: those obtained by detective posing as prisoners or obtained by promise of secrecy and help to escape or by conversations between suspects and undercover agents are admissible.

2. The Miranda rule does not apply because when a suspect considers himself in the company of cell mates and not officers, the coercive atmosphere is lacking. Miranda forbids coercion, not mere strategic deception by taking advantage of a suspect's misplaced trust in one he supposes to be a fellow prisoner.

3. But the rule is different when the suspect has already been indicted or arraigned.

❖ The **Massiah rule** based in the case of Massiah vs. U.S. states that once adversary proceedings have been commenced against an individual, he is entitled to counsel and the government may not deliberately "elicit" incriminating statements from him, neither openly by uniformed officers or by secret agents.

i. The Massiah rule includes "stimulated" conversions to "elicit" incriminating evidence or any form of "INDIRECT SURREPTITIOUS INTERROGATION".

ii. However, Massiah does not apply when a cellmate, who agreed to be an informer, merely listened to the suspect and did not initiate any conversation purposely to lead the suspect to "talk".

B. Additional Requirement for Custodial Confession to be admissible

1. The confession must be in writing

2. In a language known or understood by the confessant

3. It was given with the assistance of counsel, or that the right to counsel was properly waived (in writing and with the assistance of counsel) and the confessant was properly Mirandized.

a) The giving of the constitutional warnings must appear in the confession and in fact must preface the questioning

b) The giving must be in a manner which communicates meaningful information to the confessant

c) Counsel refers to a competent, able and independent counsel; one who is vigilant and aware of his responsibility as assisting counsel. He was either chosen by the accused or provided him by friends or relatives, or one appointed by the court upon Petition by the confessant or by one acting in his behalf.

d) If counsel as provided by the investigating officer, the counsel shall be deemed engaged by the confessant if he never raised any objection against the former's appointment during the course of the investigation and thereafter subscribed to the veracity of his statement before the administering officer.

4. It must be signed or thumb marked by him

IV. RULE As to Self Incriminatory Statements or "Non Confessional Acts" by persons in custody

i. Signed Receipts of Property Seized are in admissible unless the accused was Mirandized. Under the 2002 Dangerous Drugs Law, the signing of the Inventory of Seized Articles by the accused is expressly declared to be not admissible as evidence against him.

ii. Evidence based on re-enactments are also inadmissible unless the re-enactment was with counsel or the right to counsel was properly waived.

iii. Facts voluntarily divulged to the media are admissible as admissions unless the media was in collusion with the police to elicit inculpatory/incriminatory statements, in which case the constitutional warning should first be given before any interview; or if the media was instructed to extract information as to the details of the crime.

❖ See as Examples: PP s. Endeno (Feb. 20, 2001) and PP v.s Taboga (Feb. 6, 2002) involving a taped confession sent to the media.

iv. After the accused was properly informed of his rights, facts voluntarily divulged by him without being asked, are admissible, unless these statements were the result of some ploy or stratagem by the police, as in the case of the "good cop-bad cop" approach.
v. However, even if the confession is inadmissible, still the evidence may be admitted under other principles, notably: the doctrines of Inevitable Discovery; Independent Source, and Attentuation.

4. PRESENTATION OF CONFESSION

i. Through the officer who took the confession who shall identify the confession, the signature of the accused therein and his counsel if with the assistance of counsel, and who shall testify as to the giving of the constitutional warnings, and that the giving of the confession as voluntary.
   - ❖ The presumption of regularity in the performance of duty cannot be availed of to assume the constitutional warnings were properly given.

ii. Through the testimony of the person to whom the confession was handed, if it was not taken b the police, or to whom the oral confession was made.

5. PROOF OF VOLUNTARINESS

A. The voluntariness of a confession is not to be presumed but must be proven by the prosecution.
B. When the accused claims the confession was coerced or involuntary, the following may be considered as evidence of voluntariness:
   a. Failure of the accused to present convincing proof of duress other than the self-serving declarations
   b. Failure to complain to the administering officer
   c. Failure to show marks or physical evidence of force
   d. Failure to undergo medical examination for alleged injuries
   e. Failure to institute action against the erring officer
   f. The confession is replete with details known only to the confessant
   g. Confessions contains exculpatory statements

6. INADMISSIBLE CONFESSIONS: EFFECT THEREOF

i. A confession is inadmissible if in any of the following cases: (a) involuntary or coerced (b) there was failure to give the constitutional warning properly as to custodial confessions or if the latter was (c) uncounseled and right to counsel was not properly waived.
ii. The inadmissibility is total even if the contents are absolutely true and in case of custodial confessions, the inadmissibility extends to all evidence derived there from under the Fruit of the Poisonous Tree Doctrine.

7. PERSONS BOUND BY A VALID CONFESSION

A. As a rule the confession binds only the confessant following the Res Inter Alios Acta Rule.

B. Exceptions: when a confession is evidence against third persons
   i. When it was confirmed or ratified by the co-accused
   ii. When the extra-judicial confession is judicially confirmed
   iii. In case of interlocking confessions i.e. confessions made by two or more accused independently of each other and without collusion which are identical in their essential details. The effects are as follows:
      a) They are circumstantial evidence against the persons implicated therein, of his participation in the crime. Thus the identical confessions of 3 accused are admissible against X who was mentioned by all 3 as the master mind.
      b) circumstance or factor in gauging the credibility of the testimony of another accused and of witnesses
      c) Each confession is evidence against all confessants.

   iv. If it is a non-custodial confession given by a co-conspirator it may be admissible as an admission by a co-conspirator if it meets all the requirements therefore.

PREVIOUS CONDUCT AS EVIDENCE

Section 34. Similar conduct as evidence- Evidence that one did or did not do a certain thing at one time is not admissible to prove that he did or did not do the same thing or similar thing at another time, but it may be received to prove a specific intent, or knowledge, identity, plan, scheme, system, usage and the like.

I. This is the second part of the Res Inter Alios Acta Rule. **The REASONS** for the rule are as follows:
   1. Past acts do not afford a logical guarantee that a person will or will not commit an act in question due to changes in a man's lifestyle, habit, views, or in the circumstances or conditions of his life.
   2. Past acts are irrelevant as they merely confuse the issue and violate the right of a person to be informed of what he is being charged of or made liable for.
   3. There is the danger that a man may be

convicted or declared liable by reason of his dark or questionable past and not because he committed the present act.

4. There maybe a denial of due process.

II. EXCEPTIONS

A. To prove specific intent or knowledge: this applies to cases where guilty knowledge or intent is an essential element or where the defense raised is good faith, mistake of fact, or accident. There must however be a rational similarity between the condition which gave rise to the past and present conditions.

1. In a case of forgery or falsification past acts involving similar forgeries are admissible to prove intent to falsify and not to make corrections. Ex: The accused was previously caught changing the amount in the check issued to him If later he tried encashing a check with the amount altered, and this time claims lack of knowledge or ignorance, the previous act will be admissible to show he really intended to commit falsification.

2. In a murder case or death by secret mode, the fact that other mysterious deaths involving previous wives of the accused who were all insured with the husband as the beneficiary, is admissible, in the death of the present wife, also heavily insured and where the husband is a suspect, to prove motive and intent to kill.

3. The previous act of feeding the substance to animals is admissible to prove the accused knew the substance is poison and disprove his pretense of good faith.

4. In an arson case, the previous acts of trying to burn the place, about which the accused was sternly reprimanded, shows that this time, when the accused was found placing, clothes soaked in gasoline near the house, his intent was really to burn.

5. In a case for estafa for issuing a watered check, the prior acts of the accused in requesting other persons to who checks against the same account were issued, that cases be not filed, show knowledge that the check he issued to the present complainant was stale.

6. In an action based on negligence, the act of asking for a spare tire previously is proof of knowledge of mechanical defects of the vehicle.

7. Note: under the Traffic Code, a previous violation for three times is evidence of negligence.

B. To prove identity i.e where there is doubt as to a person's identity or where identity in issue.

- Note: in solving a crime where there are no eye witness, the fact that a person was found to be the author of previous crimes committed in the same manner as the present, is admissible to prove he is the author of the present crime. Example: Serial Killers, Akyat Bahay, the Ativan Gang

C. To prove a plan, system, design, Modus Operandi.

1. In estafa cases of illegal recruitment, the prior acts of advertising the opening of an office to assist in visa applications, and thereafter absconding, is evidence of a modus operandi or system of deceiving the unwary public.
2. Prior acts of using different names to different people from whom money is borrowed and then unpaid, is admissible to prove a plan or design to of deception.
3. The prior acts of claiming to be a member of the staff of a certain politician and asking for donation else the business papers will not be processed, shows a plan of extortion.

D. To prove habit, custom, usage or practice.

1. These can only be established by showing a repetition of similar acts on various occasions.
2. Thus wife battery requires a cycle and previous acts have to be proven.
3. To prove negligence, the fact that a driver almost always tries to beat the red light is relevant.
4. To prove habituality or recidivism or habitual delinquency, previous acts are required.
5. The habit of a businessman to always pay in check is proof he did not make a purchase as no check was drawn or made in favor of the seller-complainant.
6. The custom of the operator of vans for hire to test the brakes before renting the van is admissible to show the brakes were in facts tested and the van involve in the accident was not suffering from any mechanical defect.
7. The habit of a passenger of clinging to the back (or top load) of a running jeepney is admissible to show he was not the passenger/robber seated beside the victim at the driver's side.
8. The habit of a woman to sit at the lap of customers is admissible to prove the absence of force in a charge of acts of lasciviousness.
9. However, under the Rape Shield Law, the fact that the victim has had previous

sexual encounters is not admissible in a present charge for rape.

UNACCEPTED OFFER

Section 35. An offer in writing to pay a particular sum of money or to deliver a written instrument or specific personal property is, if rejected without a valid cause equivalent to the actual production and tender of the money, instrument or property

1. This may be availed as a defense where defendant is alleged to have failed to tender payment or delivery. It may also be a basis for the remedy of consignation.

2. The tender of money must be unconditional and for the whole amount otherwise the this is a valid ground to reject the tender.

TESTIMONIAL KNOWLEDGE: THE HEARSAY RULE

I. INTRODUCTION

A. Sources of What a Witness Testifies On. When a person testifies that a certain event occurred or that a person did or did not do an act, his reasons or basis may either be:

1. Facts based on his own personal knowledge or direct knowledge, such as when he testifies to facts or events which he personally saw or in which he participated, or to statements he personally heard.
2. Opinions, conclusions or estimations which the witness himself arrived at or formed.
3. Matters relayed to him, or learned by him from third persons or acquired by from sources outside of his own personal knowledge.

❖ Testimony based on the first source is admissible so long as it is relevant and they are what the rules desire to be testified upon. Testimony based on the second is generally not admissible. Testimony based on the third source is generally inadmissible and considered as hearsay.

II. CONCEPT OF HEARSAY EVIDENCE

A. In general, the term embraces all assertions of facts, whether in the form of oral or written statements or conduct, the source of which cannot be subjected to the opportunity for cross-examination by the adverse party at the trial in which the statements are being offered against him.

1. The essence and test of what is hearsay is the fact that the source i.e. the person who made the statement, cannot be subjected to the opportunity for cross-examination. These two concepts cannot be separated from one another.
2. The emphasis is on the opportunity to cross examine and not actual cross-examination because if there was opportunity to cross examine but it was not actually exercised due to the fault or negligence of the adverse party, the evidence is admissible.

B. The rule on hearsay is intended to satisfy the requirement of due process which is that the adverse party has the right to confront the witnesses against him, to test their credibility, the truth of their statements, their accuracy, or the reliability of the evidence against him. This is through the process known as cross-examination. This is why the rule on hearsay evidence cannot be separated from the requirement of due process.

III. KINDS OF STATEMENTS USED AS PROOF OF FACTS

A. "In-Court-Hearsay Statements". These are assertions of facts by a witness based on his own personal perception but the witness was not subjected to the opportunity for cross examination.

1. This usually occurs after a witness has testified during the direct examination but the testimony becomes hearsay because the witness refused to go back to court to be cross-examined; or he dies, becomes incapacitated mentally or physically, goes abroad, or where for any cause not attributable to the adverse party, he was prevented from cross-examining the witness.
2. The remedy of the adverse party is to Move To Strike From the Records the Direct Testimony on the ground that it is hearsay. If granted, the legal effect would be that the direct testimony would be erased/stricken from the records such that it was as if the witness never testified at all.
3. The testimony is not hearsay if the right to cross examine was expressly waived, or if it was lost by failure of the adverse party to claim or exercise it despite the opportunity given him.

B. "Out-of-Court-Statements". These refer to statements or declarations by third persons which are being used or referred to by a witness in order to prove a fact. The phrase aptly describes statements or declarations or conduct which were made elsewhere than in the trial of the case where they are being used as evidence.

They are of three kinds:

1. The Non-Hearsay Statements also referred to as the Independently relevant statements and therefore admissible.
   a) Statements the making of which are the very fact in issue.
   b) Statements which are circumstantial evidence of the fact in issue
2. The Hearsay Statements which are inadmissible under Section 36.

3. The Hearsay Statements but admissible as an exception under Sections 37 to 47.

IV. NON- HEARSAY OR INDEPENDENTLY RELEVANT STATEMENTS

A. The purpose of introducing the statement or declaration of another is not to prove the truth of a fact but either: (i) to prove the statement was indeed made, uttered, or written, or (ii) to prove the tenor of the declaration i.e why it was made, or that it was part of a conversation or exchange of communications or part of a transaction or occurrence.

B. The first kind*: Statements the Making of Which is the Very Fact in Issue.* The question before the court is: "Was there such an oral or written declaration/statement which was made? Was there such a conduct which was done"? or "What was the statement or conduct made? What were the words uttered or written?

1. It therefore becomes necessary for a witness to quote or refer to the statements or declarations or conduct of a third person in order to answer the issue.
2. Examples are: (a). statements as constituting libel or oral defamation; (b) actions based on a breach of a promise or warranty (b). statements which are offered as an admission by the adverse party (c). statements quoted to destroy the credibility of a witness or party.

C. Second Kind: Statements Which Are Circumstantial Evidence of the Facts In Issue

1. To show the state of mind, mental condition, belief, ill will or criminal intent of the utterer/declarant
   - **a)** To prove insanity- "I am God"
   - **b)** Discernment on the part of a minor: "he said" Takbo na", Tago tayo"
   - **c)** Evident Premeditation: " May araw ka rin"
   - **d)** Guilty knowledge: Don't tell anyone this money is fake, or it was stolen"
   - **e)** Bias: I will stand by him no matter what. "May pinagsamahan kami kasi"
   - **f)** Ill-Will: "I hope he dies". "Ma fail ka sana"
   - **g)** Anger, excitement, joy, elation, gratitude:
   - **h)** That Erap was resigned to giving up the presidency: "Masakit, Ayoko na, "
   - **i)** He was intoxicated
2. To prove the statement of mind of the hearer or third person or of the witness, such that:
   - **a)** He was not attentive
   - **b)** He is bias
   - **c)** He did not understand or that he was mistaken
   - **d)** He was intoxicated
3. To show the physical condition of the utterer
   - **a)** Illness: I have a headache
   - **b)** Pain: Aray: Tama na (to substantiate a claim of self-defense)
   - **c)** Tired: Let's rest. My feet are killing me.
4. To fix or identify date, time, place or person in question
   - **a)** Place: Quoting statements in the local dialect by unknown people
   - **b)** Time: "Good evening", "Gabi na, tulog na kayo.", "Gising na, umaga na", Kain na, Boom Tarantara
   - **c)** Identity: Kuya Pedro, My younger brother, My seatmate, My crush, "Itay", "Baket"
   - **d)** Sex of a Person: words such as Manong, ate, kuya, Sexy, Pogi
5. To show the lack of credibility of the witness

V. PURE HEARSAY AND INADMISSIBLE

A. This is what is covered by section 36 : A witness can testify only to those facts which he knows of his own personal knowledge, that is, which are derived from his own perception, except as otherwise provided in these rules.

B. Concept: A witness asserts something as true but his reason is the statement, declaration or conduct of another. The witness merely repeats the declarations of others, he "heard (it) said", or his testimony is to a second hand information.

C. Illustrations:

1. Oral declarations or statements such as relying on news broadcasts, popular opinions, what people think or believe.
2. Written statements such as Affidavits of third persons, newspaper reports, entries in the police blotter, medical reports, and any written account, report or statement , which even if true, but the maker/author is not the witness testifying on it.
3. Non-verbal statements or conduct. which are offered as assertion or proof of a fact. Example: On the question of who killed Z, the witness was asked: Why do you say it was X who killed Z? and he answered: "I inquired from those present who did the stabbing and one lifted his finger and pointed to X ". The act of pointing is non-verbal hearsay conduct.
4. However, the testimony of a witness as to a non-human statement is not subject to the

Hearsay Rule, such as those of machines and animals because: (a). the lack of motive to lie on the part of animals and machines and to (b). The workings of a machine can be explained by human beings who then are subjected to cross-examination. Examples:

i. To prove a party is not the owner of the dog, a witness testified that he saw the accused approached the dog and he heard the dog let out a grrrrrr…

ii. To prove the accused was carrying a prohibited article, the witness testified that when the accused passed through the detector/machine, the machine emitted a whirring sound.

D. Evidentiary Value of Hearsay Evidence. Hearsay evidence has no evidentiary value whatsoever even if it was admitted without objection from the other party. This is because this would violate the requirements of due process and because the source of the information was not subjected to the personal observation of the Court as his demeanor.

VI. HEARSAY STATEMENTS BUT ADMISSIBLE.

A. CONCEPT: These are the statements, oral or written, presented as evidence in court without the author of the statement having been presented to testify on them. A witness offers these statements by third persons to prove a fact.

B. BASIS. These statements are essentially hearsay because the makers or authors of these statements are not presented in court and are not subjected to the opportunity for cross examination. They are however are admissible because of two reasons: (1). The guarantee of trustworthiness or that they are presumed more likely to be true than not and (2. Necessity in that the court has no option but to accept them due to circumstances which exempt the authors from being personally presented in court as witnesses.

C. KINDS: They are those enumerated from section 37 to 47. The enumeration is exclusive.

Sec. 37. DYING DECLARATIONS

I. RULE: The declaration of a dying person, made under consciousness of an impending death, may be received in any case where in his death is the subject of inquiry, as evidence of the cause and surrounding circumstances of such death.

