

EVIDENCE

1. Definitions

- a. Factum probandum - ultimate fact or the fact sought to be established
- b. Factum probans - evidentiary fact or the fact by which the factum probandum is to be established

2. Classification of evidence

a. Object (Real)

(That which is directly addressed to the senses of the court and consists of tangible things exhibited or demonstrated in open court, in an ocular inspection, or at a place designated by the court for its view or observation of an exhibition, experiment or demonstration; always relevant regardless of contents

Documentary

(Evidence supplied by written instruments or derived from conventional symbols, such as letter, by which ideas are represented on material substances

Testimonial

(That which is submitted to the court through the testimony or deposition of a witness

b. Relevant

(Evidence having any value in reason as tending to prove any matter provable in an action

(Relevancy - logical relation of evidentiary fact to fact in issue

Material

(Evidence directed to prove a fact in issue

Competent

(One that is not excluded by law in particular case

c. Direct

(That which proves the fact in dispute without the aid of any inference or presumption

Circumstantial

(The proof of the facts other than the fact in issue from which, taken either singly or collectively, the existence of the particular fact in dispute may be inferred as a necessary or probable consequence

d. Cumulative

(Evidence of the same kind and to the same state of facts

Corroborative

(Additional evidence of a different character to the same point for higher probative value

e. Prima facie

(That which standing alone, unexplained or uncontradicted is sufficient to maintain a proposition

Conclusive

(Class of evidence which the law does not allow to be contradicted

f. Primary or Best

(That which the law regards as affording greatest certainty of the fact in question

Secondary or Substitutionary

(That which is inferior to the primary evidence and is permitted by law only when the best evidence is not available

g. Positive

(The witness affirms that a fact did or did not occur

Negative

(The witness states that he did not see or know of the occurrence of a fact

Rule 129 What Need Not Be Proved

1. What do not need to be proved: [NAPITAS]

Matters of judicial notice

Judicial admissions

Facts presumed

Allegations in complaint or answer which are immaterial to the issue

Facts admitted or not denied in the answer, provided they have been sufficiently alleged

Those which are the subject of an agreed stipulation of facts between the parties, as well as judicial admissions made in the course of the proceedings

Technical admission - when defendant fails to specifically deny the allegations of plaintiff

2. Doctrine of processual presumption - absent any evidence or admission, the foreign law in question is presumed to be the same as that in the Philippines

3. Mandatory judicial notice [SLAPTONG]

States - existence, territory, political history, government, symbols of nationality

Law of nations

Admiralty and maritime courts and seals

Philippine - political constitution and history

Official acts

(Court cannot take judicial notice of a law or regulation that is not yet effective

(Decisions of SC are proper subjects of mandatory judicial notice

Laws of nature

Measure of time

Geographical division

4. Discretionary judicial notice

Matters which are of public knowledge

(Common and general knowledge

(Indisputable

Matters capable of unquestionable demonstration

Ought to be known by judges because of their judicial functions

(Newspaper reports not subject to judicial notice

(Courts cannot take judicial notice of custom. Custom must be proved as a matter of fact.

Pardon is granted by the Chief Executive and as such is a private act which must be pleaded and proved by the person pardoned.

5. Judicial Admissions:

(Verbal or written; made by a party in course of the proceedings in the same case

(May only be contradicted by showing that:

Made through palpable mistake; or
No such admission was made.

(Admissions made in a pleading later amended: lose their status as judicial admissions; become merely extra-judicial admissions which must be offered.

(A stipulation made during a criminal proceeding is tantamount to a judicial admission and need not be signed as required by R118, §4 to be binding on the accused.

(A court cannot take judicial notice of an admission made by a party in another case even if the latter case is pending before the same sala or judge, except:

In the absence of objection;

With knowledge or upon request of the parties;

It is part of the records.

Rule 130 Rules of Admissibility

1. Admissibility of object evidence

Relevant to fact in evidence

Object must be authenticated before it is admitted

Production of documents under this rule and Under Rule 27 (modes of discovery), distinguished

Rule 130 Rule 27 Production is procured by mere notice to adverse party, and requirements for such notice must be complied with as a condition precedent for the subsequent evidence by the proponent
Production is by proper motion in the trial court, and is permitted only upon good cause shown (mode of discovery)

Presupposes that the document to be produced is intended as evidence for the proponent who is presumed to have knowledge of its contents, secondary evidence thereof being available in case of its non-production
Contemplates situation wherein document is either assumed to be favorable to the party in possession thereof OR that the party seeking its production is not sufficiently informed of the contents of the same

Best Evidence Rule

1. General Rule: When the subject of an inquiry is the contents of a document, no evidence shall be admissible other than the original document itself. (If only the fact of execution/existence/surrounding circumstances only is involved, or when the event is memorialized and the writing is only incidental, the Rule does not apply)

2. Exceptions to Best Evidence Rule:

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

When the original is in the custody of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;

When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the only fact sought to be established is the general result of the whole; and

When the original is a public record in the custody of a public officer or is recorded in a public office.

