EVIDENCE REVIEWER
J. ABAD

RULE 128
GENERAL PROVISIONS

> ***Section 1.Evidence defined. — Evidence is the means, sanctioned by these rules, of ascertaining in a judicial proceeding the truth respecting a matter of fact. (1)***
>
> ***Section 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. (2a)***
>
> ***Section 3.Admissibility of evidence. — Evidence is admissible when it is relevant to the issue and is not excluded by the law of these rules. (3a)***

What is competent evidence?
Evidence that is not otherwise excluded. Components are: a) materiality and b) probativeness.

Who has burden of showing whether particular evidence is competent or incompetent?
He who claims that it is incompetent must show that it is so, because of the presumption of competence of evidence.

Is a confession of the accused made to the police *relevant* evidence of guilt?
Yes since a person's confession that he committed a crime is evidence of guilt.

But *when is such confession competent?*
When such confession is made in the presence of the counsel and Sec. 12 of Bill of Rights?

What is credible evidence?
One that inspires belief as to its truth.

E.g.: *School teacher who passed by saw the accused shoot the victim. Is his testimony credible?*
-Yes. He who practices a noble profession and she is *neutral witness.*

Accused testified he did not stab victim, although his fingerprint was found the knife that was used. Admissible?
-Yes, no rules exclude it. But it is not entitled to credence

If in doubt as to admissibility of the testimony given in the court, how should the judge rule? In favour or against its admissibility? Why?
In favour of admissibility otherwise if judge erred in ruling and excluded the same, the appeals court would be precluded from reversing the ruling and taking such testimony.

Does lawyer have a remedy against such adverse ruling?
Counsel can make a tender of excluded evidence [to the appellate court] in order that the excluded document of testimony may be made part of the record.

Can a trial judge go to the scene of the crime and interview the people who may have seen it happen?
No. Court's search for truth is subject to exemptions, it is limited to evidence adduced in the trial. It must hear the case from a clean slate.

What is the duty of the litigants with respect to their claims against each other?
Duty to establish by evidence the facts upon which they rely.

Is a ruling on relevance of evidence, subject to review on appeal?
It is not subject to review on appeal, as a rule, since its relevance is subject to the trial court's discretion.

> ***Section 4.Relevancy; collateral matters. — Evidence must have such a relation to the fact in issue as to induce belief in its existence or non-existence. Evidence on collateral matters shall not be allowed, except when it tends in any reasonable degree to establish the probability or improbability of the fact in issue. (4a)***

What are the kinds of Collateral Matters allowed that may be relevant to the fact in issue?

I. **Antecedent** – or those in existing even prior to the commission of the crime. They include:
   a. Moral Character, Habit or Custom
   b. Plan, design or conspiracy
      When evidence of motive is essential to conviction: GR proof of motive is not essential to conviction. Motive as distinguished from criminal intent is not an essential element of crime. However, as in

the case of libel or slander, the plaintiff must prove the existence of motive beyond reasonable doubt. Re: must be essential to conviction.

E.g. moral character of the party such as his addiction shows tendency of doing the crime or penchant for cleanliness – shows manner of doing the crime

II. **Concomitant** - accompany the commission of the crime such as opportunity to do the act or incompatibility .
   a. Opportunity – If the accused was the only one who had the opportunity to act charged, such circumstance may be taken against him. Exclusive opportunity is not essential.
   b. Incompatibility – When concomitant circumstances are incompatible with doing of an act by a person, they may be proved to show that such person is not the author of such act.
   c. Alibi – One of the weakest defenses that an accused may resort to. It is not enough to prove that a certain individual is not present at the place of the commission of the crime but it is physically impossible for the individual to go from one place to the place of the crime.

III. **Subsequent** - those which occur after the disputed fact which may show the truth or falsity of the facts of the controversy such as flight, concealment, nervousness, despair, fingerprint, footprint, articles left by accused, resemblance, blood stains, offer of compromise, possession of stolen goods or counterfeit notes.

Significant examples
   a. Motive;
      Motive is the inner drive, impulse or intention that causes a person to act in a certain way

   b. Existence of a plan or design or agreement to commit an act, whether or not criminal

Is evidence of motive indispensable?
As a rule, it isn't. But motive is needed to support a particular a personal judgment to say or do a thing.

Example Motive in Libel or Slander is malicious intent to tarnish person's reputation.

When is motive evident important in criminal case even if it is not an element of the crime?
When there is serious doubt as to the identity of the culprit

Effects of concomitant evidence law
Establishes an *opportunity* on the part of the accused to commit the crime or *incompatibility* of committing a crime.

When is evidence of opportunity important in establishing the case against the accused?
Where there is no direct evidence that the accused committed the crime.

Must evidence of opportunity be exclusive to the accused for such evidence to be useful?
No, other circumstances may show him to be the real author

When is incompatible concomitant evidence useful?
When it shows that accused could not have committed the crime.

Explain the Principle of Incompatible Concomitant Evidence that only one of the two accused fired the shot that killed the victim, in the absence of proof of conspiracy
Therefore, there is incompatibility that only one shot the victim while the other didn't and did not conspire with the killer. Hence he must be absolved.

Explain Principle of Incompatible Concomitant Evidence that Donor, who hated the Donee, have been alleged to make a generous donation to the done.
Hatred is incompatible with generosity.

Explain how alibi is an incompatible concomitant circumstance with the commission of a crime.
Person cannot be in 2 places at the same time.

Is alibi a good defense?
No, if there is positive identification.

When is there positive identification?
When the witness categorically says that he saw the accused commit the crime

Can a weak alibi be taken against the accused *if his guilt could not be proved beyond reasonable doubt?*
No. Accused should be acquitted.