II. CONCEPT: Often referred to as ***antemortem*** statements or statements in ***articulo mortis,*** they are statements or utterances whether oral, written, or conduct, made by a victim of violence, after sustaining a mortal wound, under the belief that death is imminent, stating the facts concerning the cause and circumstances of his mortal wound.

III. REASONS FOR ADMISSIBILITY.

A. Necessity. What the victim declared is material to the case. But the victim/declarant is already dead hence the only available remedy is to rely on the testimony of a witness who heard, read or saw the dying declaration. This also to prevent an injustice if the only evidence of the crime is the dying declaration and yet it is excluded.

B. Guarantee of Trustworthiness in that what the victim declared is presumed to be true in that:

1. There is no more motive for a dying person to fabricate a falsehood, or in the words of Lord Baron Eyre

> "The general principle on which this species of evidence is admitted is that they are declarations made in extremis, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the mind is induced by the most powerful consideration to speak the truth; a situation so solemn and so awful is considered by law as creating an obligation equal to that which is created by a positive oath administered in a court of justice."

2. Another basis for the presumed truthfulness is the fear if punishment in the afterlife which may induce a person to speak the truth during his last moments. But the fact that the declarant does not believe in an after-life of rewards and punishment does not make his declarations less true.

IV. REQUIREMENTS FOR ADMISSION

A. THE STATEMENT MUST BE MADE UNDER CONSCIOUSNESS OF IMPENDING DEATH

1. The declarant is aware that his death is imminent or that his death is certain to follow by reason of his wound. He knows, is aware and accepts that he may die at any moment.

2. But it is not required that death should immediately follow for it may happen that the victim dies after the lapse of hours or days. It may happen that his condition improved but nevertheless he died after an interval of time. It is enough that when he made the statement he believed he was about to die.

3. If he entertained some hope of recovering or of surviving his injury, his statement will not constitute a dying declaration, but if later when his condition worsened, he ratified his statement and thereafter died, then the

statement ill be considered as a dying declaration.

4. This requirement is present:
   - **a)** From the express declarations of the victim
   - **b)** Inferred or implied from his utterances or conduct, such as when he begged forgiveness, asked for a priest to give him the last rites, asked a friend to watch over his family.
   - **c)** Inferred from his conduct or reaction of acquiescence when it was communicated to him that his condition is hopeless and he cried or his countenance changed.
   - **d)** Inferred from the actual character and seriousness of his wounds, which may justify and acceptance of mortal danger. Example: when the victim pointed out his assailant, he was in agony due to a mortal wound or was gasping for breath.

B. THE DECLARATION MUST CONCERN THE CAUSE AND SURROUNDING CIRCUMSTANCES OF THE DECLARANT'S OWN DEATH/INJURY.

1. The declaration must relate to the why, who, how, where and what, about his own mortal wound. If it concerns the wound of another, it might be admissible under the Res Gestae Rule, or if the declaration is something contrary to the declarant's interest, it might be admissible as a declaration against interest.
2. Thus if before dying, the victim of a shooting incident told these statements to his friend: "Pedro shot me and (b) he also shot Peter. (c). Tell my children that the son of Maria is their half-brother". Statement (a) is a dying declaration whereas statement (b) would be admissible as part of the Res Gestae in the prosecution of Pedro for shooting Peter. Statement (c) would be a declaration against interest in an action against the estate of the victim by the illegitimate son.
3. There are two kinds of declarations which, even if they refer to the cause and circumstances, are not admissible as dying declarations: (a) Those which are in the nature of opinions or conclusions. Example: "I believe Pedro was the one who shot me. He is the only who wanted me killed", and (b) those which contain hearsay information. Example: "People say it was Pedro who shot me".

C. THE DECLARATION IS OFFERED IN A CASE WHERE THE SUBJECT OF INQUIRY IS THE DEATH OF THE DECLARANT

1. The case may either be criminal or civil so long as the issue involves the death of the declarant. If a criminal case, it may be for consummated Homicide, Murder or Parricide, and it may be a simple or complex crime as for example Robbery with Homicide, Rape with Homicide, Direct Assault with Homicide, or Multiple Homicide.
2. The civil cases include action for damages arising from the death of the declarant, or claims for insurance.

D. THE DECLARANT MUST HAVE BEEN COMPETENT AS A WITNESS HAD HE BEEN CALLED UPON TO TESTIFY IN COURT.

1. Dying declarations stand in the same footing as testimony given in open court by a witness. At the time of the dying declaration, the declarant has all the qualifications as a witness and is not suffering from any physical or mental ground for disqualification.
2. Thus if the declarant was at that time too drunk, under the influence of drug, mentally insane, or an infant, his statements would not qualify as a dying declaration.

E. THAT THE DECLARATION WAS MADE FREELY AND VOLUNTARILY AND WITHOUT COERCION OR SUGGESTION OF IMPROPER INFLUENCE.

V. FORM AND MANNER OF INTRODUCING DYING DECLARATION

A. They may be oral which maybe in the form of answers to questions asked, or voluntary statements or utterances at the instance of the declarant. These may be introduced through the testimony of the person to whom the oral declarations were given or by one who heard them.

B. They may be written either in a paper or other solid surface with the use of pen, pencils or conventional writing materials, or with the use of any material by which letters or written symbols are formed, such as blood, lipstick or sharp instrument. The written declaration need not be signed by the declarant. These are introduced by presenting the written declaration if physically possible, else reproductions thereof may be used in substitution or their existence and contents maybe testified to by witnesses .

C. It may be in the form of bodily movements such as by pointing or hand, gestures, swinging or nodding of the head, eye movements, or any physical form of communication. These is introduced by the testimony of the persons to who received them as answers to his inquiries, or by those who saw or observed the gestures.

D. Where the declarations are in the form of answers to inquiries, there must be observance

of the **Rule of Completeness:** the declarations /statements or answers, must be responsive to the question asked, is not vague or equivocal, such that it provides a complete information to what is asked concerning the injuries of the declarant.

VI. WEIGHT OF DYING DECLARATIONS

A. Dying Declarations do not enjoy any advantage nor do they deserve higher consideration over other evidence. They are not superior evidence. They are in the same level as all other evidence hence:

1. They are subject to the same tests of credibility applied to all types of evidence.

2. The court has the discretion whether to accept or reject a dying declaration or to give it value or not, and how much weight it will accord it.

3. Dying declarations do not automatically result in conviction. They must be corroborated.

B. Dying declarations may be impeached or shown to be unreliable through the following modes:

1. By showing that the witness testifying thereon is not credible or that he is untrustworthy. Example: he has a motive against the accused, he is not fluent with the dialect in which the declaration was made, the possibility of having misheard the declaration, that his attention as focused elsewhere than to listening to the statements.

2. By showing that the declarant is not himself credible. Such as: his having given contradictory or conflicting declarations; ill-will or revenge against the accused or possibility of improper motives, or that his condition is too far gone as to have affected his consciousness or ability to give an accurate description of the incident.

3. By showing the lack of credibility of the declaration itself. Such as: it is hearsay, an opinion, or is not in accordance with the evidence.

C. Dying declarations may be used by either party, though generally it is the prosecution or plaintiff who is expected to use them. However there is no law which denies the accused or defendant the use of a dying declaration as their own evidence, if they believe it is to their advantage, as when it points to other perpetrators, or negate an aggravating circumstance.

Sec. 38. DECLARATIONS AGAINST INTEREST

I. CONCEPT: These refer to any oral or written declaration or conduct by a person which is against his interest provided the person is already dead or unable to testify. The declarant is not however a party to a case. The declaration maybe used against his successors in interest or against third persons. A party to a case may also use it as his own evidence.

III. DISTINGUISHED FROM AN ADMISSION

1. An admission is not necessarily against the interest of the declarant while a declaration against interest is always against the interest of the declarant.

2. In admissions the admitter may be alive while the declarant must be dead or unable to testify.

3. The admitter is a party to a case while the declarant is not.

4. An admission is evidence only against the admitter save in case of vicarious admissions and admissions by adoption whereas a declaration may be used as evidence against strangers.

5. An admission may be made at any time even during trial, while a declaration must be made before the controversy arose.

IV. INTEREST AFFECTED MUST BE REAL AND ACTUAL

A. ***Civil, Pecuniary or Proprietary.***

1. Pecuniary: The declarations may defeat in whole or in part a money claim he has against a person. Example: the heirs of a deceased sued X to collect from him the supposed unpaid consideration of a lot sold by the deceased. X presents the best friend of the deceased who testified that the deceased confided to him that although no receipt was issued, X actually had already over paid.

2. Proprietary: The declarations may affect his property rights. Examples: " I am a mere administrator of this property", or "The money is my collection as a salesman only".

Example: Creditor Z attached the land of a deceased creditor which is actually occupied by X to answer for the debtor's unpaid debt. X presents a letter written by the debtor prior to borrowing money from Z, which letter advised the family that he is actually a mere administrator of the land which in truth belonged to X.

B. Criminal: The statements may subject him to a possible criminal prosecution.

a) In an arson case the accused presents a letter of X to his girlfriend stating that he has to leave the country because he accidentally burned the store of their neighbor.

b) Statements by persons owning up a crime for which another was charged.

c) Statement by the driver of a jeepney that he was very sleepy while driving, is admissible in an action for damages against the operator arising from a collision involving the said driver.

C. Moral:

- The act of a one man showing he is the

natural father of a child, is admissible in a paternity suit against another man.

V. REASONS FOR ADMISSIBILITY

1. **Necessity:** Since the declarant is dead, there is no other source from which the court may know what the declarant said, other than the testimony of a witness.
2. **Guarantee of Trustworthiness:** No person would declare or do something against his own interest unless it is true. People are cautious about making statements adverse to themselves and ever they do, it is presumed that the statements are true.

VI. REQUIREMENTS FOR ADMISSION

1. The declarant is dead or unable to testify. Inability to testify includes situations where the declarant can no longer be presented in court due old age, physical disabilities insanity and similar mental illness, or he cannot be located despite diligent efforts to locate him.
   - **a)** If he is alive or present and can be presented in court, then the testimony of the witness would be inadmissible as hearsay.

2. The declarant must have competent knowledge about the matter subject of his declaration.
   - **a)** A person is presumed to know certain matters about himself such as financial status, condition of his business affairs, his interest in certain properties, his participation in an act, or in a crime.
   - **b)** Thus, in an action for money for services rendered, plaintiff presented a letter written by the defendant's son to the plaintiff stating that he knew his father owed plaintiff for services rendered. It was shown that the son did not know the true nature of the transaction between the plaintiff and his father- the defendant.

3. There is absent a motive to falsify.

PEDIGREE

I. CONCEPT: It covers all matters or information relating to a person's:

1. Descent: his paternity, or genealogy or family tree. Example: who were the ancestors: the circumstances of their birth, marriage, death, who were legitimate and who were not.
2. The circumstances of a person's own birth, marriage, death, legitimacy.
3. Descendants or issues if he has any including the circumstances of their birth, marriage, death
4. Sibling, i.e. brothers or sisters, whether by blood or b affinity, whether full or half blood, legitimate or illegitimate or by informal adoption, as well as circumstances of their birth, marriage, death, families.
5. All facts concerning family history intimately connected with pedigree e.g. the story that a brother was lost and presumed dead when in truth he was sent to an institution due to his abnormality)

However pedigree does not extend to the question of citizenship or to legal adoption.

II. PROOF OF PEDIGREE

A. The best proof of a person's pedigree would be
   - **1)** The records kept in the Office of the Local Civil Registry
   - **2)** As provided by Article 172 of the Civil Code as to filiations and
   - **3)** By DNA examinations.

B. However if the foregoing are not available, proof consists of the presentation of a witness who testifies to:
   1. The declaration or admission of a relative by birth or by marriage in accordance with Section 39.
   2. The Family Tradition or reputation provided the witness testifying is a member of the family either by consanguinity or affinity pursuant to section 40.
   3. Entries in Family Bibles, Family Books, Charts, Engraving, Rings, and the like, pursuant to section 40.

II. PROOF BY DECLARATION OF A RELATIVE (Sec. 39

A. Reason for admissibility: (Note that a witness is testifying to the statements of a third person - the relative- who is not available for cross-examination).
   1. Necessity-to prevent a failure of justice since matters involving the descent or relationship of a person occurred long before the case was filed and only a few might still be available to testify thereon.
   2. Guaranty of Trustworthiness- members of a family are supposed to know those matters affecting their own family

B. Requirements for Admissibility
   1. The pedigree of a person is in issue or is relevant to the main issue
      - Example: Cases involving inheritance, support, filiation, use of surnames, parricide, incest rape/acts of lasciviousness or recognition.

   2. The declarant is dead or unable to testify. If he is available to testify then the testimony of the witness quoting the declarant is inadmissible.

   3. The declarant and the person whose pedigree is in question are related to one another.
      - **a)** The relationship may be by blood or by affinity and need not be close in degree.
      - **b)** The relationship must be legitimate

unless the issue is the legitimacy itself. (Personal opinion: this is based on bias against illegitimates. Suppose the illegitimate relative has been accepted by the family?)

c) Non-relatives, no matter how close or intimate they may be, such as close friends, house helps, nannies, are not included and any statement they make upon a person's pedigree are inadmissible.

4. The declaration must have been ante ***litem motam*** (before the controversy arose) in order to ensure the declaration was not the result of bias or improper motive.

5. The relationship between the declarant and the subject person must be established by independent evidence independent of the declaration.

C. Examples

1. In the case of FPJ whose citizenship hinged on whether he was acknowledged by the father, the court admitted an Affidavit of a sister leaving in California the contents of which declared that FPJ was recognized by their father.

2. Maria wants to inherit as full heir from Pedro. X testifies that Maria is the sister of Ellen who is married to Juan, now dead. X presents a letter from Juan stating that Maria and Ellen are half-sisters because the father of Maria is not Pedro but another man.

3. AB is charged with parricide for killing X. A witness testifies that X is the illegitimate child of AB per information coming from the deceased son of AB.

III. PROOF BY FAMILY REPUTATION OR TRADITION (Sec. 40)

A. Concept: This refers to the knowledge or beliefs of a certain family handed from one generation to another, or to practices or customs which are consistently observed or engaged in by said family. A member of said family is the one testifying to these matters.

B. Examples:

1. The practice of making offerings to a deceased person, burning of incense, making of libations, visiting the grave, or including the name of a person in the family prayers, are evidence the dead is related to the family.

2. The family belief by a family in Bontoc, Mt. Province, that their surname ANDAYA was adopted by their grandfather in honor of a teacher from Tagudin, Ilocos Sur, who took care of said grandfather.

3. Stories of a grandfather that he was born on the day Bataan fell to the Japanese, or an uncle who, during the earthquake, went to the mountains and was probably buried in a landslide.

4. Practice of a family of inviting an individual to clan/family reunions.

5. Belief of a family in Aringay, La Union that the grandfather of Noli de Castro left that town in a particular year and migrated to Visayas

IV. PROOF BY ENTRIES IN FAMILY BIBLES, BOOK CHARTS, ENGRAVINGS, RINGS AND THE LIKE. (Sec. 40).

A. Entries may include the names, and date and place of births, marriages, death, and other relevant data, about a relative, as well other important family occasions.

B. Other examples: pictures, portraits, baptismal certificates, the name and date appearing in wedding rings, family tree charts.

C. Names of relatives in published "thank you messages" in obituaries as well as in wedding invitations.

COMMON REPUTATION (Sec. 41)

I. RULE: Common reputation existing previous to the controversy respecting facts of public interest more than 30 years old, or respecting marriage, or moral character, may be given in evidence. Monuments and inscriptions may be received as evidence of common reputation.

A. CONCEPT: Common reputation refers to the prevailing belief in the community as to the existence of certain facts or aggregates of facts arrived at from the people's observations, discussions, and consensus. There is absent serious opposition, adverse or contrary opinion. They are not just rumors or unverified reports or say-so.

B. What common reputation may prove

1. Matters of public interests more than 30 years old or those affecting the people as a whole and matters of general interest or those affecting the inhabitants of a town, province, or barangay. (Localized matters)

a) They must affect the community as a whole and not just certain groups.

b) Examples: boundaries of lands, existence of a road, a waterway or irrigation canals; that a private right exists in a public land, the reputation of a certain area as the: red district"; the birth of a town or barangay, how a town or city got its name, that a land has long been regarded as a communal land.

c) It cannot be used however to establish ownership over private lands.

d) Proof of common reputation:

i. Through the testimony of persons who are in a position

to know the public or general interest. He may testify thus: "The old folks told us the land has always been regarded as communal"

ii. By monuments, and inscriptions such as old road/streets signs; old maps and old surveys

2. Moral character or opinion of people concerning the moral character of a person provided the opinion is formed among the people in the place where a person is known, such as in his work place, residence, school. Examples:

a) The reputation of one as an honest, diligent and industrious laborer, or a fair and kind employer, among their co-workers; or as lazy;
b) As a trouble maker in the barangay;
c) As a conscientious teacher;
d) As a person with a hostile attitude or as a belligerent and easily provoked person;
e) As a girl with loose morals.

3. The marriage between two persons

a) The reputation need not be from family members. Thus H and W are known as husband and wife and are addressed or that the community regard W as the wife of H and vice versa.
b) But where there is a formal marriage or documentary proof thereof, reputation of non-marriage is not admissible.

PART OF THE RES GESTAE

I. RULE: Section 42: Part of the res gestae- Statements made while a startling occurrence is taking place or immediately thereafter, 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 and material to the issue, and giving it legal significance, may be received as part of the res getae.

II. CONCEPT.

1. Res gestae literally means "things done". It refers to an event, an occurrence, a transaction, whether due to the intentional or negligent acts of a person, or an accident, or due to the action of nature. All these events are set in a frame of surrounding circumstances which serve to emphasize the event or to make it standout and appear clear and strong.

2. These surrounding circumstances may consist of statements, utterances, exclamations or declarations either by the participants to the events, or by the victims, or by mere spectators. These persons may not be known or are unavailable for cross-examination and what they declared, uttered or stated, or exclaimed are repeated by the witnesses who heard them.

3. They are the events speaking for themselves thought the instinctive and spontaneous words or acts of the persons involved or present thereat.

III. CLASSIFICATION.

A. Spontaneous Statements. Those made by a person-whether a participant, victim or spectator-while a startling occurrence is taking place, or made immediately prior, during or subsequent thereto.