3. Meaning of "original" document

The one the contents of which are the subject of an inquiry

If in 2 or more copies executed:
At or about the same time; AND
With identical contents
(Then all copies are originals

If entry is
Repeated in regular course of business, with
One being copied from another;
At or near the time of the transaction,
(Then all entries are originals

4. If original is unavailable:
(Order of proof (but can be changed at court's discretion):

Existence

Execution:

Established by

Person who executed it;

The person before whom its execution was acknowledged

Any person who was present and saw it executed, and recognized the signature;

Any person to whom the parties to the instrument had previously confessed the execution thereof

c. Loss or Destruction

(If there are several original copies, all copies must be accounted for before secondary evidence may be received.

d. Contents

Proof of Contents of Lost Original or Original in custody/control of adverse party (Secondary Evidence) -

in order stated:

A copy

A recital of its contents in an authentic document

Testimony of witnesses

6. What must be proven if original in possession of adverse party

Opponent's possession of original

Reasonable notice to opponent to produce the original

Satisfactory proof of its existence

Failure or refusal of opponent to produce original in court

(By opponent's failure to produce the document on demand, he is now forbidden to produce the document in order to contradict the other party's copy/evidence of its contents

Parol Evidence Rule

1. General Rule: When the terms of an agreement have been reduced into writing, it is considered as containing all the terms agreed upon, and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement

Exceptions to the Parol Evidence Rule:

when a party puts in issue in his pleadings: [FIVE]

Intrinsic ambiguity, mistake or imperfection in the written agreement

Failure of the written agreement to express the true intent of the parties;

Validity of the written agreement; OR

Existence of other terms agreed upon subsequent to the execution of the written agreement

NOTE: Parol = evidence aliunde whether oral or written which tends to deny or contradict documented agreement.

(A "Receipt" or a "Deed" is not an exclusive memorial and facts contained therein may be shown irrespective of the terms of the document.

(Distinction must be made between "statements of fact" expressed in an instrument and the "terms" of the contractual act. The former may be varied by parol evidence.

(Parol Evidence Rule not applicable to strangers to the contract or third parties

Parol Evidence Rule and Best Evidence Rule Distinguished

Parol Evidence Rule Best Evidence Rule Presupposes that the original document is available in court The original writing is not available and/or there is a dispute as to whether said writing is the original Prohibits the varying of the terms of a written agreement Prohibits the introduction of substitutionary evidence in lieu of the original documents, regardless of whether or not it varies the contents of the original With the exception of wills, applies only to documents which are contractual in nature (written agreements) Applies to all kinds of writings Can be involved only when the controversy is between the parties to the written agreements, their privies or any party affected thereby (does not apply to complete strangers) Can be invoked by any party to an action, regardless of whether such party participated in the writing involved

Qualification of Witnesses

1. Persons Disqualified from becoming witnesses due to mental incapacity or immaturity:

a. Those whose mental condition, at the time of their production for examination, is such that they are incapable of intelligently making known their perceptions to others; or

(A mental retardate is not, for this reason alone, disqualified from being a witness.

b. Children whose mental maturity is such as to render them incapable of perceiving the facts respecting which they are examined and of relating them truthfully.

But a child, regardless of age, may be considered as a competent witness, if he is capable of [ORC]:

Observation

Recollection; and

Communication

Marital Disqualification Rule

*During their marriage, neither the husband nor the wife may testify for or against the other without the consent of the affected spouse, except in a civil case by one against the other, or in a criminal case for a crime committed by one against the other or the latter's direct descendants or ascendants.

1. Exemptions to Marital Disqualification

(Wife may testify against the husband in a criminal case for falsification, where the husband made it appear that the wife gave her consent to the sale of a conjugal house (considered as a crime committed against the wife)

(If husband-accused defends himself by imputing the crime to the wife,

he is deemed to have waived all objections to the wife's testimony against him.

Dead Man's Statute

*Parties or assignors of parties to a case, or persons in whose behalf a case is prosecuted, against an executor or administrator or other representative of a deceased person, or against a person of unsound mind, upon a claim or demand against the estate of such deceased person or against such person of unsound mind, cannot testify as to any matter of fact occurring before the death of such deceased person or before such person became of unsound mind.

1. Requisites for Application of Dead Man's Statute [PACO]

a. The witness is a Party or assignor of a party to a case, or of a person on whose behalf a case is prosecuted;

(Dead Man Statute not applicable to a corporation's officers and stockholders in a suit instituted by the corporation. Thus, the officers and stockholders may testify.

b. The action is Against an executor, administrator or other representative of a deceased person, or against a person of unsound mind;

(Heirs of deceased person are considered "representatives" of a deceased person.

c. The subject matter of the action is a Claim or demand against the estate of such deceased person, or against such person of unsound mind;

d. The testimony refers to any matter of Fact occurring before the death of such deceased person, or before such person became of unsound mind.