Can alibi overcome positive identification?
Yes if alibi is strong. And the witness' testimony is only circumstantial.

Examples of *subsequent collateral facts* that show probable guilt:

a. flight;
b. concealment;
c. nervousness
d. despair;
e. fingerprint;
f. Articles left by the accused;
g. resemblance;
h. bloodstains;
i. offer of compromise; and
j. Possession of stolen articles or counterfeit notes.

Is non-flight evidence of innocence?
Not necessarily but if taken with other circumstances including absence of positive identification, non-flight could mean innocence but in small measure.

When is testimony regarded as positive evidence?
A testimony is positive evidence when the witness knows and affirms that a fact took place or did not take place.

Is this statement positive?
Y testified he saw X slap Z. Yes.

When is it negative?
When the witness *did not <u>see or know</u> a fact that take place; Conversely, if a witness says that a fact did not take place, it is a positive evidence.*

E.g. I was in class but I did not see Cesar recite. It is negative. Note that there is still possibility that Cesar recited.

Positive Evidence has greater weight than negative evidence
Because If a thing (e.g. heated quarrel) did not happen (hence it is negative), *it is unlikely that anyone can remember* it. While if a person remembers that an incident happened, (e.g. someone falling on the stairs)

Consider the ff:
X says he drank liquor, Y says X did not.
-They have the same weight because they are both positive. It is different from Y saying that he *does not know* that X drank

X said that he did not raise his hand to recite the whole time.
-Yes it is positive, because he knew such thing for a fact.

<u>RULE 129</u>
<u>WHAT NEED NOT BE PROVED</u>

Section 1.Judicial notice, when mandatory. — A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions. (1a)

General Rule
The presumption prevails that when a cause is presented for trial, the Court is *uninformed* concerning the facts involved, and it is *incumbent upon the litigants to establishby evidence* the facts upon which they rely.

Thus, the Court shall not consider evidence which has not been formally offered. Further the purpose of the evidence must be specified. (Sec. 35, Rule 132).

Exception
Facts may be judicially noticed by the court.

<u>JUDICIAL NOTICE</u>

Judicial Notice is the cognizance of certain facts which judges may propertly take and act on *without proof* because they area already known to him. *What is known, need not be proved.*

Reason for the Rule
Judicial notice is based upon convenience and expediency. Its object is to save time, labor and expense in securing and introducing matters which *are <u>not</u>ordinarily capable of dispute and are <u>not</u>* bona fide disputed.

May a judge, who has personal knowledge of facts that are relevant to the issues of a case before him, employ such personal knowledge to the resolution of the case?
No. The trial judge is not permitted to take notice of his personal extra-judicial information arising from *e.g. acquaintance with the witness.* Else, he deprives the litigants the opportunity to test the admissibility of such evidence.

Must a party present evidence to establish every fact?

No. The court can take judicial notice of certain facts.

What are those matters of fact that a court can take judicial notice of, mandatorily?

1. The existence and territorial extent of states,
2. Their political history, forms of government and symbols of nationality,
3. The law of nations,
4. The admiralty and maritime courts of the world and their seals,
5. The political constitution and history of the Philippines,
6. The official acts of legislative, executive and judicial departments of The Philippines,
7. The laws of nature,
8. The measure of time, and
9. The geographical divisions. (See Sec. 1, Rule 129)

What facts are deemed proven despite lack of evidence adduced?
Commonly known facts where convenience and expediency demand their acceptance as facts.

What are adjudicative facts?
Are simply the facts of a *particular case* which are determinative of the outcome of litigation. Such facts are ordinarily established by evidence *unless they are of such character that by common acceptance* such facts *stand as established* without proof.

Illustrations:
May court take judicial notice of defendant's claim that his coconut oil business suffered financial reverses in 2013 because typhoon Yolanda destroyed his coco-plantation outside Tacloban?
-Yes. No evidence is needed to prove the event.

Estrada contended that he did not resign as president when Arroyo took her oath; hence he questioned the legitimacy of the Arroyo Government. May the fact that his Executive Secretary Angara negotiated with the representative of Arroyo for turn-over of power be taken judicial notice of and thus consider Estrada to be deemed to have abandoned his position as president as a result of EDSA 2?
-Yes. SC has already said so in *Estrada v. Desierto* that the challenged the legitimacy of the Arroyo government.

What are legislative facts?
Are facts that the legislature took into account in the enactment of a law. Courts can use them in interpreting legislative intent.

Illustrations:
Can the court take of notice of the fact that wickedness abounds in cyberspace prompting [the legislature] to enact the law regulating its uses?
-Yes.

Other legislative facts:

a. Rate of Population growth saps the county resources, prompting enactment of RH Law.
b. Women discriminated at the workplace. (intent in enactment of laws protecting women's rights)
c. Electronic methods allow intrusion into the privacy of citizens without physical entry prompted revision of theory of right of privacy.
d. Ordinary employees do not have bargaining power compared to the employer regarding terms of employment (intent in enactment of labor law standards).

When is judicial notice mandatory?
Whether a court must take judicial notice of facts, or whether the taking of notice is merely permissive depends on the *statutory law* and upon the extent to which the court may exercise judicial discretion without abusing it.

Can a judge take judicial notice of acts of foreign government or the existence of threats against the foreign state's stability?
No. The courts should defer to the Executive Department in view of Executive Department's prerogative in granting or withholding the recognition of foreign government. Otherwise, the undue judicial acts in this regard could embarrass the government

May the court take judicial notice of state of war between foreign powers? How about the existence of a civil war in a foreign country?
Yes to both.