B. Verbal Acts or Contemporaneous Acts. These are utterances or statements, which accompany some act or conduct which explains or gives legal significance to the act.

IV. SPONTANEOUS STATEMENTS

A. Requirements for admissibility

1. There must be a startling occurrence or a happening which was sudden or unexpected- not anticipated- which is capable of producing nervous excitement such that it may induce or incite a person to make an utterance representing the person's actual impression about the event.

- Examples of a startling occurrence: sudden death, collision between vehicles and other vehicular accidents, a fight in progress, a snatching or robbery, a fire breaking out, a suicide, an act of lasciviousness, panic breaking out.

2. The statement must relate to the circumstances of the startling occurrence or to the what, why, who, where and how of an event.

a) Examples: statements describing what is happening or referring to the persons involved such as "Si Pedro sinasaksak", 'Tama na, patay na yan", "yong mama, mabubondol". "Mamang driver, dahan dahan, mabangga tayo". "Snatcher, help".
b) They include screams and cries of alarm, cries of pain by victims, or words by a participant such as "Matapang ka ha? OOm.
c) Exited words heard over the phone by a policeman are also included.

3. The statement must be spontaneous.

- The utterances or declarations were instantaneous, and instinctive. They were reflex words and not conclusions or products of a person's conclusion,

impression or opinion about the event. The person had no time to make a reflection about the event. Thus it is said that they are the events speaking through the person.

B. Factors to determine spontaneity especially to statements made after an occurrence.

1. The time which elapsed between the occurrence and the making of the statement. The declaration should not have been made after a period of time where it is possible for a person to reflect, analyze, and reason out. There is no yardstick to measure the time which elapsed although the time must not of such length so that the declarant can be said to be still under nervous excitement.

- The utterance by a rape victim soon after being rescued is spontaneous

2. The place where the statement was made in that whether it was within the immediate vicinity or situs of the event or some distance away.

3. The condition of the declarant at the time he made the statement- whether he was in a cool demeanor so that he could have carefully chosen his words, or he is still in a state of nervous excitement. If as a victim, his groans are indicative he is still under the influence of the event.

4. The presence or absence of any intervening circumstance between the event and the making of the statements such as those which may have diverted a person's mind and restored his mental balance, or which in any manner might have affected his statement.

Examples:

a) In a collision, a driver notices that several passengers are mortally injured, whereupon he exclaims: "That bus was too fast".
b) The arrival of the friends of the victim prompted him to shout, "he, he is the one who mauled us for no reason".
c) A person lost consciousness and then recovers whereupon he shouts: Juan, have mercy"

5. The nature and circumstances of the occurrence itself in that it must really be serious and capable of producing lasting effect.

C. Relation to a Dying Declaration.

1. When a statement does not qualify as a dying declaration for failure to comply with the requirement's the latter, it may however be admitted as part of the res getae. This is under the principle of multiple admissibility. This occurs: a) when the victim survives b). there was no consciousness of impending death c). when the statement relates to the injury of another and not the declarant.

2. Example: The victim said: "Pedro shot me. He also shot Juan". The first is a dying declaration if the victim dies, otherwise as part of the res gestae. The second is admissible as part of the res gestae in a case involving Pedro for shooting Juan.

D. Illustrations

1. A Policeman testifies that he saw a commotion and while proceeding thereto, he heard several screams such as "Awatin nyo si Pedro", "Pedro maawa ka". Such screams made by unidentified persons are part of the res gestae.

2. A security guard testified that he saw two persons entered the building and after some minutes they came out running. He asked what was the matter and one of the two answered: "napatay naming si Juan".

V. VERBAL ACTS OR CONTEMPORANEOUS STATEMENTS.

A. CONCEPT: These are utterances, declarations or oral statements which accompany some act or conduct which explains or gives legal significance to the act.

B. REQUIREMENTS:

1. There must be an act:

1. which is equivocal or one susceptible to different meanings such as : (i) the act of handing money to another (ii) the act of chopping down a tree on a piece of land (iii) the act of building a fence.
2. The act may be a continuing act or that which takes place within a span of time such as the regular deposit of money in the account of another for a year
3. There are however certain acts which the law considers as self-explanatory (res ipsa loquitor) such as criminal acts of lasciviousness, injuring or killing another.

2. The oral statement must explain the act. Thus the act of handing over money to another was accompanied by the statements: "here is payment of my debt", "go buy yourself lunch". The man chopping a tree exclaimed; "This land is mine", indicating an assertion of ownership.

3. The act is relevant to the issue. Example: In a prosecution for violation of the Anti

Fencing Law, where the accused was seen receiving the cellphone, this statement of the giver is admissible: "Itago mo yan at huwag na huwag mong ipakita kahit kanino"

4. The statement is contemporaneous with the act in that it was made at the time and place of the act and not afterwards.

(NOTE: THE FOLLOWING EXCEPTIONS ARE IN THE FORM OF WRITTEN STATEMENTS).

ENTRIES MADE IN THE COURSE OF BUSINESS

I. RULE: Sec. 43. Entries made at, or near the transaction to which they refer, by a person deceased, outside of the Philippines, 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 regular course of business or duty.

III. CONCEPT: These refer to written accounts or recording of transactions or events, whether pertaining to commercial activities or not, so long as they were made by a private person.

Considerations:

- The entrant is dead.
- The entries were made because it is the entrant's legal, contractual, religious duty to make a record.
- In contrast to **entries in official records**, the public officer who made the entry need not be dead.

IV. REQUIREMENTS

V. EXAMPLES:

ENTRIES IN OFFICIAL RECORDS.

I. RULE: **Sec. 44. 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.**

II. Concept: Official records refer to official documents containing data about persons, places, conditions or properties, state of things or transactions, prepared or made by a public officer, or by another especially enjoined by law

The situation concerns facts about which a public officer has to testify on, but in lieu of his personal testimony, the official document prepared or kept by him are instead presented to the court.

III. Reasons for admissibility:

1. Necessity: difficulty of bringing the officer to court as when he has been separated from the service, or assigned to a place outside the court's jurisdiction, as well as the great inconvenience caused to the officer, and the disruption of public service during his absence from his office. Thus the court has to rely on the official records prepared by him.

2. Guaranty of trustworthiness: The entries are presumed to be true and accurate due to:

a) The sense of official duty which led to the making of the statement

b) Fear of penalty in the event of an error or omission

c) In the routine (mechanical) and disinterested (lack of personal involvement or interest) origin of most of the statements

d) In the publicity of the record, which makes more likely the prior exposure of errors and their consequent correction

IV. Requirements for admissibility:

A. The person who made the entry must be a public officer, or by another especially enjoined by law

B. The making must be in the performance of the officer's duty or in the performance of a duty especially enjoined by law

1. The keeping of the record must be due to any of the following reasons:

a) It is required by law. Examples:

i. records of birth, marriage, adoption an death kept by the Local Civil Registrar

ii. List of voters and results of elections by the COMELEC Registrar

iii. List of Eligibles by the CSC

iv. List of Professionals by the PRC Record

v. The Day Book of the Register of Deeds

vi. List of marriages by religious persons licensed to solemnize marriages

vii. Sheriff's Return on a writ of execution

viii. Court docket officer

ix. The Notarial Registry of a Notary Public.

x. Ship Log Book

b) The nature of his work requires the keeping of records i.e the records are convenient and very appropriate modes of discharging the officer's duty.

Examples: (i).The List of those applying for a Prosecutor's Clearance (ii).The Visitor's Log Book of the Jail Warden (iii).Record of Cases heard by the Barangay Police Blotter

c) The record is required by a superior.

Example: The record of the whereabouts of employees

C. The officer must have sufficient knowledge of the facts recorded by him acquired personally or through official information (Personal or official knowledge)

1. Official knowledge: the facts were supplied by subordinates who have personal knowledge of the facts and whose duty involves ascertainment of such facts.
2. Examples: (i). Tax Declarations signed by the Assessor (ii) Building Permit by the City Engineer (iii) Birth/Death Certificate issued by the Local Civil Registrar

V. Probative Value: The entries are merely prima facie evidence of the facts stated and may be rebutted or nullified but if the entry is of a fact, but not to those made in excess of official duty, or those not required to be recorded.

SEC. 45. Commercial List and the Like

Sec. 45. refers to 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 as stated if that compilation is published for use by persons engaged in that occupation and is generally used and relied upon by them therein.

Concept: This refers to journals, list, magazines, and other publications and similar written or published works carefully researched and investigated and especially prepared for use in certain trades, industry or profession, or even by the public, which rely on them.

The authors or publishers are private persons or entities

Reason for admissibility

1. Necessity in that the authors, compilers, or publishers may not be available to testify such as when they are foreigners, or already dead.
2. Trustworthiness in that these works were the product of research as to assure their correctness or accuracy.

Examples:

1. Legal Profession: the SCRA though published by a private entity for profit i.e the Central Lawbook Publishing Co.
2. Banks and financial institutions rely on the FOREX
3. Insurance Companies rely on the Actuarial and Mortality Tables [probable lifespan of people; Philippines-80]
4. The public on Business Phone Directories
5. Result of Stock Transactions/Exchanges
6. Census Reports [provided it is not ordered by the government]
7. Price Index of minerals, metals
8. But not tourist guide brochures
9. Calendars

Learned Treatises under section 46.

I. CONCEPT: These are published treatises, books, journals on a subject of history, sciences, law and arts, which were carefully researched or subjected to scrutiny and investigation. The authors are scholars or experts on the subject or it is a group of researchers.

II. REASON FOR ADMISIBILITY:

1. Necessity: the inaccessibility or, or inconvenience to, the authors or researchers.
2. Trustworthiness in that the authors have no motive to misrepresent and awareness that the work will be subjected to inspection, scrutiny and refutation, and criticism; the works were carefully researched before being published and were purposely geared towards the truth

III. Examples:

1. Textbooks in history such as Gibbons The Rise and Fall of the Roman Empire, books on Philippine History by Agoncillo and Constantino
2. Text and reference books/materials in medicine and its branches
3. Books, periodicals and writings in the exact sciences such as algebra, mathematics, the logarithmic tables, table on weight and measurements
4. Law books quoted as references by the Supreme Court such as Evidence by Francisco (but not anymore Legal Medicine by Solis as it is obsolete)
5. Commentaries on law subjects by recognized legal luminaries such as those by Wigmore, Clark and Jones on Evidence; Manresa, Sanchez Roman and Scaevola on Civil Law
6. Reference Books and Books on Knowledge such as dictionaries and thesaurus, encyclopedias, yearbooks
7. But not Publications on theology and religion, literature such as novels and other works of fiction even if the background or setting is a historical fact; philosophy.

IV. How introduced as evidence:

1. The court takes judicial knowledge of such publications as learned treatises
2. An expert witness testifies that the writer or author is a recognized authority in the subject

Testimony or Deposition in a former Proceeding under section 47

I. Concept: A witness is sought to be presented in a present case but he is dead, unable to testify such that in lieu of his personal testimony, what is presented is his testimony in a prior proceeding.

Considerations:

- Present case- must be civil or criminal
- Prior case- civil, criminal, or administrative.

II. Requirements

A. ***The witness is dead or unable to testify***. The witness may be suffering from illness or from a mental disqualification such as having become insane or loss of memory due to age. His whereabouts is unknown despite diligent efforts to locate him or he was prevented by a party from appearing as witness, either by force or by deceit or by persuasion. It does not cover a situation where the witness refuses to come to court.

B. ***Identity of the parties***. This may refer to identical parties or the parties are their successor in interest or representatives.

C. ***Identity of issues.*** The issue or matter, in which the testimony of the witness is sought is common to both cases, even if there are other issues involved or that the form of action is different. [The issue in the present t case must be the one testified by the witness in the prior case.]

Examples of cases where there is a common issue: (i) ejectment and recovery of right of ownership as both would involve the question of who has physical possession (ii) an action for damages based on an act or omission which was the subject of a prior criminal case such as killing, slander or libel or estafa.

D. Opportunity for cross examination by the opponent in the first proceeding. Tthe opportunity to cross examine refers to the prior case and not to the present case.]

1. If the opponent, through his act or negligence, did not cross examine, or lost the right, the rule still applies.

Example: the defendant was declared in default and plaintiff then presented evidence ex parte.

2. Thus if the proceedings in the prior administrative cases was summary and not adversarial/confrontational but was decided based on affidavits and position papers, the rule does not apply.

III. How to present: Present the Transcript of Testimony which the parties may stipulate on.

What if the witness was prevented from testifying?

- The party who prevented the witness from testifying in the prior case will not be allowed to use the testimony of the witness in the present case.

OPINION EVIDENCE

Sec. 48. General Rule. The opinion of a witness is not admissible except as indicated in the rules.

I. Concept of an opinion as evidence. This consists of the conclusion or inference of a witness on the existence or non-existence of a fact in issue. The opinion maybe based on facts personally known to him or as relayed to him by others.

II. Evidentiary Value. Generally opinions are not admissible because:

A. The making of an opinion is the [proper function of the court. The witness supply the facts and for the court to form an opinion based on these facts.

B. Opinions are not reliable because they are often influenced by his own personal bias, ignorance, disregard of truth, socio-cultural background, or religion, and similar personal factors. Thus there maybe as many diverse opinions as there are witnesses.

C. The admission of opinions as evidence would open the floodgate to the presentation of witnesses testifying on their opinion and not on facts.

III. Examples of matters on which opinions are irrelevant

1. The final outcome of a case such as whether an accused should be acquitted or not, or who should win a case, the amount of damages to be awarded to the winner

2. The question of care or negligence

3. Motives or reasons behind the action of a person, unless these were relayed to the witness

4. Valuation of properties

5. Cause of an event as being due to an accident, mechanical defect or human error or action of nature

IV. Exceptions or when an opinion is admissible as evidence

1. In case of expert opinions given by an expert pursuant to Section 49

2. In case of lay opinions on certain specific matters pursuant to section 50.

EXPERT OPINION

Sec. 49. Opinion of an expert- The opinion of a witness on a matter requiring special knowledge, skill, experience or training, which he is shown to possess, maybe received in evidence.

I. Who is an expert- A person possessing knowledge or skill not usually acquired or possessed by other persons, in regard to a particular subject or aspect of human activity. Expertise is acquired through any of the following manners:

1. By formal education such as in the case of lawyers, physicians, engineers, dentists, metallurgists, chemists

2. Through special training or seminars as in the case of ballisticians, weapons experts, finger print experts, questioned-documents expert, masseurs, pilots

3. Through experience based on the exercise of a profession, trade, occupation, industry such as carpenters, wielders, machinists or mechanics, deep-well diggers

4. Through hobbies as in the case of stamp collectors, coin collectors, gun collectors,

ornithologists, photographers, animal breeders,

5. Through careful study and research as in the case of those who study old civilizations, or various aspects of medicine

II. Requirements for the Admissibility of Expert Opinion.

A. The subject of inquiry requires the opinion of an expert, or that the fact in issue requires the opinion of an expert.

1. The use of an expert is becoming more frequent in order to explain how and why things happened the way they did or didn't happen the way they were supposed to, as in the following cases:
   - **a)** In personal injury cases where physicians or surgeons are needed to prove the cause and effect of certain injuries, so also economist as to the amount of income which was lost.
   - **b)** Products liability cases where there is need for reconstruction experts to prove the defects in a certain products. Such as a car accident being due to factory defects in the wheel, or a mechanical defect attributable to the manufacturer.
   - **c)** Actions relating to constructions where there is need for engineers and architects as injury to a bridge which collapsed, or breach of contract in that the building was constructed poorly

2. Traditional areas where expert opinion is used:
   i. Questions involving handwriting
   ii. Questioned documents
   iii. Fingerprints
   iv. Ballistics
   v. Criminal cases involving injuries and death
   vi. Drug cases
   vii. Value of properties
   viii. Blood groupings
   ix. DNA Profiling
   x. Forensics

B. The witness is shown to be an expert. It must be shown that the witness possesses certain skills or knowledge and is therefore in a position to assist the court based on these skills or knowledge.

III. Manner of showing the witness is an expert

1. By asking the adverse party to admit and stipulate that the witness is an expert. This is where the witness regularly appears in court as an expert and is familiar to the court, or where the witness occupies a position requiring certain knowledge or skill, as a medico legal officer.
2. Through the process known as "Qualifying the Expert"- propounding questions to the witness concerning his background and eliciting answers from the witness showing he possesses special knowledge or skill on the matter on which he is to testify.
3. If the expertise is not admitted and the witness is not properly qualified, he is to be regarded as an ordinary witness and may be objected in giving an opinion

IV. Components of Qualifying the Witness

1. Show the general professional background. Questions propounded are directed to bring about the facts concerning his (a) education (b) degrees obtained (c) academic honors or scholarships granted or earned (d) licenses obtained (e) employment history, positions held, number of years in his position , promotions earned.

2. Show the specific professional background. Questions asked are directed to bring out answers to the specific facts or skills such as (a) special trainings undergone (b) publications authored (c) membership in professional associations (d) as lecturer or speaker or resource person (e) how often he was called as a witness and (f) particular work experience which bear directly on the situation about which he is testifying

V. Basis of Opinion or How to elicit the Expert's opinion

A. Kind of Facts as Basis for the Opinion:

1. Facts personally known to the expert or about which he has firsthand knowledge.
2. Opinion maybe based on facts about which he has no personal knowledge or firsthand knowledge, but are based either (i) on the report or facts as found by another expert who had firsthand knowledge, provided the report is not hearsay or that the other expert had testified and subjected to the opportunity for cross-examination or (ii) on facts already testified to by witnesses and established by the records of the case. [not hearsy since it has been cross examined]

B. Manner of Questioning

1. Where the basis are facts personally known to the expert, these facts must first be elicited from the witness after he may be asked directly whether he has any opinion about them and to state what his opinion is.

   Example: The medico legal officer who conducted the autopsy will first be asked to state his findings as to the nature, number, location, description, depth, trajectory, etc, of the wounds of the victim after which he is asked to state his opinion as to the cause, weapon used, position of the victim and assailant, cause of the death, etc..

2. By the use of "Hypothetical Questions" when the opinion is based on facts not personally known to the witness.

[provided that all facts were given to him]

a) It is a question which, for purposes of the answer, assumes certain facts which have counter parts in the evidence, and asks the witness to give an opinion as to certain matters based on these facts. Since the witness has no personal knowledge of these facts, he is told these facts and then is asked to assume the facts to be true, and finally to give an opinion.

b) The question must incorporate or refer accurately to all the relevant facts- as proven- as basis for asking the opinion.

c) In case of physicians, the phraseology is usually thus: "Assuming all these facts to be true… within a reasonable degree of medical certainty, what might have caused the injuries…?