(Not covered by the Rule:

Counterclaim by defendant (plaintiff may testify in his defense)

Deceased contracted with plaintiff thru an agent of the deceased/insane (in the contract which is the subject of the action) who is still alive and can testify (but the testimony is limited to the acts performed by the agent)

If adverse party is called as a witness by the representative of the deceased/incompetent or if representative introduced evidence as to the transactions or communications with the deceased/incompetent

To cadastral proceedings, where there is no defendant or plaintiff

Privileged Communications:

1. Kinds of Privileged Communications:

Marital privilege
Attorney-client
Doctor-patient
Priest-Penitent
Public Officer's Privilege

2. Requisites for Marital Privilege

Valid marital relation must have existed

Privilege is claimed with respect to a communication made by one spouse to another during the marriage;

Communication was made in confidence

3. Marital disqualification and marital privilege distinguished

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

4. Attorney-Client Privilege

There is an attorney-client relationship

There is a communication made by the client to the attorney

Such communication was made in the course of, or with a view to, professional employment

(Extends to attorney's secretary, stenographer or clerk; requires consent of both employer and the client to testify as to matters learned in their professional capacity

(Exceptions:

Actions brought by client against his attorney

Communications made in presence of third persons

Communications regarding an intended crime

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

Exception:

If there is a probability that the revealing the client's name would implicate the client to the activity for which he sought the lawyer's advice;

The disclosure would open the client to civil liability;

Where the identity is intended to be confidential

(Privilege not confined to verbal or written communications, but extends to all information communicated by the client to the attorney by other means, such as when the attorney is called to witness the preparation of a document.

5. Requisites for Physician-Patient privilege [CRANB]

The action is a Civil case

The Relation of physician-patient existed

The information was Acquired by the physician while attending to the patient in his professional capacity

The information was Necessary for the performance of his professional duty

The disclosure of the information would Blacken the reputation of the patient

(A patient's husband is not prohibited from testifying on a report prepared by his wife's psychiatrist since he is not the treating physician (although it would be hearsay)

(A physician is not prohibited from giving expert testimony in response to a strictly hypothetical question in a lawsuit involving the physical or mental condition of a patient he has treated

professionally.

6. Requisites for Priest-Penitent Privilege

Confession was made or advice given by the priest in his professional character in the course of the discipline enjoined by the church to which the priest or minister belongs;

The confession must be confidential and penitent in character

7. Requisites for Public Officer's Privilege

Communication made to a public officer in official confidence

Public interest would suffer by the disclosure

8. "Newsman's privilege" - a publisher, editor, columnist or duly accredited reporter cannot be compelled to disclose the source of news report or information appearing in the publication which is related in confidence, the disclosure of which is not demanded by the security of the state.

Admissions and Confessions

1. Admission and Confession distinguished

Admission	Confession	Statement of fact which does not involve an acknowledgment of guilt or liability	Involves acknowledgment of guilt or liability
May be express or tacit	Must be express	May be made by third persons, and in certain cases, are admissible against a party	Can be made only by the party himself, and in some cases, are admissible against his co-accused

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

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

2. Requisites for admissibility of an admission

Involves a matter of fact, not of law

Categorical and definite

Knowingly and voluntarily made

Adverse to the admitter's interest, otherwise, self-serving and inadmissible as hearsay

3. Admissions and Declarations against self-interest distinguished

Admissions	Declaration against Interest	Need not be, though will greatly enhance probative weight if made against the interest of the declarant
Must have been made against the proprietary or pecuniary interest of the parties	Made by the party himself and is a primary evidence and competent though he be present in court and ready to testify	Must have been made by a person who is either deceased or unable to testify
Can be made at any time	Must have been made ante litem motam	

4. Compromises

(Civil Cases: not admission of liability

(Criminal Cases: implied admission of guilt.

Except: quasi-offenses or those allowed by law to be compromised, or when made to avoid risks of criminal actions against him.

(Also, offer to pay expenses occasioned by injury not admissible as proof of civil or criminal liability for the injury.

(A plea of forgiveness made with the knowledge, consent or acquiescence of the accused is tantamount to an offer to compromise by the accused.

(If the purpose of the offer is to buy peace and avoid litigation,

then the offer is inadmissible.

(As held in the case of Daggett v. Atchinson, etc. (48 Cal.2d 655), it is the general rule that evidence of precautions taken and repairs made after the happening of the accident is not admissible to show a negligent condition at the time of the accident.

5. Requisites for Admission by Silence (Adaptive Admissions)

The party heard the declaration or observed the act of the other person
He must have understood the statement or act

He was at liberty to interpose a denial

Statement was with respect to some matter affecting his rights or in which he was then interested, and calling, naturally, for an answer

Facts were within his knowledge

Facts admitted or inference to be drawn from his silence is material to the issue

The party has no right to remain silent (as held in Commonwealth v. Dravec, 424 Pa. 582 or 227 A-2d 904)

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

6. Res inter alios acta alteri nocere non debet

a. First branch

(Section 20, the rights of a party cannot be prejudiced by an act, declaration or omission of another

(EXCEPTIONS: where the third person is a partner, agent, joint owner, joint debtor or has a joint interest with the party, or is a co-conspirator or a privy of the party, during the existence of the partnership, conspiracy, etc. as established by evidence other than such act or declaration, or while holding title to property in relation to such

b. Second branch

(Sec. 34, evidence that one did or did not do a certain thing at one time not admissible to prove that he did or did not do the same/similar thing at another time