> ***Section 2.Judicial notice, when discretionary. — A court may take judicial notice of matters which are of public knowledge, or are capable to unquestionable demonstration, or ought to be known to judges because of their judicial functions. (1a)***

When is judicial notice discretionary upon court?
When such fact passes the *test of notoriety* and must be a matter of common and general knowledge.

What is the test of notoriety?
The test may be stated as follows: *whether the fact involved is so notoriously known as to make it proper to assume its existence without proof.*

Consequently, a fact is said to be generally recognized or known when its existence or operation is *accepted by the public without qualification or contention.*

What is the exception to the test of notoriety?

The requirement of notoriety or common knowledge of the general public must give way to less dogmatic requirements where the facts in question is well known and generally accepted in **specialized areas among those members of the public who deal with such matters.**

Must all men have knowledge of such fact before the court can take judicial notice of it?
No. It is enough that the matters are familiarly known to *the majority* of mankind or those persons familiar with the particular matter in question.

May the court take judicial notice of treatise?
Yes.A published treatise, periodical or pamphlet on a subject of history, law, science, or art is admissible as tending to prove the truth of a matter stated therein *if* the court takes judicial notice *(Section 46, Rule 130).*

May courts take judicial notice of laws of the land, administrative issuance, court rulings, etc. (official acts of 3 branches of government), executive grants of amnesty?
Yes, but not specific orders of executive clemency

Laws of the land
The function of the courts is to administer justice according to law, therefore they are bound to know the law, including the history thereof and the facts which affect their derivation, validity and operation.

Foreign Laws
General Rule
Courts cannot take judicial notice of them. They must be pleased and proved.

Exception
Foreign statute accepted by the government and rules, principles and doctrines of common law.

Official Acts, Proclamations, Regulations, and Reports
The courts have recognized that these matters may be of such general notoriety that they may be judicially recognized. This includes an executive grant of amnesty against persons who participated in a given rebellion, but it does not include specific orders of executive clemency.

May courts take judicial notice of municipal ordinances?
Yes, under the following instances:

a) Municipal courts must take judicial notice of the municipal ordinances in force in the municipality in which they sit;
b) The RTC should take judicial notice of the municipal ordinances within their jurisdiction only when so required by law, or on appeal of cases from the MTC in which the latter took notice of such ordinance.
c) The Court of Appeals may take judicial notice of municipal ordinances because nothing in the Rules prohibits it from taking cognizance of an ordinance which is capable of unquestionable demonstration.

May courts take judicial notice of affidavit attached to record of case?
Yes, but only as to its existence not as to truth of contents (because they are hearsay evidence)

May courts take judicial notice of complaint-affidavit during preliminary investigation and attached to the record?
Yes, to determine probable cause against accused but not as evidence on merits of the case.

May courts take judicial notice of records in other cases?
No, because it would be unfair to the parties. But there are *exceptions:*

1. When cases jointly tried (evidence is the same)
2. Stipulated by parties
3. Public has interest in the cases
4. Necessary to ascertain whether previous ruling is applicable

What else may courts take judicial notice of?
Matters of unquestionable demonstration.

Is this about demonstrating an unquestionable fact before the judge?
No, it is not about demonstrating an unquestionable fact before the judge.

How then does the court ascertain a fact using an unquestionable demonstration?
By consulting materials in common use respecting such fact (standard reference materials about them). Examples: day a specific date falls: check standard calendar, scientific principles, gestation period of baby

How will the Court know the day of the week on which January 1, 2002 fell?
Judge will look at a standard 2002 calendar.

Examples of facts that courts may take notice using standard reference materials:

a. Historical facts and known events
b. Geographical facts and locations
c. Natural laws and phenomenon of nature
    1. Science, laws of Physics, natural forces (use of blood test to disprove paternity, intrinsic danger in the use of dynamites as an explosive, sparks emitted by locomotive hauling a train)
    2. Phenomena of nature, time, seasons, plants (prevalence of certain weather conditions in a given locality, general times or seasons for planting crops)
d. Arts and sciences (systems of weight and measures)
e. Customs and usages provided they are:
    1. Generally known;
    2. Established; and
    3. Uniformly acted (methods of carrying on trade or business)
f. Religious matters (celebration of Christmas, God, dogmas of Church)
g. Commercial practices (exchange rates, inclusion of EVAT, etc.)
h. Habits and traits (instinct of self-preservation)
i. Diseases and frailties (spread of ebola)
j. Others - most Filipinas, employed as DH and entertainers, work under exploitative conditions; a woman in her menstrual period does not bar sexual intercourse(People v. Arisola)

Sec. 3. Judicial notice, when hearing necessary. – During the trial, the court, on its own initiative, or on request of a party, may announce its intention to take judicial notice of any matter and allow the parties to be heard thereon.

After the trial, and before judgment or on appeal, the proper court, on its own initiative or on request of a party, may take judicial notice of any matter and allow the parties to be heard thereon if such matter is decisive of a material issue in the case. (n)

What is the purpose of hearing?
A hearing may be necessary to afford the parties reasonable opportunity to present information relevant to the propriety of taking judicial notice. It does not contemplate presentation of evidence.

When does such hearing take place?
During trial, after judgment and before judgment, on appeal.

May the appellate court review judicial notice taken by trial court?
Yes, it can also do so on its own of matters not noticed by the trial court. It can also assign as error if judicial notice was erroneously taken by the lower court.

May evidence be received to contradict a fact that the court took judicial notice of?
No, such evidence cannot be received to contradict fact that court has taken judicial notice because it defeats the purpose of a judicial notice.

Facts not capable of unquestionable demonstration:
Practice of kulam, power of elves, fire in hell, sexual prowess of Italian males.