3. The expert may asked to state that his opinion is supported by learned treaties or shared by others in his class.

VI. Weight of Expert Opinion

- The weight of expert opinion depends on the matter which the expert witness is testifying on.

1. Courts are not bound as the opinions do not produce conclusive effect but are regarded as persuasive and advisory which the court may or may not consider.

2. Opinions are to be treated on the same level as any other evidence.

3. Factors to be considered in giving weight, or points to show the opinion is of no weight.

a) The qualification of witness: (i) The degree of learning and academic background (ii) The experience, professional standing and training, or his being abreast with the latest developments.

b) The reliability of the opinion: (i) The relative objectivity of the witness such as the presence or absence of personal or professional bias or motive and (ii) the degree of concordance of his opinion with the facts proven or the basis and logic of his conclusions.

Example: the complainant testified that he was hit by a rock.

Atty: Dr, in your findings what may cause the injury?
Dr: it may be caused by a blunt instrument.
Atty: Can it be caused by a rock?
Dr: yes sir.

The *witness' opinion is in concordance with the facts and it is objective. However, it is a different story if the witness insists that the injury was caused by a knife. Thus…*

Atty: The complainant himself testified that he was hit by a rock. Can the injury may be cause by a rock?

SUGGESTED CHECKLIST FOR QUALIFYING AN EXPERT

(Taken from: Fundamentals of Trial Techniques by Thomas Mauet, Professor of the University of Arizona)

1. Name, address and personal circumstances
2. Business or occupation: what is it-length of time-description of field company or organization joined- capacity and length of time –where located-prior position-description of positions
3. Education: (a) undergraduate-degree, year of graduation-honors obtained (b) graduate school-degree- when, area of study
4. Training: formal course-what-when-where-under whom-length of time
5. Licenses: what-when-reviewed-specialty- when-requirements
6. Professional associations:
7. Other background: teaching positions-publications-lectures-consultancy work
8. Expert witness at trials: how many- which side
9. Experiences in Specialty: (a) type of examination commonly done- how many

Example: Private Physician who treated a patient

A. Qualifications:
Licensed: where and when
Education and training: college/medical school-when-degree-internship-residency
Specialty training-specialty boards-requirements
Hospital staff membership
Teaching positions
Publications and lectures
Medical Society memberships
Other honors
Previously testified as an expert

B. Experience
Description of practice
Number of patients
Examination of similar types
Experience with x-rays, lab test, etc

C. Examination of Patient
1. Description of office records
2. History of the patient
3. Examination conducted
   a) complaint (symptoms)
   b) positive findings or negative finding
   c) x-ray findings
   d) lab test findings

D. Diagnosis: tentative and definite
E. Treatment (chronological) hospitalization-operation-drug-casts
F. Subsequent examinations
G. Patient's Present Condition based on last examination
H. Opinion on causation
I. Prognosis: opinion on prospects for complete recovery

J. Amount of present and future medical service

Was to destroy the testimony of an expert during cross examination

Illustration 1

Atty.: Mr. Witness, were you paid testifying in this case? [pag sumagot ng yes, lubus-lubusin mo na. pero pag no gumawa ka ng question para mapakita nan a nabayaran sya.]
Dr: Yes.

Atty: How much was your payment? [Syempre pag gustong magyabang yong doctor siguradong sasabihin un halagang binayad sa kanya…one point ka na dun ☺]
Dr. 50, 000 lang naman.

Atty: Dr. Isn't it that in a similar case where you testified on, you were paid 100, 000.00 because that is your minimum?
Dr.: Yes, sometimes it depends on the ability of the client.

Will the court believe the opinion of the expert witness? No! since his credibility is destroyed…nabayaran lang siya kaya siya pumunta doon upang tumistigo…chances are his testimony is bias.

Illustration 2

Atty: Dr. do you remember having a patient named X?
Dr. Yes, sir

Atty: Where is he now?
Dr. He is dead.

Atty: Dr. do you remember having a patient named W?
Dr. Yes sir.

Atty: where is she now?
Dr. She is dead.

Atty: Dr. Do you remember having as client named Z?
Dr. Yes sir. *[the doctor gets agitated ☺]*

Atty: She is dead right?

Purpose: by asking those series of question the lawyer want to convey to the court that the doctor is incompetent hence his opinion is not an opinion of an expert.

Illustration 3:

Atty: Dr. you had just testified a while ago that you are a famous lecturer?
Dr. Yes sir.

Atty: when you said that you are a famous lecturer, you mean that you lecturing around the world?
Dr. Yes sir.

Atty: So you spend your whole professional life lecturing?
Dr. Yes sir.

Atty: that's all for this witness your honor.

Purpose: for asking those series of questions, the lawyer is discrediting the witness as an expert since the expert knowledge is based only on theory. He never had time to apply the theories in his lecture since he is busy lecturing around the world.

Note: *When you sense that the expert witness is not credible, do not bring it out in court….pagkaginawa mo na un memorandum moss aka mo ilahad ang kawalang cridibilidad ng kanyang testemonya.*

LAY OPINION

General Rule: lay person cannot give their opinion as testimony in court.
Exceptions: their opinion is admitted when they are testifying on:

1. the identity of a person
2. handwriting]
3. mental sanity
4. Impressions of the emotion, behavior, conditions or appearance.

Sec. 50. Opinion of ordinary witnesses- The opinion of a witness for which proper basis is given, may be received in evidence regarding-

(a) The identity of a person about whom he has adequate knowledge

(b) A handwriting with which he has sufficient familiarity

(c) The mental sanity of a person with whom he is sufficiently acquainted.

The witness may also testify on his impressions of the emotion, behavior, conditions or appearance of a person.

I. Opinion on the identity of a person. Where the issue is whether a particular person is involved in an event. As for example: 1). the accused sets up alibi or defense of mistaken identity; 2). in claims for insurance, determining whether a body is that of the insured 3). determining who be the victims

A. General Method of Identification

1. *By Lay Opinion:* by face, physical appearance, height, body built, sex, color of hair, racial features, mannerisms, gait, clothing speech , defects, tattoos or marks or scars and other marks on the body, or by any factor which distinguishes him from another. .

a) Identification of a person is not solely through knowledge of his name. In fact, familiarity with physical features, particularly of the face, is the best way to identify a person. One maybe familiar with the face but not necessarily with the

name of a person. It does not follow therefore that to be able to identify a person, one must necessarily know his name. Example: precisely because of the unusual bestiality committed before their eyes, eyewitnesses, especially victims of a crime, can remember with high degree of reliability the identity of criminals.

b) The witness must however be able to explain his basis of identification

2. *By the style of writing*

3. *Psychological Profile*

4. *Identification by scientific methods:* by the teeth; fingerprints, foot prints and by DNA analysis

B. *In-court and Out-of-Court Identification in criminal cases.* In-court identification maybe influenced by the reliability of the out-of-court-identification. The latter consists of either:

1. By the police Methods of Identification of suspects

a) Show-ups-where the suspect alone is brought face to face with the witness for identification

b) Mug file shots or based on the "Rouge's Gallery" [provided the police did not influence the victim to point someone]

c) Line-ups where a witness identifies the suspect form a group of persons lined up for the purpose [for purposes of dissimilarity and contrast]

Illustration: Influence by the police

- When the complainant said, he was robbed at Harrison road, the police will give the mug files of the robbers having territorial jurisdiction over Harrison road [in Baguio thieves have their own territorial jurisdictions-that's we call honor among thieves☺].
- The police should have just brought out all the mug files and let the victim go over it.

Note: Out-of-court identification affects the reliability of in-court identification. Of course, pag sa labas hindi pa sigurado ang victim kung si Pedro talaga ang salaranin, tapos sa hukuman man, kombisidong tinuro na si Pedro ang salarin…you should suspect that there is something fishing that went on☺.

Tip on identification by mug files:

- See if the pictures were updated- baka kasi luma na ung picture na nakalagay doon, and it may create a doubt as to the identity of your client.

2. By circumstances: Totality of Circumstances Test. Several factors are to be considered, to wit:

a) Witness' opportunity to view the criminal at the time of the crime. These include matters such as presence of light, distance of viewing, length of time of the event; presence of obstructions to line of visions, the position of the witness in relation to the suspect.

b) The witness' degree of attention at that time: to what or who was he focused on, as well as the presence of distractions.

c) The accuracy and consistency of any prior descriptions by the witness.

d) The level of certainty demonstrated by the witness at the time of the identification. Example: the reaction of a victim upon seeing the suspect.

e) The length of time between the time of the occurrence and the time of the identification

f) The suggestiveness of the identification process.

C. Concept and Types of Positive Identification

1. Positive identification pertains essentially to proof of identity and not per se to that of being an eyewitness to the very act of commission of the crime.

2. First Type: As direct evidence: where a witness, as an eyewitness, may identify a suspect or accused to the very act of the commission of the crime.

3. Second Type: As part of circumstantial evidence: where a witness may not have actually witnessed the very act of the commission of the crime but is still able to positively identify a suspect or accused as the perpetrator of a crime as when, for instance, the suspect/accused is the person last seen with the victim before or right after the commission of the crime (Baleros vs. People, 483 SCRA 10, Feb. 22, 2006)

Trial technique on positive identification:

- It cannot be denied that there are some cases that are scheduled for hearing after so many years. Chances are the witnesses cannot

any more vividly remember the faces of the accused. So anong gagawin?

1. Kausapin mo muna un witness mo ago magsimula ang trial. Instruct him na ganito ang gagawin ninyo: Obserbahan ka niya kasi lalapitan mo un abogado ng kabilang panig para tanungin kung meron un kliyente niya. Kakausapin mo ung accused…bahala ka na sa sasabihin mo basta ang importante alam na ng witness na un ang accused na itituro niya mamaya pag tumistigo siya.
2. Or before the trial begin ask the judge if the accused is present…syempre the judge will ask the if the accused is present in court…chances are the accuse will immediately raise his hand…by that way your witness already knows whom to point as the accused during his testimony.

II. Opinion on Handwriting. A handwriting maybe proved to be that of a particular person by any of the following:

1. By the opinion of an expert

- "The opinions of handwriting experts, although helpful in the examination of forged documents because of technical procedure involved in the analysis, are not binding upon the courts. As such, resorts to these experts is not mandatory or indispensable to thee examination or the comparison of handwriting. A finding of forgery does not depend entirely on the testimonies of handwriting experts, because the judge must conduct an independent examination of the questioned signature in order to arrive at a reasonable conclusion as to its authenticity (G& M Phil. Inc. vs. Cuambot 507 SCRA 552)

2. By the admission of the author/owner of the handwriting.

3. By the testimony of witnesses or those who actually saw the person write, they maybe subscribing witnesses or eye witnesses.

4. By the testimony of those who have gained sufficiently familiarity with the handwriting of the person, under section 50.

a) By the fact that he has seen writing purporting to be that of the other person upon which he has acted or been charged. Example: persons in receipt of demand letters, notices, purchase orders, letters of inquiry, directive, memorandum, letters of authority.

b) Familiarity has been acquired due to close personal, business, social or professional relations which include the regular receipt, sending and reading of mutual written hand-written communications between the witness and the other person. Examples are (i) Personal or social relations such as pen-pals, spouses, lovers, classmates (ii) Business such as between the employee such as secretary and employer, teacher and student

5. By the testimony of those who are in receipt of reply letters (Identification by subject matter)

6. Identification by the court based on a comparison between the genuine handwriting and the one in issue

7. Identification by the style of writing

Note: Familiarity with signature is not necessarily familiarity with handwriting and vice-versa. (The application of section 50 may be lessened due to increasing frequency of communications by e-mail, or machine prepared communications, and other modern gadgets.)

An allegation of forgery and a perfunctory comparison of the signature/handwritings by themselves cannot support a claim of forgery, as forgery cannot be presumed and must be proved by clear, positive and convincing evidence and the burden of proof lies on the party alleging forgery.

Criteria to determine forgery or falsification: per Ladignon vs. CA (390 Phil. 1161 as reiterate din Rivera vs. Turiano (March 7, 2007)

The process of identification must include not only the material differences between or among the signatures/handwritings but a showing of the following:

i. The determination of the extent, kind and significance of the resemblance and variation (of the handwriting or signature).
ii. That the variation is due to the operation of a different personality and not merely an expected and inevitable variation found in the genuine writing of the same writer.
iii. that the resemblance is a result more or less of a skillful imitation and not merely a habitual and characteristic resemblance which normally appears in genuine handwriting

III. Opinion on the sanity of a person.

There are two instances when an ordinary person may testify on the mental sanity or state of mind of a person:

1. Under the Civil Code it permits the opinion of a subscribing witness to a writing the validity of which is in dispute in that the sanity or state of

mind of a party thereto is put in issue. Examples: (a). An attesting witness to a will may give his opinion on whether the testator was of sound and disposing mind (b) A subscribing witness to a contract may give his opinion that the party was fully conscious and aware of the nature of his acts

2. Under section 50 of Rule 130 in that it allows the opinion of an intimate acquaintance who may give his opinion based on the external conduct of a person. Examples are family members, immediate neighbors, house hold helps, office and business acquaintances. Thus where the accused puts up insanity as a defense, his friends, relatives and family members are competent to testify on his mental sanity. But not strangers or casual acquaintances.

IV. Opinions on the emotions, behavior, conduct or appearance of a person.

1. Examples: (a) emotions: that a person is angry, agitated, exited, tense, nervous, hesitant. Happy, elated, grateful, afraid (b) condition or appearance- as unkempt, dirty, well groomed, drunk, tired, sleepy, haggard, sickly.
2. But a witness may not give his opinion on the motive, reason or purpose why a person did or did not do an act unless these were communicated to the witness, such as jealousy or revenge, or financial reward.

V. Instantaneous impressions of the mind.

- These include opinions on the conditions or state of things, or of persons or things in motion such as on the weather, speed of vehicles, distance, value of his personal things or property, or value of services.

VI. Opinion on the age of a person.

- As a general rule, the age of person maybe established by: (a) the record of birth (b) Opinion of an expert (c) Opinion of an ordinary witness who is acquainted with the person whose age is in question, such as a relative, a contemporary, persons in the know in the community where he lives, as well as (d) Family tradition, entries in family records

CHARACTER EVIDENCE

I. INTRODUCTION. Section 51 provides the general rule that character evidence is generally not admissible as evidence except in the cases specified therein.

II. Concept of Character As Evidence

1. Character is the sum total of all the traits of a person which distinguishes the person from others. They include the physical, mental, emotional and psychological attributes of a person. These maybe genetically acquired, or inherited or in-born, such as a person's sex, height, physical appearance. Or they may be acquired and developed such as personality and behavioral characteristics due to virtues or vices, such as being bad, immoral, honest, lazy, anti-social or friendly.

Character is what a person truly is.

2. Reputation on the other hand is the estimation of a person by other people, or what people think a person is. Character is not always one's reputation as people may pretend and present a public face or image different from what they are in private. One may have a good reputation but a bad character and vice-versa.

3. What a person thinks of himself is either his illusion or delusion

III. Proof of Character

1. By personal opinions- this is not allowed
2. By specific conduct- this is also not allowed
3. The only method allowed is proof of reputation in the community or place where a person is known by persons acquainted with him. Although it may happen that the reputation is not always the character.

IV. Coverage of the Rule. Where the rule allows the introduction of character evidence, it is understood to be limited to MORAL CHARACTER, the possession by a person of the qualities of mind and morals distinguishing him from others. This is limited to:

1. Good Moral Character which includes all the elements necessary to make up such a character as honesty, veracity in all professional, business, commercial intercourse or dealings of a person; the virtue of chastity, or those character which measures up as good among people, or that which makes a person look upon as being up to the standards of good behavior and upright conduct.

2. Bad Moral Character or those which defines a person's tendency to be of loose morals, evil, to be violent, dishonest, to disregard law and authority and the welfare of the community.

V. Reason for the General Rule on Inadmissibility

- Character is highly irrelevant in determining a controversy. If the issues were allowed to be influenced by evidence of the character or reputation of a party, the trial would have the aspect of a popularity contest rather than a factual inquiry into the merits of the case. After all the business of the court is to try the case and not to try the man for a very bad man may have a very good case, in much the same manner that a very good man may have a very bad case.

VI. Rule in Criminal Cases

1. Moral Character of the Accused.

a) The accused enjoys the presumption of good moral character but he is given the privilege of proving a particular moral character if it is "pertinent to the moral trait involved in the

offense" i.e. the character evidence must be relevant and germane to the kind of act or omission charged.

i. In estafa or embezzlement or malversation the moral trait is that of dishonesty and deceit. Hence the accused may introduce evidence of his honesty, fairness and openness in his personal and business deals or transactions.

ii. In physical assault cases the moral trait is violence hence the accused may introduce evidence of his peaceable nature, his being friendly or of his passivity.

iii. In rape, he may prove his chaste character

b) The moral character must be one in existence at the time of the commission of the crime

c) **Evidentiary value.** Evidence of good moral character is not a basis for acquittal.

i. It serves only as a positive defense because it affords a presumption against the commission of a crime in that, it is improbable that a person who has uniformly pursued an honest and upright course of conduct will depart from it.

ii. It is to be regarded only as circumstantial evidence of innocence as its role is to provide a basis for the court to doubt his guilt.

d) Where the crime is one of great or atrocious nature or criminality, or the so called heinous crimes, evidence of good moral character is of little weight, as for instance in multiple murder.

e) The Prosecution may not immediately introduce evidence of the bad moral character because: (i) it is to avoid undue prejudice on the part of the judge due to the deep tendency to punish not because the accused is guilty but because of his bad character and (ii) to avoid confusing the issues

f) WHEN MAY THE PROSECUTION INTRODUCE EVIDENCE OF THE BAD MORAL CHARACTER OF THE ACCUSED?

(Ans). 1. Pursuant to section 51, only in rebuttal provided the accused introduced evidence of his own good moral character during the presentation of his evidence-in-chief. This is to prevent the accused from having a free hand and fabricating evidenced of his good moral character without fear of contradiction.