(Exceptions: [KISSHICUP] it may be received to prove a specific intent or knowledge, identity, plan, system, scheme, habit, custom, or usage

7. Admission by a Co-Partner or Agent

Partnership, agency or joint interest is established by evidence other than the act or declaration

Act or declaration is within the scope of the partnership, agency or joint interest

Act or declaration must have been made during the existence of the partnership, agency or joint interest

8. Admission by Co-conspirator

(Requisites apply only to extrajudicial acts or statements, and not to testimony during trial

Conspiracy is shown by evidence other than the act or declaration

Admission was made during existence of the conspiracy

Admission relates to the conspiracy itself

(An extra-judicial confession of an accused is not admissible in evidence against his co-accused when the latter had not been given the opportunity to hear him testify and cross-examine him. Such confession

is not admissible as an Admission by co-conspirator because it was made after the conspiracy had ended and after the commission of the crime.

9. Admissions by Privies

Must be a relation of privity between the party and the declarant
Admission was made while declarant as predecessor in interest, while holding title to the property

Admission is in relation to said property

(HOWEVER, such evidence is still not admissible to contradict the terms of the written instrument

10. Opinion of a witness

Expert - special knowledge, skill experience or training

The matter to be testified to is one that requires expertise

The witness has been qualified as an expert

*It is not enough that a witness who is being presented as an expert belongs to the profession or calling to which the subject matter of the inquiry relates. He must further show that he possesses special knowledge to the question on which he proposes to express an opinion.

Ordinary

Identity of person about whom he has adequate knowledge

Handwriting, if with sufficient familiarity

Mental sanity, if sufficiently acquainted

Impressions on emotion, behavior, condition or appearance which he has observed

Ordinary matters common to all men of common perception

Hearsay Rule

1. Exceptions to hearsay rule

Dying declaration - ante mortem or in articulo mortis

Declaration against interest

Act or declaration against pedigree

Family reputation or traditions regarding pedigree

Common reputation

Res gestae

Entries in course of business

Entries in official records

Commercial lists and the like

Learned treatises

Court takes judicial notice; or

Testified to by an expert

Testimony or deposition at a former proceeding

(Newspaper clippings are hearsay and have no evidentiary value unless substantiated by persons with personal knowledge of the facts.

2. Doctrine of independently relevant statements

(Independent of whether the facts stated are true, they are relevant since they are the facts in issue or are circumstantial evidence of the facts in issue

(Not covered by the hearsay rule

(Example: The statements or writings attributed to a person who is not on the witness stand are being offered, not to prove the truth of the facts stated therein, but only to prove that such statements were actually made or such writings were executed, or to prove the tenor thereof.

3. Requisites of Declaration Against Interest

- a. Declarant dead or unable to testify
(Mere absence from jurisdiction does not make declarant "unable to testify." Exception contemplates that the declarant is dead, mentally incompetent or physically incapacitated
- b. Declaration was against his own interest
- c. Reasonable man in declarant's position would not have made the declaration unless he believed it to be true
(Declarations by accused against his interest are inadmissible if done in violation of his constitutional rights

4. Requisites of Act or Declaration about Pedigree
Declarant dead or unable to testify
Declarant is related to the person whose pedigree is in question
Made ante litem motam
Relationship between declarant and person whose pedigree is in question showed by evidence other than the declaration EXCEPT if claiming from the declarant, where the declaration itself is sufficient

5. Requisites of Family Reputation/Tradition regarding Pedigree
Reputation or tradition exists in family of person whose pedigree is in question
Reputation or tradition existed previous to the controversy
Witness testifying thereon is a surviving member of that family, by either affinity or consanguinity
(A person's statement as to the date of his birth and age, as he learned of these from his parents or relatives, is an ante litem motam declaration of family reputation.

6. Requisites of Common Reputation
Facts to which the reputation refers are of public or general interest
Reputation is ancient (or more than 30 years old)
Reputation must have been formed among a class of persons who were in a position to have some sources of information and to contribute intelligently to the formation of the opinion
Reputation must exist ante litem motam
(HOWEVER, if the reputation concerns marriage or moral character, the requisite that the reputation must be ancient does NOT apply

7. Requisites of Dying Declarations
a. Declaration is conscious of impending death
b. Declaration relates to the facts or circumstances pertaining to the fatal injury or death
Statements referring to the antecedents of the fatal encounter or opinion, impressions, or conclusions of the declarant are not admissible. (Professor Bautista believes that the opinion rule is still applicable in dying declarations.
c. Declarant would have been competent to testify had he survived
d. Declaration is offered in a case wherein the declarant's death is the subject of the inquiry.
Dying declarations are admissible in ANY case not only in criminal prosecutions for homicide which was the former rule.