<u>JUDICIAL ADMISSIONS</u>

Sec. 4. Judicial admissions. – 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 may be contradicted only by showing that it was made through palpable mistake or that no such admission was made. (2a)

What is an admission?
It is an acquiescence or concurrence in truth of allegation; "Pag-amin na totoo ang isang bagay". As a general rule, an admission needs to be proven.

What are admissions that do not require proof?
Judicial admissions. These are admissions, verbal or written, made by the party in the course of the proceedings, in the same case. This is based on the universal principle of estoppel, which gives an individual the duty to tell the truth in court. One cannot take back what one has stated.

What are the requirements of a judicial admission?
1. The admission must be made by a party to the case;
2. The admission to be judicial, must be made in the court of the proceedings in the same case;
3. The admission may be verbal or written, not only in the pleadings.

E.g. admission to a neighbor that one already paid his loan. Is there a need to present the neighbor?
Yes, since this is not a judicial admission. It must be made in the course of the proceedings.

What is the effect of a judicial admission?
It conclusively binds the party making the admission, and he cannot disown

what he has admitted.

What is the effect of subsequent inconsistent statements?
In case of subsequent inconsistent statements, the court will ignore diversions, whether or not opposed by other party.

Is the judicial admission of one party in a pleading binding on the other party?
No, it is only binding to the one who makes the admission. The exception is when the party failed to deny it and so it is deemed to be admitted.

How are denials made?
1. A defendant must specify each material allegation of fact the truth of which he does not admit and, whenever practicable, shall set forth the substance of the matters upon which he relies to support his denial.
2. Where a defendant desires to deny only a part of an averment, he shall specify so much of it as is true and material and shall deny only the remainder.
3. Where a defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment made in the complaint, he shall so state, and this shall have the effect of a denial. (Sec. 10, Rule 8).

Material averment in the complaint, other than those as to the amount of unliquidated damages, shall be deemed admitted when not specifically denied. (Sec. 11, Rule 8).

What are not admitted despite of failure to deny?
a. Immaterial allegations, such as anticipatory defense;
b. Incorrect conclusions of facts drawn from facts set out in the complaint;
c. Conclusions of law;
d. General averments contradicted by specific averments;
e. Unliquidated damages;

No admissions are permitted in:
a. Annulment of marriage;
b. Legal separation.

Which court proceedings are covered by the rule on judicial admission?
a. admissions made in the pleadings
b. stipulation of facts at pre-trial hearing
c. admissions during trial
d. answers to requests for admissions, depositions, written interrogatories (filed with the court)

Is there a need for a formal offer of evidence for the admissions to be admitted?
There is no need to formally offer admission as evidence. One only needs to cite or mention in his memo or pleadings.

What is the difference between a judicial admission and those made outside court?
Judicial admission – There is no need to present evidence. It cannot be disputed.

Extrajudicial admission – There is a need to present/formally offer evidence. It can be disputed.

What is the effect of admission made in original pleading after it has been amended?
There are different views:
1. The amended supersedes the original. It disappears from the record and the original becomes an extrajudicial admission.
2. According to Feria, the admissions in superseded pleadings are considered judicial admissions, such is the intent of the revision of Rule 10, Sec. 8. – "An amended pleading supersedes the pleading that it amends. However, admissions in superseded pleadings may be received in evidence against the pleader; and claims or defenses alleged therein not incorporated in the amended pleading shall be deemed waived."

How about admissions made in a different case?
They can only be considered as extrajudicial admissions.

What are the exceptions to the conclusiveness of judicial admissions?
1. palpable mistake or
2. there was no admission made.

What is palpable mistake?
It is an obvious or plainly visible mistake.

E.g. typo error, statement that contract is notarized but not really so

ADMISSIONS BY COUNSEL

RULE 138
ATTORNEYS AND ADMISSIONS TO BAR

Sec. 23. Authority of attorneys to bind clients. – Attorneys have authority to bind their clients in any case by agreement in relation thereto made in writing, and in taking appeals, and in all matters of ordinary judicial procedure. But they cannot, without special authority, compromise their client's litigation, or receive anything in discharge of a client's claim but the full amount of cash.

General rule
A client is bound by counsel's admission because the counsel is deemed as an agent of client.

Exception
When such admissions are made in the counsel's professional capacity, for the purpose of dispensing with proof of some fact, or modifying the severity of some rule of practice, and to that end are distinct and formal, they bind the client, whether made during, or even after, the trial.

They are not, however, judicial but merely extra-judicial admission.

What if the client did not sign the pleading prepared by his attorney?
Client is still bound.

What if the client has no personal knowledge of admitted facts?
Client is still bound.

What if the counsel makes an admission in another case?
Client is still bound, provided with the authorization of client.

Cases where client is not bound without his knowledge or consent

a. An agreement by an attorney to permit judgment to be entered against his client.
b. The entering by an attorney into a compromise agreement which practically confesses judgment
c. Where an attorney for the judgment debtors agrees to the issuance of a writ of execution which departs materially and radically from the tenor of the judgment rendered.
d. Where an attorney acts beyond his authority

What if the counsel for a party affixes his signature to a stipulation of facts?
It is a judicial admission, in behalf of his client, of all the facts stated therein including the changes made thereon, unless the admission was made through palpable mistake.

How about counsel's incidental or casual remarks?
They are not binding because they are not uttered on behalf of the client.

What is the effect of an amended pleading?
It superseded the original pleading which disappears from the records. So that defenses in the original pleadings not reproduced in the amended pleadings are deemed waived and cease to be judicial admissions.