2. Pursuant to the Rule on Cross-Examination, if the accused testifies in his own behalf, the prosecution may prove his bad character as a witness i.e. his veracity for truth is bad. [*Destroy the credibility of the accused as a witness*]

2. The Moral Character of the Victim may be proved "if it tends to establish in any reasonable degree the probability or improbability of the offense charged".

a) The Prosecution may immediately introduce evidence of the good moral character of the victim if:

i. If it is an element of the offense charged, such as good reputation in case of seduction, or in libel and oral defamation.

ii. It proves the probability of the offense charged as in sex crimes such that the victim could not have given consent due to her good moral character

b) The accused may prove the bad moral character of the victim in the following cases.

i. In assault or homicide cases where he sets **self-defense**, or in cases of the **Battered Wife Syndrome** defense, the accused may prove the victim is of a violent character, quarrelsome, trouble seeker or pugnacious. [*Thus, when you put up alibi or mistaken identity, you cannot introduce the bad moral character of the victim as a defense*]. [*Why? Because of the element of self-defense to resist an actual or imminent unlawful aggression---how to prove imminent aggression? Prove the victim's bad moral character*].

This is to prove it was the victim who was the aggressor. Likewise to show the state of mind of the accused in that bad character of the victim produced a reasonable belief of imminent danger on the mind of the accused and a justifiable conviction that a prompt action was necessary.

Battered wife syndrome- because of past abuses the woman feels that her life is in imminent danger. Thus, even if her husband is urinating, she can stabbed him and claim battered woman's syndrome as a defense and introduce the bad moral character of her husband. ☺☺☺

ii. In sex crimes involving unchaste acts of the accused, where the willingness of the woman is material, her character as to her chastity is admissible to show whether or not she consented to the man's acts.

iii. In murder and in other heinous crimes, evidence of the bad moral character of the victim is irrelevant [why? This is a crime *mala in se*, it is inherently wrong since you deprive someone's life in committing a heinous crime].

VII. Rule in Civil Cases

1. Evidence of the character of the parties is not admissible unless the issue involved is character i.e. character is of particular importance in the case, or that the good or bad moral character of a party will affect the outcome of the case.
2. Examples of the exception
   - **a)** Action for damages for injury to plaintiff's reputation as in libel cases
   - **b)** Actions which impute moral turpitude such as the employment of deceit, misrepresentation or fraud
   - **c)** Actions for damages due to seduction
   - **d)** Legal separation or annulment of marriage based on reasons grounded on the character of the spouses, such as psychological incapacity
   - **e)** Action for damages for breach of promise to marry where the bad character of plaintiff maybe used as a defense.
   - **f)** As a defense in actions for Alienation of Affection.
   - **g)** In actions involving custody of children.
   - **h)** Opposition to the appointment of a guardian, or administrator of the property of another

VIII. Rule as to Witnesses

1. The witness enjoys the presumption of good moral character hence it is not necessary to introduce evidence thereof.

2. However, evidence thereof is necessary in order to rehabilitate the character of the witness if the same had been impugned by the adverse party.

Ilalabas mo lang ang magagandang katangian ng testigo mo kung nasira ang diskarte niya. Kasi tingin ng korte pogi siya pagnagtiestify siya, saka mo lang sya papogihin pag nasira kagapwuhan niya. Why? Hindi mo pwedeng pagwapuhin ang sa tingin ng hukuman ay gwapu na!

Illustration:

Cross examination:

Q: Mr. witness, this record shows that last month you were charge of falsification?
Witness: Yes sir. [Naku nadali, pumangit ang imahe ng witness, he's credibility was destroyed]

REMEDY: Redirect examination:

Q: Mr. witness, last month there is man named Santi who returned to the owner a lost and found bag containing big amount of money, how are you related to that person?
Santi: I am that person sir.

Q: Mr. witness, two weeks ago there is a man named Santi who helped the police in apprehending a robber, how are you related to that person?
Santi: I am that person sir.

3. The bad moral character as witness, his tendency to lie or improper motives may be shown by the adverse party. [Honesty and integrity]

IX. Rule as to Third Parties

1. Generally evidence thereof is inadmissible being irrelevant as they are neither parties nor witnesses.

2. However if relevant in that they may affect the issues of the case, then evidence thereof maybe admitted. Thus in an action for legal separation based on adultery by the wife with a man, evidence that the man is a person of good moral character may be introduced as proof that the man could not have entered into the adulterous relationship

Rule 131. BURDEN OF PROOF AND PRESUMPTIONS

Section 1. Burden of Proof… the duty of a party to present evidence on the facts in issue necessary to establish his claim by the amount of evidence required by law. This is also known as the Onus Probandi

I. Introduction.

- ***Relationship between allegation and proof.*** He who alleges must prove. Allegations do not prove themselves. Although plaintiff's causes of actions are couched in the strongest terms and most persuasive language, the allegations are of no consequence unless they are substantiated. Similarly, in criminal cases, the offense and the aggravating circumstances charged in an information remain just accusations until they are shown to be true by the presentation of evidence. Defendant is not relieved from liability simply because the raises a defenses.

II. Distinguished from related concepts:

1. ***Burden of Proof Proper or Burden of Persuasion*** or ***Risk of Non Persuasion***- the duty of the party alleging the case to prove it.
   - **a)** This lies with the plaintiff.
   - **b)** This lies too with the defendant as to his defenses and counter-claim

2. ***Burden of Evidence*** or ***Burden of Going Forward***- The duty or logical necessity imposed upon a party, at any time during the trial, to establish a prima facie case in his favor or to overcome a prima facie case against him.
   - "… when the prosecution has succeeded in discharging the burden of proof by presenting evidence sufficient to convince the court of the truth of the allegations in the information, or has

established a prima facie case against the accused, the burden of evidence shifts to the accused making it incumbent upon him to adduce evidence in order to meet and nullify, if not overthrow, that prima facie evidence". [PP vs. Villanueva, 506 SCRA 280]

3. **Points of distinction:**
   - **a)** The former never shifts but remains constant with the party while the latter shifts from one party to the other as the trial progresses.
   - **b)** In civil cases where it lies is determined by the pleadings while the latter is determined by the rules of logic [Are the evidences sufficient to build a case against you?].

If a party has the burden of proof, then he has the burden of evidence.

III. Who has the Burden of Proof Proper

1. The **general rule** is- he who would lose the case if no evidence is presented. Hence it is the plaintiff as to his causes of action, and the defendant as to his counterclaim.

2. In **criminal cases**, the burden of proving guilt is always the plaintiff/prosecution. But if the accused sets up an affirmative defense, the burden is on him to prove such by "clear, affirmative and strong evidence"

The foregoing rests on the maxim: EL INCOMBIT PROBOTION QUI DECIT NON QUI NEGAT [He who asserts, not he who denies, must prove].

IV. The Equipoise Rule: where the evidence of the parties is evenly balanced, the case will be resolved against the plaintiff, thus in criminal cases the accused must be acquitted and in civil cases, the complaint must be dismissed. [***Why?*** Because of the constitutional presumption of innocence].

V. What to prove in criminal cases:

A. By the Prosecution:

1. Each and every element of the crime charged in the Information.
2. Where there be two or more accused, the prosecution must prove the conspiracy and the participation of each of the several accused in the commission of the crime.
3. All aggravating circumstances, whether ordinary, special or qualifying, as are alleged in the Information.
4. The civil liability based on the crime.

B. By the Accused

1. *Non-Liability*
   - **a)** His Affirmative Defenses [Exempting, Justifying and absolutory causes] by clear, positive and convincing evidence
   - **b)** His negative defenses such as denial alibi, or mistake in identity

2. *Lesser liability:* the offenses are a lesser offense or lesser stage of commission, or that his participation is of lesser degree.

3. *Mitigating circumstances*

VI. Rule as to Negative Allegations

A. ***General Rule:*** Negative allegations need not be proved [Allegations of non-doing, non-delivery].

B. Exceptions:

1. *In civil cases*- if it constitutes part of the statement of the cause of action of the plaintiff.
   - **a)** Actions based on non-payment or non-delivery of money or good
   - **b)** Actions based on non-compliance with a legal obligation, such as giving of support, or of a contractual obligation or with the terms or conditions of a contract
   - **c)** Allegations of lack of due care on the part of the defendant

2. *Criminal Cases:*
   - **a)** If the negative allegation is an **essential element** of the offense charged or when the charge is **predicated on a negative allegation**. [*The accuse committed a crime and the crime involves non-performance of an act required by law*].
     - **i.** Lack of permit or license in offenses involving firearms
     - **ii.** Lack of permit or authority to recruit
     - **iii.** Absence of a Building Permit
     - **iv.** Absence of consent of the victim in sex crimes, theft or robbery; Arbitrary Detention requiring proof of absence of formal charges filed within the required period.
     - **v.** Lack of care or failure to obey traffic rules, or to take necessary precautions, in case of reckless imprudence
   - **b)** (i) If the negative allegation of an issue does not permit of direct proof or (ii) the facts are more immediately within the knowledge of the accused in which case the onus probandi rest upon the accused (PP. vs. Macalaban, 395 SCRA 461) . [*Things exclusively within the knowledge of your opponent need not be proved*].

Example: Rule as to Drug Cases. Unlike in offenses involving firearms, the prosecution has no burden to prove the lack of authority from the Dangerous

Drugs Board or government agency for the accused to sell, transport or possess dangerous drugs. It is the accused who must prove he is exempted from obtaining a license or permit. The reason is because this is a matter which is purely within his knowledge (PP. vs. Johnson, 348 SCRA 526).

Rationale: maybe one is in possession of dangerous drugs because it was required by his physician…but the prosecution has no knowledge of it, since the very reason is within the exclusive knowledge of the possessor. Thus, it is incumbent upon him to prove that he is exempted from the rule on dangerous drugs.

C. When the Burden of Proof is Dispensed With

1. In case of facts which were judicially admitted
2. As to facts Judicially noticed.
3. As to facts conclusively presumed.
4. As to facts which are irrelevant.
5. As to facts which exclusively within knowledge of the adverse party.
6. As to negative allegations

PRESUMPTIONS

I. Introduction: The facts in issue are either (i) proved by the presentation of testimonial, documentary or object evidence or they are (ii) presumed.

II. Concept: An **assumption** or **conclusion** as to the existence of a fact based on another fact or group of facts which were already established. These are based on human experience or common sense, or laws of nature.

III. Classification:

A. ***Praesumptio Legis:*** these are presumptions which the law directs to be made by the court

1. Juris tantum- or prima facie, rebuttable or disputable presumption or those which may be overcome or disproved.
2. Juris et de Jure: conclusive or those which the law does not allow to be contradicted.
3. Statutory and Constitutional.

B. ***Praesumptio Hominis*** [Fact] these are presumptions which may be made by anyone as a result of the mental processes of inductive or deductive reasoning from a fact.

Inductive reasoning:
Santi eats Banana.
All monkeys eat banana
Therefor Santi is a monkey.

Deductive Reasoning:
All monkey eats banana
Santi eats banana
Therefore Santi is a mankey. ☺☺☺

IV. Evidentiary Value:

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. [*Since it is impossible to prove everything with direct evidence*].

   Thus there is no need to present the Bank Representative in case of Violation of B.P. 22.

4. In case of **Conflicting Presumptions** or whenever several presumptions arise from the same set of facts, the rule is:
   a. That which has the **weightier reason prevails** otherwise all will be considered as equal and therefore all will be disregarded and
   b. Constitutional prevails over statutory presumptions.

5. 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)

V. Components of a Presumption

1. The Ultimate Fact or the Presumed Fact.
2. The basic fact or factual basis because a presumption cannot arise or be based on another presumption. This may either be:
   a) A ***fact within Judicial Knowledge*** in which case the presumption becomes operative at the moment the case is filed or at any time thereafter. The basic fact need not be proven.

      For example: The presumption of innocence becomes operative the moment an Information is filed in Court. So also the presumption of sanity of parties and witnesses or the presumption of good moral character of every party arises whenever a case is filed in court and at the time the witnesses testify.

b) The ***basic fact which must be proven***.

For example: The presumption of a child being that of the husband arises only after it is proven: that the parents were validly married and the child was born thereafter. The presumption that a public officer was regularly appointed or elected after it is first shown he was acting as a public officer. Likewise the presumption of survivorship.

Note: There must be a rational connection between the Ultimate Fact and the Basic Fact

Sec. 2 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.**

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.**

I. **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.

II. **Estoppel in Pais:** The essence is intentional misrepresentation. [You led somebody to believe something which is not true]
   A. Requirements:
      1. 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.
      2. 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

   B. Illustrations
      1. A man who represents himself to be the true owner in a sale will not be permitted later to deny the sale after he acquire title thereto.
      2. Estoppel to deny validity of sale as when the wife, in collusion with the husband, concealed her true status induce her parents to believe she is single and to a property which in truth is conjugal. The husband cannot deny the validity of the deed.
      3. The heirs who represented the minors in a suit for partition cannot impugn the validity of the judgment for lack of proper authorization.
      4. Jurisdiction by estoppel [refer to civil procedure].
      5. Agency/Partnership by estoppel.
      6. But estoppel does not apply to the government for acts of the public officials

   C. Estoppel against a Tenant- presupposes a contract of lease since this rule is English in origin.
      1. The relationship is that between parties to an original contract of lease (not sublease) involving a real property. The tenant refers to the lessee. What is deemed conclusive as to the tenant is the ownership of the lessor over property.
      2. The lessee cannot use his physical possession over the property as basis to dispossess the lessor of the latter's ownership. The law seeks to protect owners of real property from being deprived of their ownership by those in actual physical possession who are their own lessees.
      3. However the downside of the law is that it does not jibe with the proposition that the land should be owned by those who actually till and utilize the land over those whose sole connection to the land is merely a piece of document.
      4. However, the lessee may assert ownership if after the lease, he acquires the property is in his own right, such as when he buys it in an execution sale

Sec.3. Enumerates the disputable presumptions which are applicable in civil, criminal, political, commercial and remedial laws.

- Use it to strengthen you defense in your memorandum.
- *Falsus in unom, falsus in omnibus* [though not applicable in the Philippines].
- Evidence if presented will be adverse.

> **Witness:** nakita ni Pedro hindi ako ang pumatay!…the trial end but the accused did not present Pedro. His act creates a presumption that if he presents Pedro it will be adverse to him.

RULE 132. PRESENTATION OF EVIDENCE

I. **INTRODUCTION.**
   1. Rule 132 governs the manner by which Testimonial and Documentary evidences are to be presented in Court.

   2. Principles in the presentation of evidence by the parties:

a) A case is won or lost depending upon how effective was the presentation of evidence, particularly as to what evidence were presented and how they were presented.

b) Parties should be allowed a certain latitude in the presentation of their evidence otherwise they might be so hampered that the ends of justice may eventually be defeated or appear to be defeated. The court should not limit the evidence to be presented.

c) The parties should be allowed to maintain their own way or style of presenting evidence when these can be done without injury to the speedy disposition of the case and to the best interest of the administration of justice.

d) The court should liberally receive all evidence offered in the trial to be able to render its decision with all the possibly relevant proof in the record and to assure the appellate court to have a good judgment and to obviate remanding the case for re-trial or reception of evidence

Note:

- The court cannot dictate how you present evidence, but can stop you from presenting other evidence, such corroborating evidence.

Section 1. Provides the manner of presenting testimonial evidence to be as follows:

By presenting the witness personally in open court

a. The witness must appear in person so that the court and the opponent may observe him and hear his testimony.

b. His personal presence cannot be substituted by the submission of written statements or audio testimony.

c. There is also no secret testimony and it must always be in the presence of the adverse party, except when the presentation is allowed to be ex parte, or testimony through interrogatories or depositions in advance of trial before a hearing officer but upon prior approval of the court and with proper notice to the adverse party.

d. CHILD WITNESSES: the witness may testify inside a room but the child must be visible and can be heard through the medium of facilities appropriate for the purpose such as a mirror.

QUESTION: May the witness testify wearing masks to preserve his identity?

I. To be examined under oath or affirmation

- To answer questions as may be asked by the proponent, the opponent and by the court.
  - **i.** ***Oath:*** an outward pledge by the witness that his testimony is made under an immediate sense of responsibility to a Supreme Being. An appeal is made to the almighty that he will tell the truth.
  - **ii.** ***Affirmation:*** a solemn and formal declaration that the witness will be truthful.
  - **iii.** ***The purpose of an oath or affirmation is:*** (i) to affect the conscience of the witness and compel him to speak the truth and (ii) to lay him open to punishment for perjury. But it is not essential that he knows what or how he will punished.
  - **iv.** If the opponent believes the witness is not aware of his obligation and responsibility to tell the truth and consequences of telling a lie, the party may ask for leave to conduct a VOIRE DIRE examination (PP. vs. Alma Bisda, July 17, 2003)
  - **v.** ***Effect of lack of oath:*** If the opponent fails to object then the testimony may be given weight as the party would be estopped or, the party may move to disallow the witness from testifying, or move to strike the testimony after he found the lack of oath. The proponent however may ask that the witness be placed under oath. . .

II. The form of testimony must be :

a) Oral answers to questions unless:
  - **1.** the question calls for a different form of answer such as by bodily movements or demonstrable actions,
  - **2.** or the witness is a deaf mute
  - **3.** In case of a child witness.

b) Not in a narrative (i) in order to prevent the witness from testifying and narrating facts which are irrelevant and thus he will testify straight to the point in issue, as well as (ii) to give the opponent an opportunity to raise an objection [*of course, some question that may be ask may against the rule on evidence*].

Sec. 2. The Proceedings must be recorded.

Courts of the Philippines are courts of record. Anything not recorded is deemed not to have transpired or taken-up and will not be considered in the resolution of the case. The matter to be recorded include:

a. Questions by the proponent, opponent and the court, which are propounded to the witness

b. The answers of the witness to the questions

c. Manifestations, arguments, and statements of counsel

d. Statements of the court to the counsel

e. Instructions or statements of the court to the court personnel

f. Demonstrable actions, movements, gestures or observations asked to be described and recorded

g. Observations during the conduct of ocular inspections

Matters not recorded:

- Off-the-records statements

- Statements which were ordered or requested to be stricken from the record such as those which are improper, irrelevant or objectionable. Example: hearsay direct testimony

Sec. 3. Rights and Obligations of Witnesses

- The obligation of a witness is to answer all questions which are asked of him. He cannot choose which questions to answer and to answering others.

- The witness however has the right to be protected against tactics from the opponent which are intended to "brow beat, badger, insult, intimidate, or harass him".

- He has the right not to be detained longer that is necessary.