8. Res gestae
(2 kinds/classes:
a. Spontaneous statements;
(Requisites:
There is a startling occurrence

Statement must relate to the circumstances of the occurrence

Statement is unconscious and unpremeditated

(Factors to be considered in determining spontaneity of statement:

Time that elapsed between occurrence and the making of the statement

Place where statement was made

Condition of the declarant when he made the statement

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

Nature and circumstances of the statement itself

b. Verbal acts:

(Requisites:

Res gestae or principal act must be equivocal

Act material to issue

Statements must accompany equivocal act

Statements must give legal significance to equivocal act

9. Res gestae and Dying Declarations distinguished

Res Gestae Dying Declarations Statement of the killer himself after or during the killing, or that of a third person (e.g., victim, bystander)

Can be made only by the victim Statement may precede, accompany or be

made after the homicidal act was committed Made only after the

homicidal attack has been committed Justified by the spontaneity of

the statement Trustworthiness is based upon its being given under

awareness of impending death

10. Requisites of Entries in the course of business

Entrant is deceased or unable to testify

Entries made at or near the time of the transaction to which they relate

Entries made by entrant in his professional capacity or in the

performance of a duty

Entries were made in the ordinary or regular course of business

Entrant must have been in a position to know the facts therein stated

(Heirs of Conti vs. CA - baptismal certificates are admissible as

entries in the ordinary course of business, even absent the testimony

of the officiating priest or official recorder

11. Requisites of Entries in official records

Entry was made by public officer of the Philippines or by a person

especially enjoined by law to make such entry

Entry was made in the performance of entrant's duty

Entrant must have been in a position to know the facts therein stated

(Baptismal certificates or parochial records are not public or

official records and are not proof of relationship or filiation of the

child baptized.

12. Entries in the course of business and Entries in official records distinguished

Entries in the course of business Entries in official records

Sufficient that entrant made the entries pursuant to a duty either

legal, contractual, moral or religious, or in the regular course of

business or duty entrant is a public officer in performance of duty, or

if a private individual, must have acted pursuant to a specific legal

duty (specially enjoined by law) The person who made such entries must

be dead or unable to testify there is no such requirement for

admissibility, precisely because the officer is excused

13. Requisites of Testimony or Deposition in former proceeding

Witness whose testimony is offered is dead or unable to testify

Party against whom the evidence is offered, or his privy, was a party to the former case or proceeding, judicial or administrative
Testimony or deposition relates to the same subject matter (identity of issue)

The requirement of identity

Adverse party had opportunity to cross-examine

Testimony given during preliminary investigation where the defense had the opportunity to cross-examine the unavailable witness is admissible in the criminal case

14. Modes of Extra-judicial Identification of Accused

Show-ups - where accused alone is brought face-to-face with the witness for identification

Mug shots - where photographs are shown to the witness for identification

Line-ups - where a witness identifies the suspect from a group of persons lined up for the purpose

(Identification will be admissible if it passes the totality of circumstances test which considers the following factors:

The witness' opportunity to view the criminal at the time of the crime

Witness' degree of attention at that time

Accuracy of any prior description by the witness

The level of certainty demonstrated by the witness at the identification

Length of time between the crime and identification

Suggestiveness of the identification procedure

15. The SC approved an additional exception to the hearsay rule in its A.M. no. 00-4-07-SC approving the Proposed Rule on Examination of a Child Witness.*

(A statement made by a child describing any act or attempted act of child abuse NOT otherwise admissible under the hearsay rule, may be admitted in evidence in any criminal or non-criminal proceeding subject to the following rules:

Before such statement may be admitted, its proponent shall make known to the adverse party the intention to offer such statement and its particulars to allow him an opportunity to object.

If the child is available

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

If the child is unavailable

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

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

Whether there is a motive to lie

The general character of the declarant child

Whether more than one person heard the statement

Whether the statement was spontaneous

The timing of the statement and the relationship between the declarant child and witness.

Cross-examination could not show the lack of knowledge of the declarant child.

The possibility of faulty recollection of the declarant child;

The circumstances surrounding the statement are such that there is no reason to suppose the declarant child misrepresented the involvement of

the accused.

The child witness shall be considered unavailable in the following situations:

- i. Is deceased, suffers from physical infirmity, lack of memory, mental illness or will be exposed to severe psychological injury; Is absent from the hearing and the proponent of his statement has been unable to procure his attendance by process or other reasonable means.
- d. When the child witness is unavailable, his hearsay testimony shall be admitted only if corroborated by other admissible evidence.

Rule 131 Burden of Proof and Presumptions

1. Presumptions of law

May be conclusive or absolute, or disputable or rebuttable

A certain inference must be made whenever the facts appear which furnish the basis of the inference

Reduced to fixed rules and form a part of the system of jurisprudence

2. Presumptions of fact

A discretion is vested in the tribunal as to drawing the inference

Derived wholly and directly from the facts of the particular case by means of the common experience of mankind

3. Burden of proof

(Onus probandi

(Obligation imposed upon a party who alleges the existence of facts necessary for the prosecution of his action or defense to establish the same by the requisite presentation of evidence

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

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

(Determined by pleadings filed by party

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

4. Burden of evidence

(Lies with party asserting affirmative allegations

(Shifts during trial, depending on exigencies of the case

(Determined by developments at trial or by provisions of law (presumptions, judicial notice, admissions)

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

(People vs. Macagaling - in a charge of illegal possession of firearms, the burden is on the prosecution to prove that the accused had no license to possess the same.