Any statement contained in the original pleading may, however, be considered as an extra-judicial admission, and as such, in order that the court may take into consideration, it should be formally offered.

The stipulation of facts during a trial is also a judicial admission because they are recorded and written in the transcript of records.
The parties to any action may agree, in writing upon the facts involved in the litigation, and require the judgment of the court upon the facts agreed upon, without the introduction of evidence. If the parties can agree on some of the facts in issue, the trial shall be held as to the others (Sec. 2, Rule 30, ROC)

May parties stipulate that a commissioner's finding of fact shall be final?
Yes. Only questions of law arising upon the report shall thereafter be considered.

May the court deviate from the stipulation of facts entered into by the parties?
As a rule, no. The court is bound by stipulation of facts. Its judgment must be based on those facts and could not be substitute its conjectural surmises for those facts.

What if a third person's affidavit was adopted by a party litigant in course of proceedings. Is this admissible?
It depends. If profited and used as his evidence, he is bound by it.

A judicial admission in an affidavit used in the case when relevant, is competent evidence, even if merely adopted and not made by the party against whom it is used. It may be competent evidence for the adverse party on the trial of another issue different from that on which it was offered.

E.g. affidavit of value in a replevin case

However, where a pleading, affidavit, or deposition is offered in evidence, the statements relied on as admissions must be construed together. Although a party may offer part of his pleading as explanatory of another part offered by the adversary, he cannot use such pleading (his own) as affirmative evidence.

What if the plaintiff moves for judgment on the pleadings, and defendant interposes no objection thereto?
The defendant is deemed to have admitted the truth of the allegations of the complaint, so that there is no longer any necessity for the plaintiff to submit evidence of his claim.

Is a party producing a document as evidence bound by the document regarding the facts upon which he presented it?
Yes. And when he presents it to impeach the veracity of the facts therein stated and fails to destroy the correctness of such facts, he will be bound by every material fact recited in the document.

What governs admission by adverse party?
Rule 26 of the Rules of Court

Is an answer to request for admission to discovery proceedings a judicial admission?
Yes.

How about a plea of guilty by the accused?
Yes. It is an admission of material allegations of the information, including the attendant circumstances qualifying and/or aggravating the crime. To be valid, the plea must be an unconditional admission of guilt, i.e., that the accused admits his guilt, freely, voluntarily, and with full knowledge of the consequences and meaning of his act and with clear understanding of the precise nature of the crime charged in the complaint or information.

What if the accused pleads guilty to a capital offense?
The court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and require the prosecution to prove his guilt and the precise degree of culpability. The accused may also present evidence in his behalf.

How about pre-trial agreements in criminal cases?
Yes. The requirements are: 1) must be in writing, and 2) signed by the accused and counsel

The requirement does not, however, apply to stipulation of facts made during trial. Why?
Such stipulation of facts is automatically reduced into writing, and contained in the official transcript of the proceedings had in court. The signature of the accused thereto is unnecessary.

May the accused waive his right of confrontation?
Yes. In a case, the court deemed as waiver the admission by the accused that witnesses if present would testify to certain facts stated in the affidavit of the prosecution. In the same vein, such admission is a waiver of the right of an accused to present evidence on his behalf.

Can it be said then that the right to present evidence may be waived?
Yes. Although the right to present evidence is guaranteed by no less than the Constitution itself for the protection of the accused, the right may be waives expressly or impliedly.

May the stipulations by counsel to the effect that certain additional witnesses, if they were produced and sworn on behalf of both the prosecution and the defense, would testify the same as the actual witness had as to substance of the issue, be accepted as the equivalent of proof under oath?
No. It is not supposed to be within the knowledge or competence of counsel to predict what proposed witness may say when under the sanction of his oath and the test of cross-examination.

Is it permissible to consider a case closed, or to render judgment therein, by virtue of an agreement entered into between the provincial fiscal and the counsel for the accused with reference to facts, some of which are favorable to the defense, and others related to the prosecution, without any evidence being adduced or testimony taken from the witnesses mentioned in the agreement?
Such practice is not authorized and defeats the purpose of the criminal law.

How about when the accused testifies in his defense during trial?
This is not a judicial admission, but it can be used against him. It is not a judicial admission because a judicial admission dispenses presentation of evidence.

RULE 130
RULES OF ADMISSIBILITY

A. OBJECT (REAL) EVIDENCE

> ***Sec. 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.***

What is object evidence?
Object Evidence is that which is addressed to the senses of court. It is warranted by the relevance to the factual issue.

How is object evidence presented?
By exhibiting for examination and viewing of the judge.

What are the three sources of knowledge?

a. The testimony of a witness (ex: man saw one with iron hook)
b. Circumstantial evidence - belief drawn by inference from surrounding circumstances (ex: hook marks on things he grasped)
c. Object evidence – belief drawn from a direct self-perception or autopsy (showing the iron hand to the judge)

Give examples of object evidence
Knife used in crime, slippers left by thief, wound of victim, contract on which the lawsuit is based, allegedly defective product

These are physical or tangible evidences presented to the trier of fact for inspection, as relevant to an issue in the case.

Object Evidence vs. Other Evidence
Object evidence has the highest probative value. Inanimate things don't lie. It speaks more eloquently than a hundred witnesses.

When is a document regarded as object evidence? Or documentary evidence?
Object evidence if trying to prove the existence of a document. *Documentary evidence* if content is the issue.

Do you still need the authentication of documentary evidence if the document presented is already object evidence?
There is no need to comply with the requirement of documentary evidence if you have already presented the document as object evidence.