- He may refuse to answer the following questions:
  - **a)** Those which are not pertinent to the issue.
  - **b)** Those which are self-incriminatory except in the following cases:
    - **i.** Where the accused is testifying as a witness in his own behalf, as to questions relating only to the offense upon which he is testifying.
    - **ii.** Where the witness was granted immunity from prosecution as when he is under the Witness Protection Program or was discharged to be used as a state witness, or he is a government witness in Anti-Graft Cases.
  - **c)** Those which are self-degrading, unless it is to discredit the witness by impeaching his moral character.

EXAMINATION OF A WITNESS

A. INTRODUCTION: Meaning of terms:

1. *"Examination"* – to find out facts from the witness or to test his memory, truthfulness or credibility by directing him to answer appropriate questions.

2. *Proponent* - the party who owns or who called the witness to testify in his favor. Opponent- the party against whom the witness was called.

3. *Friendly Witness*- one who is expected to give testimony favorable to the party who called for him.

4. *Hostile Witness*, one whose testimony is not favorable to the cause of the party who called him as a witness.

5. *Party witness* and *accused-witness* refer to the plaintiff, defendant or the accused, testifying as witness for themselves, as opposed to ordinary witnesses.

B. ORDER OF EXAMINATION

- Direct examination by the proponent.
- Cross-examination by the opponent.
- Re-direct examination by the proponent.
- Re-cross examination by the opponent.

C. ORDER OF PRESENTATION OF EVIDENCE

- Presentation of Evidence in Chief by the Plaintiff
- Presentation of Evidence in Chief by the Defendant
- Presentation of Rebuttal Evidence by the Plaintiff
- Presentation of Sur rebuttal Evidence by the Defendant

Section 5. Direct Examination. Direct examination is the examination-in-chief of a witness by the party presenting him on the facts relevant to the issue.

A. Procedural Requirement

- ***Offer of Testimony-*** the proponent shall state the substance of the intended testimony of the witness (an outline of the major points) and the purpose of said testimony (what the proponent intends to prove by said testimony).

- ***Importance of the Offer of testimony-*** (i) The direct examination may be objected to by the opponent (ii) Matters not included in the offer may not be allowed to be testified on upon proper objection and (iii) to shorten the proceedings as the opponent may admit or stipulate on the matters to be testified on.

- In cases under the ***Rules on Summary Procedure***, the sworn statement of the witness must have been submitted to the court beforehand.

After the offer of testimony, the court will say "any comment?"…

Thus, answer: we will stipulate on these facts, but we dispute the rest and subject to cross… [and not no comment or subject to cross.]

What is the value of the offer?

- It may shorten the proceeding; e.g. the other party may accept all the testimony and they will not cross.
- It affords the other party to determine whether the testimony is part of the offer or not thus he can post objections.

B. Importance of the Direct Examination

- This is the only opportunity for the proponent to elicit from the witness all the facts which are important and favorable to him. The witness should be considered as a sponge heavy with facts. By the time the direct examination is over, all favorable facts should have been squeezed from the witness. The examination must be clear, forceful, comprehensive, and must efficiently present the facts of the case.

Points of Effective Direct Examination

a) KEEP IT SIMPLE. Avoid these two pitfalls (i) too little time on critical points and (ii) too much time on unimportant points.

b) ORGANIZE LOGICALLY. Determine the key points and organize them in a logical order. If possible resort to a chronological presentation of testimony.
c) INTRODUCE THE WITNESS AND DEVELOP HIS BACKGROUND.
d) USE PRELIMINARY QUESTIONS WHICH ARE INTRODUCTORY, TRANSITION OR ORIENTING QUESTIONS.
e) ELICIT SCENE DESCRIPTION.
f) ELICIT GENERAL FLOWING DESCRIPTION. Let the witness paint a picture. Avoid excessive detail. [*Excessive detail may destroy your theory, since it gives the opposing party more details to lift his question of cross*].
g) USE PACE IN DESCRIBING ACTION. Control the speed of the examination by eliciting testimony in small segments at the most advantageous rate. SLOW DOWN THE ACTION.
h) USE SIMPLE LANGUAGE. Choose simple words and phrases. Word choice affects answers. Avoid jargons, idioms and technical words. WHAT MATTERS AND WHAT WILL BE REMEMBERED IS NOT HOW BEAUTIFUL AND IMPRESSIVE THE LAWYER PHRASED HIS QUESTIONS BUT WHAT THE WITNESS NARRATED.
i) HAVE THE WITNESS EXPLAIN.
j) USE NONLEADING OPEN-ENDED QUESTIONS.
k) USE EXHIBITS TO HIGHLIGHT AND SUMMARIZE.
l) PRACTICE WITH THE WITNESS.

Rules:
1. Interview the witness before presenting him.
2. Tell what will happen in court to the witness.

Sec. 6. Cross Examination.

A. Concept: The examination of the witness by the opponent after the direct examination.

B. Nature:

1. An essential part of the right to procedural due process i.e. the right of a party to confront witnesses against him face-to-face. The essence however is not actual cross examination but that a party be given the opportunity to cross examine. Hence the consequences are as follows:
- **a)** If the opponent was never given the opportunity to cross examine a witness, the direct testimony may, on motion of the opponent, be stricken off as hearsay.
- **b)** All assertions of facts not based on the personal knowledge of the witness may also be stricken off as hearsay since the source cannot be subjected to the opportunity of cross-examination.

2. Limitations:
- **a)** The right may however be waived expressly;
- **b)** It may be lost through the fault or negligence of the opponent.
- **c)** After a witness has been cross-examined and discharged, further cross-examination is no longer a right but must be addressed to the sound discretion of the court.
- **d)** The Court may limit the cross-examination if its needlessly protracted, or is being conducted in a manner which is unfair to the witness or is inconsistent with the decorum of the court, as when it degenerates into a shouting match with the witness

3. Effect of the Loss or non-completion of the cross examination
- **a)** If the loss, in whole or in part, was due to the fault of the adverse party, the testimony of the witness is to be taken into consideration.
- **b)** If the cross-examination cannot be done or completed due to causes attributable to the party offering the witness, the testimony is rendered incompetent.
- **c)** If the loss or –non-completion was due to the death or unavailability of the witness then that part of the testimony which was subjected to cross-examination remains admissible.

4. Character of Cross Examination: It is both an Art and a Science.

a) It is an Art because it requires consummate skill which is acquired and developed. There is no standard method as it is highly personalized, subjective and be adaptive to who the witness is and to the subject of the cross examination. The length, style of questioning or approach to a witness requires intuition and understanding of human nature; of the habits, weaknesses, bias and prejudices of people; their reactions to situations, their perception of matters, and such other factors that vary according to circumstances of time, place, people and occasions.

It requires the ability to think quickly, read quickly and to know when to quit. The lawyer's antennae must ever be tuned in to the witness: his character, personality; mannerism, and all traits which will give a favorable clue; to the adverse counsel and to the Court.

b) Should a party cross examine or not depends on a full understanding of what to expect. The following must be considered before a party attempts to cross-examine:
- **i.** Whether the witness has hurt the case or the impact of his testimony

on the case.
ii. Whether the witness is important, as for example an eye witness, or a party witness.
iii. Whether the testimony is credible.
iv. The risks that the party undertakes.

5. ***It is a science.*** It requires a thorough preparation and mastery of certain rules/jurisprudence on procedure in the presentation of evidence.

C. Importance and Purpose of Cross Examination.

When you cross examine you must have a purpose, either your cross examination is constructive, destructive or both.

Important note:

- ***Sometimes the best cross is no cross!***
- *Example:* sit on the chair and look the witness straight to the eyes for substantial minutes. If the witness cannot look at you in the eye, then say: "you cannot look me straight to the eye, how can you tell the truth… no need for cross."

Do not overcross!!!!!!!!!

Example:

- In the case of rape, the victim in her testimony testified that it is "daplis"

Atty.: What do you mean daplis?
Witness: konti lang pumasok

- Observe that were it not for the stupid and unnecessary cross examination of the counsel, the accused may have been convicted of attempted murder. Yong cross examination kasi ang sumira sa diskarte eh, dahil sa cross naipaliwanag ng witness ang ibig sabihin ng daplis na konti ang pumasok which made it as a consummated rape.

Another example:

- An expert witness will testify that the human appendix is located by the throat.

Atty. Santi: Mr. X, in your testimony you said that the human appendix is located by the throat?
Mr. X: Yes sir.

Atty. Santi: do you know a person named Dr. Borris Spasky?
Mr. X: Yes sir, he is my counterpart in eastern Europe. He also specializes in modern human anatomy?

Atty. Santi: have you read any of his books?
Mr. X: Yes sir.

Atty. Santi: I have here a book entitled "modern human anatomy by Borris Spasky, are you referring to this book?
Mr. X: Yes sir.

Atty. Santi: let me read then par. 3 on page 69: "the human appendix is located at the back of the neck." That's all for the witness your honor.

Do not over cross!!!!!!! Why? Because if you overcross, this might be the next scene…

Atty. Santi: Mr. X, why is it that you said that the human appendix is located by the throat?
Mr. X: Sir kindly turn to page 63, paragraph 1.

And the first paragraph says: "this findings are obsolete, please refer to the findings of Mr. X. [Patay] ☺ ☺ ☺

Cross examination is both a weapon to destroy or weaken the testimony of the opponent's witness and a tool to build up or strengthen a party's case. The conduct of cross-examination must always be directed towards achieving a specific purpose or purposes.

Constructive Cross-Examination, where the purposes are:

1. To amplify or expand the story of the witness so as to place the facts in a different light which is favorable to the party. Note that the witness of the opponent seldom volunteer facts favorable to the cross-examiner, hence the manner of questioning should be "insinuating", and
2. To obtain favorable or establish additional facts favorable to the cross-examining party.

Destructive Cross-Examination; the purposes are:

1. To discredit the testimony of the witness by showing its absurdity or that it is unbelievable or contrary to the evidence.
2. To discredit the witness by showing his bias, interest, lapse of or selective memory, incorrect or incomplete observation of event, and similar situations.

Accuse is the brother of the witness.

Cross:

Atty.: Do you love your brother?
Witness: Yes.

Atty.: Are you concern then with your brother?
Witness: yes.

Atty.: do you know what will happen to the family of your brother if he will go to prison?
Witness: Yes.

Atty.: That is the reason that you came here to testify so that your brother's case will be dismissed.
Witness: ???

- If the witness answered "No" then attacked it in your memorandum the inconsistency.

Defense of Alibi

- When the defense of the person is alibi, then it is expected that he knew every minutest details of that place, thus do not ask question regarding such matter… how to attack: (1) do you remember any significant event on that day so that you are in that place? Or (2) were you present last hearing? Yes sir, What then was I wearing? If the witness cannot answer then it creates a doubt on his memory. How come that he can remember every details that happened 5 years ago but he cannot remember things that happened 5 days ago?

D. Scope of Cross Examination

1. Under section 6 the witness may be examined:

a) As to any matter stated in the direct examination;
b) Or any matter connected therewith;
c) As to the accuracy and truthfulness and freedom of the witness from interest or bias, or the reverse and;
d) Upon all important facts bearing upon the issue.

2. ***The English Rule is followed in the Philippines***

- **English Rule:** the cross examination is not confined to matters subject of the direct examination but extends to other matters, even if not inquired in the direct examination but are material to the issues.

- **American Rule** which holds that the scope of the cross-examination is confined to the facts and circumstances brought out, or connected with, matters stated in the direct examination

E. Questioning by the Court:

- The Court may ask questions:
  - **a.** to clarify itself on certain points;
  - **b.** To call the attention of counsel to points at issue that are overlooked and;
  - **c.** To direct counsel to questions on matters to elicit facts and clarify ambiguous answers.
  - **d.** However, the questioning by the court should not be confrontational, probing and insinuating. Should not be partisan and not over extensive. The court is not to assume the role of an advocate or prosecutor.

BASIC RULES ON CROSS EXAMINATION

1. PREPARE. Know what the witness has testified on and its relation to the case and how it affects your own evidence.
2. KNOW YOUR OBJECTIVE. What are the points in the testimony of the witness which are critical and are these points to be brought out and emphasized.
3. OBSERVE PACING AND PATIENCE. Do not rush the witness and avoid being over eager in bringing out an important point.
4. LEAD THE WITNESS. State the facts and let the witness ratify. Know how to lead. Use variation in the phraseology of the questions.
5. HAVE A STYLE AND ADAPT IT TO THE OCCASION. Be true to yourself and develop an approach or style suited to your personality and character. Be able to vary your style and know when is it effective to use either a booming or soft voice; to move around or to stay put; to be conversational or confrontational or tough and confident.
6. KNOW WHEN TO QUIT. Stop when (1) the witness has been discredited or made a monumental concession. There is no need for an over kill or when the witness is killing the case or the counsel.
7. KNOW WHAT MATERIALS TO TAKE TO CONFRONT THE WITNESS. Have them be ready and easily accessible.
8. KNOW THE JUDGE. Are you making an impact or are you boring, antagonizing or confusing the Judge?
9. KNOW THE RULES OF EVIDENCE.

ADDITIONAL PRACTICAL TIPS

1. BE BRIEF. Confine to the strongest points.
2. SHORT QUESTIONS. Use plain words and avoid fancy words or elaborate syntax.
3. NEVER ASK A QUESTION to which you do not already know the answer.
4. LISTEN TO THE WITNESS. Tune in if he was contradicted by another witness or prior testimony; is the testimony contrary to human experience or completely inconsistent with nature.
5. DO NOT QUARREL WITH THE WITNESS.
6. DO NOT PERMIT THE WITNESS TO EXPLAIN.
7. DO NOT REPEAT HIS TESTIMONY ON DIRECT.
8. AVOID QUESTIONS TOO MANY.
9. SAVE THE EXPLANATION FOR THE MEMORANDUM. Questions should not be explanations of your position.

Sec. 7. Redirect Examination by the proponent

Purpose and Scope:

- To afford the party calling the witness to explain or amplify the testimony given on cross-examination; to explain apparent contradictions, or inconsistencies, and to rehabilitate the testimony.

- The scope is confined to matters taken up in the cross-examination, not those outside, which may be objected to on the ground that it is improper for redirect.

- But, new matter may be inquired into provide the prior approval of the court was obtained and the testimony on the new matter must be subject to cross-examination by the opponent.

Red hearing

- Point out an important matter and make it appear that you are avoiding it…so that the opponent will have the impression that you are avoiding it and that he will touch on it during the cross. Then yahoooo.. pag kinagat yong pain…you can ask those matters in the redirect.

Improper for redirect- those matters which were not brought out in the cross.

Sec. 8. Re-cross examination by the opponent.

- This is confined to matters subject of the re-direct examination.

Sec. 9. Recalling Witnesses.

A. ***On Motion By a party:*** This is not a right but the recall must be addressed to the discretion of the court and the recall must be on justifiable grounds.

B. ***By the Court:*** If there be matter it wishes to clarify.

Sec. 10. Leading and Misleading Questions.

A. Introduction. The examination of a witness is by asking questions the answers to which will bring out facts from the witnesses. However a lawyer is subject to certain rules such as to what questions he is allowed to ask, how they are to be phrased or worded so that facts known only to the witness through his own perception are revealed, or so that facts which are suppressed or forgotten may be forced out from the witness.

Some of these limitations consist of the prohibition on leading and misleading questions.

B. Leading Questions. Section 10 defines it as a "A question which suggest to the witness the answer which the examining party desires". It is also known as "Suggestive Question".

1. Witnesses are to give data spontaneously from their own memory, according to their own perception and interpretation. The role of the lawyer is simply to ask questions which will help the witness recall events. The question should be framed in such a manner that the lawyer does not in any way suggest or influence the answer to be given, otherwise the fact or answer becomes merely the product of the suggestion, and not what the witness personally knows.
2. If the witness is asked simply to confirm or deny, then in effect it is the lawyer who is supplying the facts through the mouth of the witness who is reduced to being merely the echo and mouthpiece of the lawyer.
3. **Test:** The form or phraseology and the contents of the question in that whether it contains a statement of a fact which the witness is asked to affirm or agree to. In such case the witness contributes no substantial data. The lawyer is coaxing.

The tone, inflection, mannerism or body language of counsel, may also indicate if the counsel is leading his witness.

Illustration:

Atty.: isn't it that at 3pm you are in your house?
Accuse: Yes sir.

Atty.: in that particular hour of the day, you were drinking with your friends?
Accuse: Yes sir.

Atty.: Isn't it that you drunk until 10pm?
Accuse: Yes sir.

Why are leading questions not allowed?

- Because it is the lawyer who is testifying and not the witness. The witness becomes an issue and it is the lawyer supplying the facts.

Using leading questions in your favor

- Use leading question to refresh the memory of the witness if he forgot something.

Illustration:

Atty. Santi: Mr. witness after your drinking spree, where did you go next? [The witness cannot remember. Remedy of the lawyer: ask a leading question].

Atty. Santi: Mr. Witness, let me ask you again, isn't it that after your drinking spree you went to the house of Pedro?

Opposing counsel: Objection, leading
Court: sustained. Reform your question.

Atty. Santi: Mr. Witness, after your drinking spree where did you go next?

By asking the leading question the witness can now remember the next sequence ☺. Do not hesitate to ask leading question lalo na kapag nakalimutan ng witness yong sequence kasi hindi ka makakausad. Ang parasu lang naman sa leading questions ay "reform your question."

C. General Rule on Direct: The witness being a friendly witness and having been called by the proponent, he is naturally expected to be sympathetic to the cause of the proponent. Thus there is great danger that he would just confirm any and all facts suggested to him by the

proponent. Hence leading questions are not allowed.

The following instances are the exceptions when leading questions are allowed to be asked during direct:

Instances where leading questions maybe asked?

1. ***On preliminary matters***
   - **a.** Those pertaining to the personal circumstances of the witness and which are asked at the start of the cross-examination.
   - **b.** those which are intended to bring the witness directly to the point in issue; they are referred to as "orienting, introductory or transitory questions"

     When there is difficulty in getting direct and intelligible answers from the witness who by reason of the any of the following:" is immature; aged and infirm; in bad physical condition; ignorant of, or unaccustomed to, court proceedings; inexperienced; unsophisticated; feebleminded; confused and agitated; terrified; timid or embarrassed while on the stand; lacking in comprehension of questions or slow to understand; deaf and dumb; or unable to speak or understand the English language or only imperfectly familiar therewith" (PP. vs. Dela Cruz, July 11, 2002)

     Is suffering from some mental deficiency, or where the intelligence of the witnesses is impaired, thereby making necessary the making of suggestions:

     For example: witnesses who are ignorant, feeble minded deaf-mutes, minors or uneducated

2. **In case of unwilling or hostile witnesses: they are uncooperative and will not readily supply the facts desired by the examiner. The approach to these witnesses is to conduct a direct examination as if it were a cross-examination**

   - **a.** Unwilling witnesses include (i) those who have to be compelled to testify by the coercive processes of the court (ii) or those who, at the time of their presentation at the witness stand, become evasive, reluctant or unfriendly.