(People vs. Manalo - in a charge for selling regulated drugs without authority, it was held that although the prosecution has the burden of proving a negative averment which is an essential element of the crime (i.e. lack of license to sell), the prosecution, in view of the difficulty of proving a negative allegation, need only establish a prima facie case from the best evidence obtainable. In this case, the

lack of license was held to have been established by the circumstances that the sale of the drug was consummated not in a drug store or hospital, and that it was made at 10:00 PM.

Rule 132 Presentation of Evidence

1. Use immunity

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

2. Transactional immunity

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

3. When leading questions allowed

On cross

On preliminary matters

Difficulty in getting direct and intelligible answers

Unwilling or hostile witness

Adverse party or an officer, director or a corporation or partnership which is an adverse party

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

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

Hostile witness

Adverse party or rep. of adverse party

Not voluntarily offered but required by law (e.g., subscribing witnesses to a will)

4. Impeaching witness of adverse party

Contradictory evidence from testimony in same case

Evidence of prior inconsistent statement

Evidence of bad character/general reputation for truth, honesty, integrity

Evidence of bias, interest, prejudice or incompetence

Evidence of mental, sensory derangement or defect

Evidence of conviction of an offense which affects credibility of witness

5. Impeaching own witness

(General Rule: Party not allowed to impeach own witness

Exceptions:

Unwilling or adverse witness so declared by the court

Witness who is also an adverse party

Witnesses required by law (e.g., subscribing witnesses to a will)

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

(When a witness who is partly cross-examined dies, his direct examination cannot be expunged. In People v. Señeris (99 SCRA 92), the direct testimony of a witness who dies before conclusion of the cross can be stricken only insofar as not covered by the cross. However, Professor Bautista does not like this decision because although the cross was substantially complete, still, the court ordered the direct examination to be stricken out.

6. Requisites of revival of present memory

Memorandum has been written by him or under his direction; and
Written by him:
When the fact occurred or immediately thereafter; or
At any other time when the fact was fresh in his memory and he knew
that the same was correctly recorded

7. Requisites of Revival of Past Recollection
Witness retains no recollection of the particular facts;
But he is able to swear that the record or writing correctly stated
the transaction when made

8. Revival of present memory and Revival of past recollection
distinguished
Present Recollection Revived Past Recollection Recorded Applies if the
witness remembers the facts regarding his entries Applies where the
witness does not recall the facts involved Entitled to greater weight
Entitled to lesser weight Evidence is the testimony Evidence is the
writing or record Rule of evidence affected is competency of witness,
examination of witness (laying the predicate) Rule of evidence affected
is the best evidence rule

9. Additional modes of authenticating a private writing
Doctrine of self-authentication
(Where the facts in the writing could only have been known by the
writer
Rule of authentication by the adverse party
(Where reply of the adverse party refers to and affirms the
sending and his receipt of the letter in question, a copy of which the
proponent is offering as evidence

10. Authentication not required:
Ancient document
More than 30 years old
Contains no alterations or circumstances of suspicion
Produced from a custody in which it would naturally be found if genuine
Public document or record
Notarial document acknowledged, proved or certified
Authenticity and due execution has been expressly or impliedly admitted
(e.g., actionable documents, failure to deny under oath)
(Computer printouts are inadmissible unless properly authenticated
by a witness attesting that they came from the computer system or that
the data stored in the system were not and could not have been tampered
with before the same were printed out.

11. Handwriting: evidence of genuineness
Witness actually saw person writing the instrument
Familiar with handwriting and witness can give opinion
Comparison of questioned handwriting and admitted genuine specimens
Expert evidence

Offer and Objection

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

Exception: If there was repeated reference thereto in the course of
the trial by adverse party's counsel and of the court, indicating that
the documents were part of the prosecution's evidence.

(Two requisites must concur (People vs. Napta)

- a. The document must have been duly identified by testimony duly recorded.
- b. The document must have been incorporated to the records of the case.

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

Evidence offered is presumed to be admissible or competent until the contrary has been established.

(Thus, the opposing party must OBJECT to its introduction.

When to object

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

When is a motion to strike out answer proper?

- a. When the witness answered the question before the counsel has a chance to object

Where a question which is not objectionable may be followed by an objectionable unresponsive answer

Where a witness has volunteered statements in such a way that the party has not been able to object thereto

Where a witness testifies without a question being addressed to him

Where a witness testifies beyond the ruling of the court prescribing the limits within which he may answer

When a witness dies or becomes incapacitated to testify and the other party has not been given the opportunity to cross-examine the witness. There must be an objection first before a motion to strike. If the party slept on his right to object, he cannot later on avail a motion to strike to exclude the evidence.

When is a motion to strike out improper?