In a rape case, the accused argued that the lack of external injuries negated the employment of force by the accused on the complainant and ruled out struggle or any other form of resistance on the part of the complaint.
Although there was an absence of external injuries on the body of the complainant, her t-shirt was torn which corroborates her testimony that it was forcibly removed; her shorts, like her panty, had blood stains.

A ring was presented with the name of complainant. The accused said that he gave it to the latter to prove amorous relations between them. Can this be an OE in rape case?
Yes, provided that authenticity is shown. The ring implies close intimacy (making it unlikely to rape her).

What if the ring is too big?
No. The object evidence already belies intimacy.

There was a claim that the will is void for being signed on different dates. May the variance in color of pen ink a proper object evidence?
Yes, it is an evidence of difference.

What are the requisites for the admissibility of object evidence?

a. It should be relevant, must not be hearsay (or must come within an exception to the hearsay rule) and must not be privileged
b. It should be competent
c. It should be authenticated

What are the physical senses of the court which object evidence applies?
Object evidence includes everything addressed to the 5 senses: vision, hearing, taste, smell, touch.

E.g.

a. In a condemnation proceeding instituted by a railroad company, a phonograph was permitted to be operated in the presence of the jury to reproduce sounds claimed to have been made by the operation of trains in proximity to the defendants' hotel.
b. In a case, the singing of songs, being material, was permitted before the court.
c. Where it is necessary to ascertain whether or not a liquid is a fermented cider, the judge may taste it.
d. In a case, the jury was permitted to examine and smell the liquid contained in a bottle to ascertain whether or not it was whisky. The tasting and smelling of objects should be left to the personal delicacy

of the judge.

e. The jury is permitted to feel the hands of the plaintiff who alleged that the physical injuries he had suffered caused an abnormal circulation of blood in one of his hands making it cold all the time.
f. Exhibition of weapons and bloody garments of participant in felony is permitted.
g. Use of courtroom furniture to reconstruct a scene is also permitted.

What are the requirements for admissibility for tape recordings, wire, and dictaphone?

a. That the tape, wire, or dictaphone device was capable of taking testimony;
b. That the person operating the device was competent to operate it;
c. That the recording is authentic and correct;
d. That the recording has been duly preserved;
e. That the testimony was voluntarily made;
f. That the speaker has been correctly identified.

This is subject to limitation of RA 4200 the Anti-Wire Tapping Law (Tanada Law) and the Constitution.

When is object evidence a direct evidence?

When there is no further inference required or the real evidence can prove directly the fact for which it is offered.

E.g. In personal injury case, direct real evidence of a disfiguring injury would be an exhibition to the court of the injury itself.

When is object evidence a circumstantial evidence?

When inference is needed. In such case, facts about the object are proved as the basis for inference that other facts are true.

E.g. In a paternity case, the court may be shown the baby and asked to compare its appearance with that of the alleged father look alike, the court may then be asked to draw an inference that the parental relationship exists.

What is the significance of the use of mechanical aids like microscope or taking part in an experiment?

These are admissible as object evidence, provided that a party or the witness is not placed in prolonged agony (like making the witness limp on one leg).

What are the particular types of real evidence?

a. **Documentary evidence**

The most common kind of real evidence. It includes contracts, written confessions, letters, and when otherwise admissible, books.

The regular rules of evidence (i.e., relevance, hearsay, privilege), of course, also apply to documents. But 3 special rules have particular application to documentary evidence: authentication, the best evidence rule, and the doctrine of completeness.

b. **Exhibition of injuries**

In personal injury case, exhibition of the injured portion of the body constitutes real evidence. However, where the wound is particularly gory, or showing the injured portion of body would embarrass or offend the jury, the trial court in its discretion may exclude such evidence to avoid possible prejudice.

Trial courts are generally deemed to have the power to order a reasonable physical examination of persons involved in a case to determine the nature, extent or permanency of alleged injuries.

c. **Personal appearance**

In some instances, the exhibition of a person is authorized in order to determine from his personal appearance, racial characteristics, language, dress, and manners whether or not he is an alien.

Likewise, the appearance of a person is made as a basis for determining his age.

d. **Inspection of body**

In criminal cases, the accused may be compelled to submit himself to an inspection of his body for the purpose of ascertaining identity or for other relevant purpose.

While it is true that an accused has the right to be exempt from testifying against himself, however, such constitutional guaranty is limited to a prohibition against compulsory testimonial self-incrimination.

An ocular inspection of the body of the accused is permissible.

Examples of inspection of body which do not violate the constitutional provision:

a. Forcing the accused to discharge morphine from his mouth
b. Place his feet over bloody footprint
c. Compelling a woman who is accused of adultery to submit herself to medical examination to determine whether she is pregnant

d. Taking of substance from the body of the accused to determine, from a scientific examination thereof, whether he was suffering from a venereal disease.

DEMONSTRATIVE EVIDENCE

Distinguished from Real Evidence
Real evidence is tangible evidence which itself is alleged to have some direct or circumstantial connection with the transaction at issue.

Demonstrative evidence is NOT the real thing. It is not the alleged murder weapon, or the actual engine part involved in the litigation. Instead, it has tangible or exemplifying purposes. It is visual aid – an anatomical model, a char, a diagram, a map, etc.

We said courts may allow demonstration to show effect of injury like limping, provided the witness is not placed on prolonged agony. They have also been allowed to blood tests, fingerprints, re-enactments, etc… Can the court allow demo that would violate right against self-incrimination? Example?
No, like requiring the witness to give a specimen of his writing in court.

Two kinds of demonstrative evidence
1. Selected demonstrative evidence
    a. Existing, genuine handwriting specimens or exemplars used as standards of comparison by handwriting experts.
2. Prepared or reproduced demonstrative evidence
    a. Such as the making of an object specifically to be used for trial (scale models, photographs, etc.)