   - **b.** hostile-may refer to (i) a witness who manifest so much hostility and prejudice during the direct examination that the party who called him is allowed to cross-examine, i.e to treat him as if he had been called by the opposite party or (ii) one who surprises the party and unexpectedly turns against him.

     In either case, the party calling the witness must present proof of either adverse interest on the part of the witness, his unjustified reluctance, or of his misleading the party into calling him a witness, and on the basis of which the court shall declare the witness to be a hostile witness. Thereafter leading questions are asked.

     In case the witness is the adverse party, or representative or officer of a juridical entity which is the adverse party. Said witnesses is expected to resist any attempt to obtain favorable data, hence the direct examination is in the nature of a cross-examination and the most effective manner of forcing favorable data, or of destroying his credibility, would be through leading questions.

     When the witness is not voluntarily offered but is required by law to be presented by the proponent, as in the case of subscribing witnesses to a will.

     When the witness lacks the power of recollection a leading question is allowed in order to refresh the memory.

     To identify persons or things.

     In case of an expert witness as to his opinion.

3. **In direct examination**
   - Thus, state facts and let the witness confirm or deny it. Never ask questions on "Why?"!!!

D. Leading and Misleading Questions on Cross.

1. **Rule on Leading Questions:** During cross-examinations leading questions are allowed for the reason that the witness is not expected to be sympathetic to the cause of the opponent and would not volunteer important facts favorable to the opponent, or that he would resists to testify on facts adverse to the party who called him. Thus it becomes necessary that the opposing counsel has to force the facts from the witness thru leading questions.

   The opponent states a fact favorable to him and forces the witness to confirm it.

2. **Misleading Questions are not allowed.** They

are of two kinds:

a. A question which assumes a fact not yet testified to by a witness or still unproven or by putting words into the mouth of the witness.

b. A question premised on a fact which is contrary to that testified to or proven or those which distort or do not accurately state the true facts. This is akin to twisting the words of the witness.

Illustration:

1. ***Asking something which is not yet in evidence.***

   Witness: Lagi po kaming nag-aaway?
   Atty. Santi: ilan beses kang binabanatan sa gabi?

   Atty. X: objection. Misleading.
   Court: Sustained. Why? The witness did not yet testified tha she was binabanatan..kasi pwedeng mag-away ng salita lang eh.

   Another example:
   Witness: I was seated infront.
   Atty. Santi: How fast were you driving?

   Atty. X: Objection. Misleading.
   Court: Sustained. Why? Because you are asking a question not yet in evidence…sabi ng witness nakaupo siya sa harap hindi nya sinabi na siya ay nagdadrive!

2. ***Distorting the facts.***
   - The witness testified that he saw the accused open the cabinet.

   Atty. Santi: Did you saw the witness open the cabinet and took the camera?

   Atty. X: Objection. Misleading.
   Court: Sustained. Why? Dinagdagan ng counsel un facts sa kanyang cross examination eh. The witness testified that he saw the accused opened the cabinet but the lawyer's question points that he opened the cabinet and took a camera.

IMPEACHMENT

Note: Sometimes the witness may be credible as a person, but his testimony is not credible

Why do we need to impeach a witness?

- Because the witness is a messenger of facts. If the messenger is tainted, it is probable that the message is also tainted.

A. Concept: The process of showing that a witness is not credible or that his testimony is not worthy of belief, i.e. casting doubt as to the credibility of the witness or credibility of his testimony. Note that credibility of the witness is different from credibility of testimony.

B. Impeachment of the witness of the adverse party

- Generally the witness may be impeached during his cross-examination or during the presentation of evidence by the party. Thus the witness of the plaintiff may be impeached at the time he is cross-examined by the defendant and/or during the presentation of evidence in chief by the defendant. On the other hand, the witness of the defendant may be impeached by the plaintiff during the cross examination of said witness and/or during the presentation of evidence during the rebuttal stage.

C. Specific Modes pursuant to section 11 and jurisprudence

1. By presenting evidence or facts which contradict the version of the witness.

2. By proving the bad general reputation of the witness for truth or honesty or integrity.

   a) He cannot be impeached by the direct testimony of witnesses of the adverse party as to particular instances of immoral acts, improper conduct, or other evidence of misconduct.

   b) The person who is called by the adverse party to testify to the bad general reputation of the witness of the opponent is called the "Impeaching witness" who himself may also be impeached.

3. By proof of prior inconsistent statements in that a truthful person will be consistent with his statement even on different occasions and to different persons.

4. By introducing evidence of his bias or interest, such as his relationship to a party, or financial gain as well as of his motive or intent.

5. By showing his social connections, occupations and manner of living in that he voluntarily associates with those who are engaged in disreputable activities, or if he is addicted to disgraceful or vicious practices, or follows an occupation which is loathsome and vile, even if not criminal, as all these affects his credibility. [*Tell me who your friends are, and I will tell you who you are*].

6. By proof of prior conviction: the moral integrity of a person is placed in doubt by reason of a conviction for violation of the law, but not by the fact that there are pending cases against him. [*Prior conviction suggests that the person has no respect for the law*].

7. By showing the improbability of his testimony or that it is not in accordance with ordinary human experience. Example: (i) the claim of an accidental firing of a caliber gun is not believable because the mechanism of the gun which requires that pressure be applied on the trigger for the gun to fire (ii) the claim of four big able men having been attacked and mauled by one person who is who is much smaller in height and

heft.

8. By showing defects in his observation, or that he has a faulty or selective memory.
9. By showing that this actions or conduct is inconsistent with his testimony.

   Example: A rape victim was shown to have been partying with the alleged rapist after the rape.
10. By engaging the witness in contradictions and discrepancies as to the material facts testified by him.

D. Impeachment of one's own witness.

1. ***General Rule:*** It is not allowed pursuant to section 12. The reason is that a party calling a witness is supposed to vouch for the truthfulness of the witness and of his testimony, which he is assumed to know before hand, and is therefore bound by whatever the witness testifies to in court. A party is not permitted to let the witness be believed as to facts favorable to him, but to impeach him as to facts not favorable.

2. ***Exceptions:*** If the witness presented is any of the following:
   - **a)** An unwilling witness
   - **b)** He turns out to be a hostile witness or a treacherous witness and the party was mislead into calling him as a witness.
   - **c)** An adverse party witness

E. Impeachment by Prior Inconsistent Statement.

1. ***The procedure or Laying the Foundations is outlined by section 13. To be effective the steps should follow the following sequence:***
   - **a)** Recommit: Confront the witness with his prior statements narrating the circumstances of time, place, persons or occasion, or by showing him the prior written statement. Get the witness to affirm he made the statements.
   - **b)** Build-Up. Let the witness affirm he made the prior statements freely, knowingly and that he stood by the accuracy and truthfulness of said statements.
   - **c)** Contrast: Confront the witness by the fact that his prior statement contradicts or deviates or is materially different from his present statement.
   - **d)** Demand an explanation why he made a different statement from his previous statements

2. ***Reason for the Procedure:***
   - **a)** Fairness to the witness and avoid surprising him, so that he may recollect the facts, and to give him the opportunity to explain the reason, nature, circumstances, or meaning, of his statements. Example: He might have been too emotional then, or was improperly influenced, or wanted to avoid embarrassment, and similar reasons.
   - **b)** To save time if he admits his prior statements

3. ***Exceptions when there is no need to lay the foundation:***
   - **a)** In case of statements made by a deceased which contradicts his dying declarations.
   - **b)** If the contradictory statements are testified to by another person as an admission

Section 14. Exclusion and separation of witness.

A. Concept: The act of excluding a future witness from the court room at the time another witness is testifying or, of ordering that witnesses be kept separate from one another to prevent them from conversing with one another.

1. This is upon the court's own motion or on motion of the adverse party.
2. A disobedient witness may be testify but his (a) testimony may be excluded or (b). his disobedience may be considered to affect his credibility and (c) he maybe punished for contempt of court

B. Purpose: To ensure the witnesses testify to the truth by preventing them from being influenced by the testimony of others; to prevent connivance or collusion among witnesses.

[Note: the practical purpose of this rule is defeated by the reservations for cross examination or resetting to present another witness, such that the counsel and other witness have the opportunity to go over the testimony of the witnesses].

C. Who may not be excluded.

1. Parties to an action even if they are numerous.
   - **a)** In criminal cases, the presence of the accused is indispensable and he may not be excluded.
   - **b)** The private offended party should not also be excluded even if he will be a witness. As such he has a right to be present because it is his interest which is involved and also to assure that the proceedings are conducted properly. Besides he is party to the civil aspect of the case.
2. Expert witnesses as they testify to their opinions based on facts of their own knowledge, or on hypothetical facts.
3. Witnesses on rebuttal.
4. Character witnesses.
5. Spectators unless they behave in a manner which is against the proper decorum of the court or when the evidence to be presented are sensitive

REVIVING MEMORY OF WITNESSES

Note: it is the recollection that is the evidence itself and not the means of recollection such as memorandums and other documents.

This must be made by the opponent. Why? Because you must prepare your own witness for direct testimony and preparation includes informing the witness the logical sequence of his/her testimony and the questions to be asked.

A. Introduction:

- A witness may suffer from lapses of memory or loss of recollection as to material facts so that there is a need for him to recollect the facts. The remedy of reviving applies more appropriately to the adverse party conducting a cross-examination rather than to the proponent.
- The reasons are:
  1. because a party presenting a witness is presumed to know what the witness is to testify on and is expected to have prepared him for the direct examination and
  2. Matters favorable to the cross-examiner may have been forgotten by the witness.

B. Modes of reviving

1. By asking leading questions;
2. By the Process of Association i.e. calling the attention of a person to a material connected with a certain event so it would trigger the brain to associate the material with the event and thereby enable the person to remember the event.

   Examples:
   - **a)** Presenting a pictorial representation of a person, thing, place, object or person.
   - **b)** Playing the record of a conversation.
   - **c)** Presenting physical objects such as trinkets, or other "memorabilia"
   - **d)** By allowing the witness to refer to a memorandum under section 16

Section 16. When witness may refer to a memorandum.

A. ***Two Methods of Revival under Section 16.*** (These are useful methods to the opposing counsel when conducting his cross examination. The proponent is supposed to have already gone over the testimony of his witness and briefed him hence, resorting to these methods reflect badly on the proponent).

1. **Present Recollection Revived:** the witness is presented the memorandum or record with the expectation that it will pull a switch in the brain and enable the witness to put aside the memorandum and testify on what he now recalls.

   Thus the evidence is not the memorandum or writing but what he testify remembers as now testified provided:
   - **a)** The written record/memorandum was written by him or by someone under his direction (who wrote it?).
   - **b)** It was written at the time the fact/event occurred or immediately thereafter or at any time when the facts was still fresh in his mind (when was it written?).
   - **c)** The record/memorandum is presented to the adverse party who may cross-examine on it, and it may be read into the evidence.

2. **Past Recollection Recorded.** The same procedure is followed but the witness is still unable to recollect the event but he can assert that the facts therein narrated are true. The evidence therefore is the writing itself.

3. **Examples:** (a). Filing clerks who record conversations then forget all about it (b) Diaries (c) Letters

Section 17. The Rule of Completeness.

A. Concept: When a part of an act, declaration or conversation, writing or record, is given in evidence by one party, the adverse party may : (i) ask or inquire into the whole or (b) introduce evidence on the remainder, and in case of writing he may have the other portion or even the entire writing be read in evidence.

As a matter of procedure, in case of documents already in court, a party merely underscores only those portions which are material to his case. It is for the opposing party to inquire as to the rest.

The other portions is limited to those which tend to qualify or explain the part first given and which were given at the same time.

B. Examples:

1. As the issue is the nature of the transaction between the parties, where plaintiff presented his letter, it was proper for defendant to introduce all the other letters which passed between them.
2. Where a letter is presented on direct examination, it is proper on cross to ask if there be any reply to it.
3. Where a witness testified to the occurrence of a fight, it is proper to inquire on the antecedents and details thereof, past altercations between those involved or any bad blood between them.
4. Where the Prosecution presented only a part of the records of the Preliminary Investigation, the defense may introduce the whole record

C. Need for Precision of Statements:

1. The general rule is that verbal accuracy is not required but the substance or effect of the actual words spoken will be sufficient so that the witness may testify to the substance as best as he can from his recollection.
2. However, in case of oral defamation, there is a need for verbal accuracy.

RULE ON EXAMINATION OF CHILD WITNESS

I. INTRODUCTION: The Supreme Court, in an en banc Resolution adopted the so called-Rule on Examination of a Child Witness which became effective on December 15, 2000. The rule applies to child witnesses who are victims of crimes, accused of a crime, and witnesses to a crime. It shall apply to criminal proceedings and non-criminal proceedings involving child witnesses.

- **Child Witness-** any person who, at the time of giving testimony, is below the age of 18 years. In child abuse cases, a child includes one over 18 years but is found by the court as unable to fully take car of himself or protect himself from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition.

SALIENT FEATURES

I. ***Creates a Presumption of Competency in favor of a child-witness subject to a Competency Test.***

A. "Every child is presumed qualified to be a witness. However the court shall conduct a competency examination to a child motu proprio or on motion of a party, when it finds that substantial doubt exists regarding the ability of the child to perceive, remember, communicate, distinguish truth from falsehood, or appreciate the duty to tell the truth in court". (Sec. 6).

B. A party seeking a competency examination must present proof of necessity of competency examination. The age of a child shall not by itself is not a sufficient basis for a competency examination.

II. Allows the Court to, motu proprio or on motion, appoint certain persons to help in the testimony of the child-witness:

A. Guardian Ad Litem- a person to protect the best interest of the child whose appointment took into consideration his familiarity with the judicial process, social service programs, and child development. The parent if preferred, if qualified. Has the right to be present in all proceedings, to obtain copies of documents, interview witnesses, make recommendations to the court, and to do all to protect the child.

B. Interpreter- one, other than the regular court interpreter, whom the child can understands and who understands the child.

C. Facilitator- one who poses the questions to the child who may be a child psychologist, psychiatrist, social worker, guidance counselor, teacher, religious leader, parent or relative. Counsels shall pose questions only through the facilitator.

D. Support Person- person chosen by the child to accompany him to testify at or attend a judicial proceeding or deposition to provide emotional support to the child

III. Contains Child Centered Provisions during the actual testimony such as :

A. A separate waiting area furnished to make the child comfortable.

B. To create a more comfortable courtroom environment, the court may direct and supervise the location, movement, deportment of all person in the court room;

C. The child may testify from a place other than the witness chair; child is not required to look at the accused

D. To testify during the time of day that the child is well rested

E. Reasonable periods of relief is allowed as often as is necessary

F. The child is allowed to use testimonial aids, such as dolls, puppets, drawings, mannequins or any other appropriate devise to assist in the testimony of the child.

G. Child is allowed to have an Emotional Security Item of his own choosing as a blanket, toy, doll.

IV. Manner of Questioning and Objections

h. Leading Questions are allowed specially des for Child-Directs

AUTHENTICATIONS AND PROOF OF DOCUMENTS

a. **INTRODUCTION.** Per section 2 of Rule 130, documents are writings or any material containing letters, words, symbols, numbers, figures, or other modes of written expressions offered as proof of their contents. They are either paper based or other solid surfaced based documents. These are what are referred to by Rule 132.

As to Electronic documents, the manner of their authentication is as provided for by the Electronics Evidence Law.

b. CLASSIFICATION OF DOCUMENTS.

A. Section 19 provides that for purposes of their presentation in court they are either (i) public or (ii) private.

Importance of the classification:

1. **As to the need for authentication:** public documents are admissible without further proof of their due execution whereas private documents must be authenticated.
2. **As to the persons bound:** public documents are evidence even as against third persons as to the fact which gave rise to their execution whereas private documents bind only the parties thereto and their privies.
3. **As to the validity of certain transactions:** certain transactions are required by law to be public documents in order to be valid and/or enforceable. E.g.: the law on donations of real properties, Statute of Frauds.

B. Classification into Domestic and Foreign Public Documents

The following are public domestic documents:

a) **Written Official acts of sovereign authority, official bodies, tribunals and public officers:** such as decisions or courts or quasi-judicial bodies, legislative enactments, executive orders, directive from superior officers or memoranda, written appointments, warrants issued by court, subpoenae, ship's log book.
b) **Record of the official acts of said bodies or officers:** e.g: the marriage contract embodies the act of solemnizing a marriage; records of birth and death; written oaths; returns and reports, congressional records of the deliberations in congress.
c) **Acknowledged documents such as contracts and conveyances.**
d) **Public record (i) kept in the Philippines of private writings (ii) or required by law to be kept therein.** Example of the first would be documents affecting registered lands which are submitted to the Register of Deeds, Assessors Office, Letters of acknowledgement submitted to the Local Civil Registrar. Example of the second: Personal Bio Data or Information Sheets submitted to form part of the 201 File of government officials

b. AUTHENTICATION.

A. Concept: As to documents, it is the process of proving that the document presented in court is not spurious, **falsified**, or **questionable**, or that it is **not a different document**. As to objects, it is the process of proving that the object presented in court is the very object involved in the case without any alteration or substitution.

B. Rule as to private documents: Section 20 provides that in order for a private document to be admissible, it is necessary to prove the "due execution and authenticity of the document" in that it is not spurious, counterfeit or a different document. This is because private documents are not self-authenticating.

c. How to prove a private document is authentic or genuine

A. By **direct evidence** consisting of the testimony of witness such as
1. The parties to the document
2. By an attesting /subscribing witness
3. By a person who was present and saw its execution and
4. By the person before whom it was executed and acknowledged.