A party cannot insist that competent and relevant evidence be stricken out for reasons going to his weight, sufficiency or credibility

One cannot move to strike it out because it proves unfavorable to him

7. If court improperly excludes an otherwise admissible evidence, remedy is to tender the excluded evidence, also known as OFFER OF PROOF:
Documentary - by attaching the document or making it part of the record
Testimonial - by stating the personal circumstances of witness and the substance of proposed testimony

Rule 133 Weight and Sufficiency of Evidence

1. Proof beyond reasonable doubt

(Does not mean such degree of proof as, excluding possibility of error, produces absolute certainty

(Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind

2. Circumstantial evidence to sustain conviction must:

More than one circumstance

Facts from which inferences are derived are proven

Combination of all circumstances such as to produce conviction beyond reasonable doubt

3. Substantial evidence

(That amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

Pertinent Provisions of the Implementing Rules of the E-Commerce Act:
Chapter II Legal Recognition of Electronic Data Messages And
Electronic Documents

Section 7. Legal Recognition of Electronic Data Messages and Electronic Documents. - Information shall not be denied validity or enforceability solely on the ground that it is in the form of an electronic data message or electronic document, purporting to give rise to such legal effect. Electronic data messages or electronic documents shall have the legal effect, validity or enforceability as any other document or legal writing. In particular, subject to the provisions of the Act and these Rules:

A requirement under law that information is in writing is satisfied if the information is in the form of an electronic data message or electronic document.

A requirement under law for a person to provide information in writing to another person is satisfied by the provision of the information in an electronic data message or electronic document.

A requirement under law for a person to provide information to another person in a specified non-electronic form is satisfied by the provision of the information in an electronic data message or electronic document if the information is provided in the same or substantially the same form.

Nothing limits the operation of any requirement under law for information to be posted or displayed in specified manner, time or location; or for any information or document to be communicated by a specified method unless and until a functional equivalent shall have been developed, installed, and implemented.

Section 8. Incorporation by Reference. - Information shall not be denied validity or enforceability solely on the ground that it is not contained in an electronic data message or electronic document but is merely incorporated by reference therein.

Section 9. Use Not Mandatory. - Without prejudice to the application of Section 27 of the Act and Section 37 of these Rules, nothing in the Act or these Rules requires a person to use or accept information contained in electronic data messages, electronic documents, or electronic signatures, but a person's consent to do so may be inferred from the person's conduct.

Section 10. Writing. - Where the law requires a document to be in writing, or obliges the parties to conform to a writing, or provides consequences in the event information is not presented or retained in its original form, an electronic document or electronic data message will be sufficient if the latter:

Maintains its integrity and reliability; and

Can be authenticated so as to be usable for subsequent reference, in

that:

It has remained complete and unaltered, apart from the addition of any endorsement and any authorized change, or any change which arises in the normal course of communication, storage and display; and
It is reliable in the light of the purpose for which it was generated and in the light of all relevant circumstances.

Section 11. Original. - Where the law requires that a document be presented or retained in its original form, that requirement is met by an electronic document or electronic data message if -
There exists a reliable assurance as to the integrity of the electronic document or electronic data message from the time when it was first generated in its final form and such integrity is shown by evidence aliunde (that is, evidence other than the electronic data message itself) or otherwise; and
The electronic document or electronic data message is capable of being displayed to the person to whom it is to be presented.
For the purposes of paragraph (a) above:
The criteria for assessing integrity shall be whether the information has remained complete and unaltered, apart from the addition of any endorsement and any change which arises in the normal course of communication, storage and display; and
The standard of reliability required shall be assessed in the light of the purpose for which the information was generated and in the light of all relevant circumstances.
An electronic data message or electronic document meeting and complying with the requirements of Sections 6 or 7 of the Act shall be the best evidence of the agreement and transaction contained therein.

Section 12. Solemn Contracts. - No provision of the Act shall apply to vary any and all requirements of existing laws and relevant judicial pronouncements respecting formalities required in the execution of documents for their validity. Hence, when the law requires that a contract be in some form in order that it may be valid or enforceable, or that a contract is proved in a certain way, that requirement is absolute and indispensable.

Legal Recognition of Electronic Signatures

Section 13. Legal Recognition of Electronic Signatures. An electronic signature relating to an electronic document or electronic data message shall be equivalent to the signature of a person on a written document if the signature:
Is an electronic signature as defined in Section 6(g) of these Rules;
and
Is proved by showing that a prescribed procedure, not alterable by the parties interested in the electronic document or electronic data message, existed under which:
A method is used to identify the party sought to be bound and to indicate said party's access to the electronic document or electronic data message necessary for his consent or approval through the electronic signature;
Said method is reliable and appropriate for the purpose for which the electronic document or electronic data message was generated or communicated, in the light of all circumstances, including any relevant agreement;
It is necessary for the party sought to be bound, in order to proceed

further with the transaction, to have executed or provided the electronic signature; and,

The other party is authorized and enabled to verify the electronic signature and to make the decision to proceed with the transaction authenticated by the same.

The parties may agree to adopt supplementary or alternative procedures provided that the requirements of paragraph (b) are complied with. For purposes of subparagraphs (i) and (ii) of paragraph (b), the factors referred to in Annex "2" may be taken into account.