What is the alternative if the needed object evidence consists of the sites, buildings, machinery, or other heavy objects that cannot be brought to the court?
The court can make an ocular inspection of the thing in the presence of the parties, A photograph duly authenticated may also be shown to him.

Can a person be viewed to determine his of age?
Yes, but the court must state the reason for his estimate of the age of the person. Otherwise, it cannot prevail over the testimony of the person himself.

Are prohibited drugs object evidence?
Yes, they are evidence of the commission of drug offenses.

What is the duty of the police officers who seize prohibited drugs?

The apprehending team having initial custody and control of the drugs shall immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from which such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof *(Sec. 21(1), Article II of RA 9165).*

Within 24 hours upon the confiscation or seizure of the drugs, the same shall be submitted to the PDEA Forensic laboratory for a qualitative and quantitative examination *(Sec 21(1), Article II of RA 9165).*

Then it will be brought to court during trial.

What is the duty of the public prosecutor concerning the presentation of the drugs as evidence?
Follow chain of custody of evidence.

Types of authentication of object evidence
1. By testimony
   Stating that the object is what is claimed to be e.g. “Yes sir, this is the gun used in shooting the victim.”

   If the real evidence if of a type which can be readily identified by a witness, the witness; testimony will be sufficient authentication

2. By showing the chain of custody
   E.g. seized prohibited drugs

   If the real evidence is of a type which cannot easily be recognized or readily be confused or tampered with, the proponent of the object must present evidence of its chain of custody.

Purpose of authentication
1. To prevent introduction of an object different from the one testified about
2. To insure that there have been no significant changes in the object condition

A witness testified that he saw the accused falsify the document. Is that a proper authentication when he himself states that its contents were false?

Yes. It is proper authentication since what is authenticated is the existence of the forged document, not the truth of its contents. The witness is basically saying that "it is what I claim it to be".

What would be the legal basis for excluding unauthenticated object evidence?
IRRELEVANCE. This is because the party is unable to connect the object to the issues in the case

What does DNA mean?
Deoxyribonucleic acid. It is the chain of molecules found in every nucleated cell of the body.

What makes it significant object evidence?
A person's DNA is unique. It is the same in each cell of that person and it does not change throughout his lifetime. No two person has the same DNA, with the notable exception of identical twins.

What is DNA testing?
DNA testing is the scientific method for determining with reasonable certainty:

a. Whether or not the DNA obtained from 2 or more distinct biological samples originates from the same person (direct identification) or
b. Biological samples originate from related persons (kinship analysis)

What is a biological sample?
It is any organic material originating from a person's body even if found in inanimate objects that is susceptible to DNA testing.

E.g. blood, saliva and other body fluids, tissues

What do you need to get DNA pending trial?
Court order is needed. Note, however, that it is not needed before litigation.

What need be shown for the court to issue an order for DNA testing?

1. A biological sample exists that has relevance to the case;
2. The biological sample (i) was not previously subjected to the DNA testing requested; or (ii) if it was previously subjected to DNA testing, the results may require confirmation for good reasons;
3. The DNA testing uses a scientifically valid technique;
4. The DNA testing has the scientific potential to produce new information that is relevant to the proper resolution of the case; and
5. The existence of other factors, if any, which the court may consider as potentially affecting the accuracy and integrity of the DNA testing *(Sec, 4, Rule on DNA Evidence)*

Does this mean that only by court order can DNA testing?
No. The last paragraph of Sec. 4 of the RDE allows a testing without a prior court order if done before a suit or proceeding is commenced at the request of any party, including law enforcement agencies.

What will be the basis for assessing the probative value of DNA evidence?

1. The chain of custody of the biological samples, including how the they were collected, how they were handled, and the possibility of contamination of the samples;
2. The DNA testing methodology, including the procedure followed in analyzing the samples, the advantages and disadvantages of the procedure, and compliance with the scientifically valid standards in conducting the tests;
3. The forensic DNA laboratory, including its accreditation and the qualification of the analyst who conducted the test; if the laboratory is not accredited the court shall consider the relevant experience of the laboratory in forensic casework and its credibility shall be properly established; and
4. The reliability of the testing result *(Sec. 7, RDE)*

May a person already convicted of a crime avail himself of DNA testing?
Yes, post-conviction DNA testing may be available, without need of prior court order, to the prosecution or any person convicted by final and executory judgment.

What are the requirements for allowing post-conviction DNA testing?

1. Biological sample exists
2. The sample is relevant to the case
3. Probably result in reversal or modification of the judgment of conviction *(Sec. 6, RDE)*

What is the remedy of the accused in case of favorable DNA testing results?
He or the prosecutor may file a petition for habeas corpus. The purpose of the petition for habeas corpus is basically to determine validity of detention

Do photographs, motion pictures, electromagnetic images, and sound or voice tapes require authentication?
Yes, since they are not the real things but are mere reproductions. Someone should identify the persons in the photograph, the subject of motion pictures and electronic images.

In case of sound, the recording can be authenticated by a person testifying that it is the voice of the person, and that he is familiar with the voice of the person

Who can authenticate a photograph?
Photographer or any competent witness who is present or who has knowledge/familiar with the person or object.

Old doctrine: Only the photographer can testify
New doctrine: Photographer is not needed for authentication

How will he make such authentication?
He will testify that the photograph accurately represents such objects or person.

What weight is given to authenticated photographs?
Satisfactory and conclusive of what they portray.

SISON V PEOPLE

Photographs can be identified by the photographer or by any other competent witness who can testify to its exactness and accuracy.