B. By proof or evidence of the **genuineness of the handwriting or signature of the maker** or of the parties thereto. It may be by any of the following:
1. Direct evidence consisting of the testimony of the maker or party affirming his own handwriting or signature.
2. By the testimony of the attesting/subscribing witnesses or of witnesses to the execution thereof.
3. By the use of "Opinion Evidence" pursuant to the Section 22 of Rule 131 such as (a) by one who has obtained sufficient familiarity (b) by an expert (c) based on a comparison with a genuine handwriting.
4. By the contents of the document.
5. By the style of writing

d. When Authentication Not Necessary

A. In case of ancient documents: referring to private document which are more than 30 years old, produced from a custody in which it would naturally be found in genuine and unblemished by nay alteration or circumstance of suspicion.
1. The reason is the possible unavailability of witness due to the passage of time. Age is to be reckoned from the execution to the date it is offered.
2. Requirements for "Ancient Documents"
(a) Proof of age: to be counted backwards from the time of offer to its date of execution.
(b) Proof that on its face it is free from any circumstance of suspicion, as when it bears signatures which are not counter-signed, deletions, insertions, a missing page, a page which is new or recent, use of different inks, or it bears different handwritings, or suspicious tears.
(c) Proof of proper custody: this removes the suspicion of fraud and suggests the document is genuine. Proper custodian/depository includes one who is entitled to the possession such as a party and his successors in interest, privies or agents; as well as one who is connected to the document that he may reasonably be inferred to be in [possession thereof, such as a common witness.

B. When the **due execution and genuineness has been admitted** either expressly or by provision of law, as in failure to deny under oath.

C. When the **due execution and authentication is immaterial**, as in documents which are used as annexes or attachments.

D. When the **document need only to be identified**.

E. In case of **public documents.**

e. PROBATIVE VALUE AND PRESENTATION OF PUBLIC DOCUMENTS

I. Requirement of authentication does not apply because of (a) necessity in that it is difficult and inconvenient to require the attendance of the public officer to appear in court (b) trustworthiness of the documents.

II. Probative Value Under Section 23.

1. Written Official Acts are conclusive because it is the act which is recorded.

2. Documents consisting of entries in public records made in the performance of a duty by a public officer are prima facie evidence of the facts stated therein

This does not include those made in excess of official duty and they are limited to those facts which are public.

Examples:

i. Entries in the Records of Birth, Marriage, or Death of a person, as entered by the Local Civil Registrar.
ii. Data in the Police Blotter
iii. Return of Search Warrants
iv. Entries in the time record
v. Entries in the Community Tax Certificate or Tax Declaration of Property
vi. The terms, conditions or consideration in a contract

3. The recitals in a public instrument, executed with all the legal formalities are evidence against the parties thereto and their successors in interest, and a high degree of proof is necessary to overcome the presumption that such recitals are true.

4. In order to overcome the documentary evidence, the oral testimony must be "clear, strong and convincing"

4. All other public documents are evidence of the act which gave rise to their execution and date of execution. They are proof why they were executed and the date thereof.

5. Examples: Certifications issued by a public officer. Recommendations and endorsements by a public official.

III. How to Prove a Public Document (Section 24)

1. In case of written official acts or records of official act of public or sovereign bodies.

i. By presenting the Official Publication thereof.
ii. By presenting a certified true copy i.e. attested by the proper custodian and bearing the certification by him, his signature, and the seal of his office. A certified copy is allowed by reason of the principle of Irremovability of Public records under Section 26.

Example: Laws of national application are proved by a certified copy thereof or a copy appearing in the official publication. In case of publication other than the Official Gazette, the copy must be accompanied by the Certificate of the Publication by the publisher.

2. As to written foreign public documents

i. By an Official Publication thereof.
ii. By a Copy attested by the official custodian and accompanied by a certificate by the proper officer of the Philippine Foreign Service stationed in the country where such foreign document is kept.

Thus a Special Power of Attorney executed abroad, must be bear the "Red Ribbon" coming from the Phil. Embassy or Consul.

QUESTION: How is a foreign law proven in the Philippines?

Answer: If it is written it is proved by: (i) the Official Publication thereof (ii) An official copy issued by the custodian (iii) certified true copy accompanied by the certification of the Phil. Foreign official and (iii) By the testimony of an expert.

IV. In case of the public record of a private writing

i. By the original record i.e. the very private document kept in official custody
ii. By a copy duly certified by the custodian

Rules on presenting a certified true copy of a written document.

- Attach official receipt.
- Attach documentary stamp tax.

Stages in presenting documentary evidence:

1. Marking- putting of numbers or letters.

- **Plaintiff-** markings are alphabetical; sub-marking: numerical.
- **Defendant-** numerical; sub-markings: alphabetical.
- **When is marking made?** Made in the first day of preliminary conference or pre-trial.
- **Can you reserve a document?** No.
- **Are you allowed to present evidence not marked?** No, except (1) if the opponent did not object (2) those document which came into existence after pre-trial or during the trial; (3) documents which despite diligent efforts cannot be found; (4) Document which are brought out during cross examination, rebuttal or

sur-rebuttal.

2. **Inspection**
   - Inspection refers to the allowance for the other party to inspect your evidence that is to be presented.

3. **Identification**
   - Identification- during the trial by the witnesses.

4. **Authentication**

5. **Formal offer-** process of informing the court the documents that you will submit to the court. Identify the document and tell the purpose of submitting such document.
   - Thus you can pose your objections to the admission of the exhibits if there are any.
   - After presenting your evidence, then state your prayer: "wherefore we pray that the court accepts this evidence and consider them in his decision."

6. **Comment by the opponent.**

7. **Court's ruling on**

8. **The offer.**

When to make offer?
- After presenting all your witness….thus, "the prosecution rests its case."

Note: if a document was not formally offered, it will not be considered. Except:
1. It was been duly testified and identified to by witnesses; **and**
2. It is a part of the records.

Summary of Rules in presenting proof of the existence and contents of documentary evidence

1. The Original of public record cannot be presented by reason of the Rule on the Irremovability of Public Records under section 26. Hence secondary evidence is allowed which consist either of the Official Publication, if so published, or a certified true copy thereof, unless if is extremely necessary that the original of the public record be produced in court, but only upon lawful order of the court.

2. If the documents be in a non-official language, i.e not in English or Pilipino, it must be accompanied by a translation in either r said language.

3. In case of notarized documents. The acknowledgment suffices to authenticate the document and there is no need to present the notary public.

4. Private documents need not be sealed.

5. If the documents contain alterations, the party offering the document must explain the alteration was: made by another without his concurrence; as consented by all the parties, was innocently made, or that it does not change the meaning, or any other valid reason. Said explanation must be made at the time of the presentation of the document.

6. If the document presented consist of judicial record, such as decisions or orders, they are conclusive and the only grounds to impeach said records are (a) want of jurisdiction of the court which issue them (b) there was collusion between the court and the prevailing party and (c) extrinsic fraud was practiced by the winning party.

7. If what is sought to be proven is the lack of records in a certain public office, there must be a certificate to that effect

Examples: 1. Certifications from the National Statistics Office that no marriage ever took place between two people; or (2) from the POEA in illegal recruitment cases and the (3) FEU in prosecutions for illegal possession of firearms.

NEED FOR FORMAL OFFER:
- The purpose for which evidence is offered must be specified because such evidence maybe admissible for several purposes under the doctrine of multiple admissibility, or may be admissible for one purpose and not for another, otherwise the adverse party cannot interpose the proper objection (Uniwide vs. Titan-Ikeda 511 SCA 335)

RULE 133. WEIGHT AND SUFFICIENCY OF EVIDENCE

a. INTRODUCTION
- **Weight of Evidence:** The balance of evidence and in whose favor it tilts. This refers to the indication of the greater evidence between the parties. This depends on the judicial evaluation within the guidelines provided by the rules and by jurisprudence.

- **Sufficiency of Evidence**- refers to the adequacy of evidence. Such evidence in character, weight, or amount, as will legally justify the judicial action demanded or prayed by the parties.

- This refers to the question as to whether the evidence amounts or meets the required quantum needed to arrive at a decision in a civil, criminal, or administrative case; or to prove matters of defense or mitigation or to overcome a prima facie case or a presumption

II. HIERARCHY OF EVIDENTIARY VALUES
- **a)** Proof beyond reasonable doubt.
- **b)** Clear and convincing proof.
- **c)** Preponderance of Evidence.
- **d)** Substantial evidence.

Conclusive- overwhelming or incontrovertible.
Prima Facie- that which suffices until rebutted.
Probable Cause- as that required for filing of an Information in Court or for the issuance of a warrant of arrest.

III. QUANTUM OF EVIDENCE REQUIRED

A. Criminal cases: Proof of Guilt Must be Beyond reasonable doubt.

- That degree of proof, which, excluding the possibility of error, produces moral certainty. If the inculpatory facts are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction.

B. Civil Cases: Preponderance of Evidence. This means that he weight, credit and value of the aggregate evidenced of one is superior to the other.

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IV. RULES IN THE EVALUATION OF EVIDENCE

1. Courts shall consider and take into consideration:
- **a.** all facts which were presented during the trial whether testimonial, object, or documentary
- **b.** all facts which were stipulated or judicially admitted
- **c.** those judicially noticed and
- **d.** All facts which are presumed.

2. No extraneous matters shall be considered even if the Court knows them as existing in his personal capacity.

3. In determining the weight and sufficiency of a party's evidence, the court shall consider
- **a.** All the facts and circumstances of the case.
- **b.** The testimonial characteristics of a witness such as:
  - **i.** The manner of testifying by a witness which includes his conduct and behavior on the witness stand, the emphasis, gestures, and inflection of his voice in answering questions. This is the reason why the rules require the witness to personally testify in open court.
  - **iii.** The intelligence of the witness. This refers o this position to perceive by the use of his organs of sense, his opportunity for accurate observation and faithful recollection of the facts to which he is testifying.
    This intelligence must be coupled with integrity, a general reputation for truth, honesty and integrity. This is because a witness to be believed must be truthful in his narration of correct facts.
  - **iv.** The means and opportunity of knowing the facts which includes his presence and observation of the facts.
  - **v.** The nature of the facts to which the witness is testifying such as: whether he did the act as a participant, whether he saw the occurrence of an accident as he was a passenger; the identity of a person who is an old acquaintance; thus as to the circumstances of the birth a person, the mother would be the best witness on this point mother.
  - **vi.** The absence or presence of interest or basis for bias or prejudice.
  - **vii.** Personal Credibility of the witness, referring to his general reputation for truth, honesty or integrity as for example: (i) the case of an young girl who makes a complaint for rape ; as for instance the accused claiming self-defense who is well built, broad shouldered a boxer and expert in martial arts claiming the victim of assault by an ordinary person
  - **viii.** The probability or improbability of the testimony

- **c.** The number of witnesses. However witnesses are to been weighed not numbered because quantitative superiority does not necessarily mean legal preponderance. Thus an accused may be convicted based solely on the testimony of one witness.

  But where the evidence for both parties is principally testimonial where the version of each exhibit equal tendency to be true and accurate, and the witnesses have not betrayed themselves by major contradictions or other indications of falsehood, there exists every reason to measure preponderance by numerical advantage. .

4. The Court has the power to stop the further presentation of evidence on the same point as when the additional evidence is only corroborative or the point has already been established, or when it results to unnecessary delay.

5. As to the testimony of a witness:
- **a.** The court must consider everything stated by the witness during the

direct, cross, re-direct and re-cross examinations.

b. The testimony of a witness maybe believed in part and disbelieved in other parts, depending on the corroborative evidence and the probabilities and improbabilities of the case. It is accepted as a matter of common sense that if certain parts of the testimony are true, his testimony can not be disregarded entirely.

Contrast this with the so called **"Falsus in unom, falsus in omnibus"**

6. **The Preference of Evidence must be observed in case of conflict:**
   - **a.** Physical or Object evidence is evidence of the highest order and prevails over contrary testimonial evidence.
   - **b.** Documentary over testimonial evidence.
   - **c.** Positive over negative evidence. E.G. positive identification over alibi; an assertion of the occurrence of a thing over a plain denial. "Denials, if unsubstantiated by clear and convincing evidence, are deemed negative and self-serving evidence unworthy of credence." (Wa-acon vs. People, 510 SCRA 429).
   - **d.** Direct over circumstantial.
   - **e.** Testimony in open court over sworn statements or affidavits.
   - **f.** The "Admitted Facts Rule"- evidence of whatever description must yield to the extent that it conflicts with admitted or clearly established facts". Thus courts give superior credit to witnesses whose testimonies on material points are in accord with facts already established (Frondarina vs. Malazarte 510 SCRA 223).

Inconsistency of statements

Caveat: No inconsistencies- not credible, possibility o being coached.

7. **Rule in criminal cases:**
   - **a.** For conviction
     - **i.** For conviction: the prosecution must adduce proof of guilt beyond reasonable doubt i.e. moral certainty not absolute certainty.
     - **iii.** Every doubt is to be resolved in favor of the accused
     - **iv.** Accusation is not synonymous with guilt
     - **v.** Accused need not present evidence if the evidence against him is weak because conviction must be on the strength of the evidence of the prosecution and not on the weakness of the evidence of the accused
   - **b.** Affirmative Defenses be shown by clear, positive and convincing evidence.
   - **c.** Two Witness Rule in Treason.
   - **d.** If conviction is based on circumstantial evidence. The requirements under section 4 must be present
     - **i)** There must be more than one circumstance
     - **iii)** The facts from which the inferences are derived are proven
     - **iv)** The combination of all such circumstances produces conviction beyond reasonable doubt
   - **e.** If based on Extra Judicial Confession, same must be corroborated by evidence of corpus delicti

V. CREDIBLE EVIDENCE: Evidence to be believed requires:

- **A.** That it be credible in itself i.e. such as the common experience and observation of mankind can approve as probable under the circumstances. Testimony must be natural, reasonable and probable as to make it easy to believe.
- **B.** Must come from a credible source- a credible witness is one who testifies in a categorical, straightforward spontaneous and frank manner and remains consistent on cross examination

VI. APPRECIATION OF EVIDENCE BY TRIAL COURT by trial court generally accorded respect by appellate courts as the former have first hand contact with the evidence and were able to observe the witness as they testified.

- In matters concerning the credibility of witnesses, appellate courts will generally not disturb the findings of trial courts unless they neglected, ignored or misappreciated material and substantial facts, which could materially affect the results of the case.

VII. EVIDENCE ON MOTION –When a motion is based on facts not appearing of record the court may hear the matter on affidavits or depositions presented by the respective parties, but the court may direct that the matter be wholly or partially on oral testimony or depositions.

- This refers to collateral issues or motions based on facts not appearing on record such as
  - **a.** proof of service by publication

b. relief from order of default
c. Taking of depositions
d. motion for new trial
e. relief from judgment
f. issuance of writ of preliminary injunction

REMEDIES IN THE PRESENTATION OF EVIDENCE

1. **Interposing an objection**
   - **What can be objected?**
     a. Presentation of witnesses.
     b. Testimony as stated in the offer of testimony- "those are not included in the offer."
     c. Questions- "you make a specific objection by stating your specific ground."- leading questions, misleading questions, question is vague [phraseology], or the question is argumentative…beware also of complex questions.
     d. Desired answers- those question that will not elicit facts but speculative answers.
     e. The question has already been ask and answered.
     f. Character of the witness- the witness had not been properly qualified so he cannot give an opinion.
     g. Witness not competent- not the proper person to answer a question.
     h. Approach of lawyers.

   - **When to make objection?**
     a. Witness- before he takes his oath.
     b. Question- wait for the question to be finished before interposing your objection.

2. **Continuing objections-** register your objection and that objection will be recognize to all question regarding such matter**.**

3. **Motion for reconsideration-** asking the court to change its ruling on the objection.

4. **Taking exception to a ruling**- the court made a ruling, the counsel take exception to the ruling.

5. **Proffer or offer of proof**- with respect oral testimony-
   a) when a witness was not allowed to testify, the counsel will summarize what will the witness would testify if he was allowed [*presupposes that the witness is in court ready to testify]*
   b) The witness is testifying and the opponent objected to your question which was sustained…thus, announced to the court "if my question was allowed these would be the answer of my witness." Proffer of proof belongs to the proponent and not to the opponent [Why? Because the proponent knows what his witness will testify…the opponent counsel does not know what the proponent's witness will testify on..kaya nga siya magcross- examine eh!!!.

6. **Tender of excluded evidence**- submit to the court those documents which were not allowed to be presented as evidence. Tender it to the clerk of court and to the judge. Purpose: ask the court to make those documents as part of the records of the case.

7. **Motion to strike-** asking the court to direct the stenographer that the answer or part of the answer of the witness to be erased or expunge from the record. Why? Some answers are hearsay, not responsive to the question or when a question was already answered before an objection was interposed. Also, those irrelevant statements of the counsel.

8. **Motion to suppress-** with respect to evidence which are inadmissible, because they are obtained in violation of exclusionary law. When to make it? Before the trial begins or before marking OR if during the trial, file a motion to suppress upon knowledge thereof.

9. **Motion to quash a search warrant/ warrant of arrest.**

10. **Demurrer to evidence or motion to dismiss.**

11. **Motion to reopen trial**- when? When the case is submitted for decision and no decision was made. What can be presented? Newly discovered evidence, which if presented will affect the outcome of the case.

12. **Perpetuation of Testimony**

RULE 134: PERPETUATION OF TESTIMONY

A. To perpetuate is to preserve for future use .Rule 134 governs the procedure on how a party or witness may preserve his testimony because the person may not be available to personally testify in Court during the trial of a case in which he may be involved, And therefore the purpose is prevent the loss or unavailability of the testimony.

B. The depositions are of two kinds:
   1. ***Depositions de bene esse***: one filed after a case has already been filed in court , i.e to preserve testimony in danger of being lost before the witness can be examined in court

      Examples: a). the witness scheduled to leave abroad with no possibility of returning b). the witness is so sick and might die

   2. ***Depositions perpetuam rei memoriam***: one taken in anticipation of a case not yet filed in court

C. The requirement of notice to the adverse party(ies) is essential. It cannot be used against a party who was not named in the Petition or not issued a notice of the

date and place of the hearing.

D. The deposition may be taken by oral testimony or by written interrogatories, as directed by the court.

1. In oral testimony, the court may designate before whom the testimony shall be taken. The witness undergoes the stages of direct, cross; re-direct t and re-cross, examinations, which are duly recorded, including objections by the parties.

2. If the witness is no longer available for personal testimony during the trial, the testimony as, recorded becomes his testimony in court.