Section 14. Presumption Relating to Electronic Signatures. - In any proceeding involving an electronic signature, the proof of the electronic signature shall give rise to the rebuttable presumption that:

The electronic signature is the signature of the person to whom it correlates; and

The electronic signature was affixed by that person with the intention of signing or approving the electronic data message or electronic document unless the person relying on the electronically signed electronic data message or electronic document knows or has notice of defects in or unreliability of the signature or reliance on the electronic signature is not reasonable under the circumstances.

Modes of Authentication

Section 15. Method of Authenticating Electronic Documents, Electronic Data Messages, and Electronic Signatures. - Electronic documents, electronic data messages and electronic signatures, shall be authenticated by demonstrating, substantiating and validating a claimed identity of a user, device, or another entity in an information or communication system.

Until the Supreme Court, by appropriate rules, shall have so provided, electronic documents, electronic data messages and electronic signatures, shall be authenticated, among other ways, in the following manner:

The electronic signature shall be authenticated by proof that a letter, character, number or other symbol in electronic form representing the persons named in and attached to or logically associated with an electronic data message, electronic document, or that the appropriate methodology or security procedures, when applicable, were employed or adopted by a person and executed or adopted by such person, with the intention of authenticating or approving an electronic data message or electronic document;

The electronic data message or electronic document shall be authenticated by proof that an appropriate security procedure, when applicable was adopted and employed for the purpose of verifying the originator of an electronic data message or electronic document, or detecting error or alteration in the communication, content or storage of an electronic document or electronic data message from a specific point, which, using algorithm or codes, identifying words or numbers, encryptions, answers back or acknowledgement procedures, or similar security devices.

Section 16. Burden of Authenticating Electronic Documents or Electronic Data Messages. - The person seeking to introduce an electronic document or electronic data message in any legal proceeding has the burden of proving its authenticity by evidence capable of supporting a finding

that the electronic data message or electronic document is what the person claims it to be.

Modes for Establishing Integrity

Section 17. Method of Establishing the Integrity of an Electronic Document or Electronic Data Message. In the absence of evidence to the contrary, the integrity of the information and communication system in which an electronic data message or electronic document is recorded or stored may be established in any legal proceeding, among other methods By evidence that at all material times the information and communication system or other similar device was operating in a manner that did not affect the integrity of the electronic document or electronic data message, and there are no other reasonable grounds to doubt the integrity of the information and communication system; By showing that the electronic document or electronic data message was recorded or stored by a party to the proceedings who is adverse in interest to the party using it; or By showing that the electronic document or electronic data message was recorded or stored in the usual and ordinary course of business by a person who is not a party to the proceedings and who did not act under the control of the party using the record.

Admissibility and Evidential Weight

Section 18. Admissibility and Evidential Weight of Electronic Data Messages and Electronic Documents. - For evidentiary purposes, an electronic document or electronic data message shall be the functional equivalent of a written document under existing laws. In any legal proceeding, nothing in the application of the rules on evidence shall deny the admissibility of an electronic data message or electronic document in evidence:

On the sole ground that it is in electronic form; or

On the ground that it is not in the standard written form.

The Act does not modify any statutory rule relating to the admissibility of electronic data messages or electronic documents, except the rules relating to authentication and best evidence.

In assessing the evidential weight of an electronic data message or electronic document, the reliability of the manner in which it was generated, stored or communicated, the reliability of the manner in which its originator was identified, and other relevant factors shall be given due regard.

Section 19. Proof by Affidavit and Cross-Examination. - The matters referred to in Section 12 of the Act on admissibility and evidentiary weight, and Section 9 of the Act on the presumption of integrity of electronic signatures, may be presumed to have been established by an affidavit given to the best of the deponent's or affiant's personal knowledge subject to the rights of parties in interest to cross-examine such deponent or affiant as a matter of right. Such right of cross-examination may likewise be enjoyed by a party to the proceedings who is adverse in interest to the party who has introduced the affidavit or has caused the affidavit to be introduced.

Any party to the proceedings has the right to cross-examine a person referred to in Section 11, paragraph 4, and sub-paragraph (c) of the Act.

Retention of Electronic Data Message and Electronic Document

Section 20. Retention of Electronic Data Message and Electronic Document. - Notwithstanding any provision of law, rule or regulation to the contrary:

a. The requirement in any provision of law that certain documents be retained in their original form is satisfied by retaining them in the form of an electronic data message or electronic document which:
Remains accessible so as to be usable for subsequent reference;
Is retained in the format in which it was generated, sent or received, or in a format which can be demonstrated to accurately represent the electronic data message or electronic document generated, sent or received; and,

Where applicable, enables the identification of its originator and addressee, as well as the determination of the date and the time it was sent or received.

The requirement referred to in paragraph (a) is satisfied by using the services of a third party, provided that the conditions set forth in subparagraphs (i), (ii) and (iii) of paragraph (a) are met.

Relevant government agencies tasked with enforcing or implementing applicable laws relating to the retention of certain documents may, by appropriate issuances, impose regulations to ensure the integrity, reliability of such documents and the proper implementation of Section 13 of the Act.

* The resolution came out last November 21, 2000. The rule took effect last December 15, 2000.

REMEDIAL LAW (EVIDENCE)

MEMORY AID

Ateneo Central Bar Operations 2002