FACTS:
Stephen Salcedo, a known "Coryista", was murdered in 1986. Marcos loyalists were charged with the Murder.

The prosecution presented twelve witnesses, including two eyewitnesses, Ranulfo Sumilang and Renato Banculo, and the police officers who were at the Luneta (there was a rally by the Marcos loyalists) at the time of the incident. It was alleged that the Marcos loyalists attacked the Cory loyalists, and as a result Salcedo was beaten to death. In support of their testimonies, the prosecution likewise presented documentary evidence consisting of newspaper accounts of the incident and various photographs taken during the mauling.

For their defense, the principal accused denied their participation in the mauling of the victim and offered their respective alibis.

Trial court ruled against the accused.

ISSUE:
Whether the photographs are inadmissible for lack of proper identification by the person or persons who took the same

HELD:
No. **The rule in this jurisdiction is that photographs, when presented in evidence, must be identified by the photographer as to its production and testified as to the circumstances under which they were produced.** The value of this kind of evidence lies in its being a correct representation or reproduction of the original, and its admissibility is determined by its accuracy in portraying the scene at the time of the crime. **The photographer, however, is not the only witness who can identify the pictures he has taken. The correctness of the photograph as a faithful representation of the object portrayed can be proved prima facie, either by the testimony of the person who made it or by other competent witnesses, after which the court can admit it subject to impeachment as to its accuracy. Photographs, therefore, can be identified by the photographer or by any other competent witness who can testify to its exactness and accuracy.**

In this case, the counsel for two of the accused used the same photographs to prove that his clients were not in any of the pictures and therefore could not have participated in the mauling of the victim. When the prosecution used the photographs to cross-examine all the accused, no objection was made by the defense, not until Atty. Lazaro interposed at the third hearing a continuing objection to their admissibility. The use of these photographs by some of the accused to show their alleged non-participation in the crime is an admission of the exactness and accuracy thereof. That the photographs are faithful representation of the mauling incident was affirmed when some of the accused identified themselves therein and gave reasons for their presence thereat. The absence of two of the accused in the photographs, meanwhile, does not exculpate them. The photographs did not capture the entire sequence of the killing of Salcedo but only segments thereof. However, the accused were unequivocally identified by two witnesses.

Can photographs be offered in evidnce to establish what they do not show?
No. In the signing of the will, the failure to take photos of all is not proof a requisite stage has been omitted.Pictures are worthy only of what they show and prove and not of what they do not speak of including the events they failed to capture.But a picture taken of a town was admitted as evidence to show that no monument of Rizal stands on it.

May the court admit maps, diagrams and sketches in evidence?
Yes. But cannot be presented on its own, it has to be presented with a testimony of a witness. (only supplementary)

Are drawings and illustrations prepared by the witnesses before or during the hearing admissible in evidence?
Yes.

What is paraffin test?
It detects the presence of gunpowder ingredients on a person's hand or clothing as evidence that he had recently filed a gun.

PEOPLE VS. BRECINO

A negative paraffin result is not conclusive proof that a person has not fired a gun. While the paraffin test was negative, such fact alone did not ipso facto prove that the appellant was innocent.

FACTS:
SPO1 Virgilio Brecinio, a jail guard in Municipal Jail of Pagsanjan, Laguna, was found guilty beyond reasonable doubt of the crime of murder for shooting Alberto Pagtananan, an inmate.

On June 30, 1996, the accused who was drunk went to cell no. 1 of the municipal jail. The accused terrorized the inmates, entered their cell and asked for the names and the reasons for their detention. After answering, each of them would receive a blow in the stomach for no reason. Accused proceeded to the comfort room and saw the victim Alberto also coming out. Appellant confronted the victim and asked him where he came from and accused the victim of hiding and making a fool out of him. The accused then pulled out his .45 caliber pistol tucked on his right waist and fired it thrice. The third shot was aimed to the victim - the latter was shot in the stomach.

The accused argued that the shooting was accidental. He declared that he had just gone out of the comfort room and was about to tuck his .45 caliber pistol in its holster on his waist when he slipped on the floor causing the gun to drop and fire, to support this, the defense argued that the result of the paraffin test was negative, making the guilt of the accused doubtful.

ISSUE:
Whether a negative result of paraffin test can be a proof of the absence of guilt.

HELD:
No. While the paraffin test was negative, such fact alone did not ipso facto prove that the accused was innocent. A negative paraffin test is not conclusive proof that a person has not fired a gun. Furthermore, since the accused submitted himself for paraffin testing only two days after the shooting, it was likely he had already wanted his hands thoroughly, thus removing all traces of nitrates therefrom.

Inherent limitations to the admission of object evidence

1. Relevancy
2. Illegally obtained evidence (competence)

Can a reenactment of a crime during a custodial investigation be admitted in evidence?
No, it will violate the right of the accused to silence.

Is the inspection of a person's body in court proper object evidence?
Yes, if it is necessary to determine identity.

Would the inspection of a person's body violate his right against self-incrimination?
No. In criminal cases, the accused may be compelled to submit himself to an inspection of his body for the purpose of ascertaining identity or for other relevant purpose. While it is true that an accused has the right to be exempt from testifying against himself, however, such constitutional guaranty is limited to a prohibition against compulsory testimonial self-incrimination, an ocular inspection of the body of the accused is permissible.

May a woman accused of adultery be compelled to submit to pregnancy test?
Yes. However, in the US, it was held that this procedure violates the woman's right to privacy.

What are the non-inherent limitations to the admission of object evidence?

1. **Undue Prejudice**
   Real evidence may be excluded on the ground that, although relevant and authentic, its probative value is exceeded by its prejudicial effect.

2. **Indecency or impropriety**
   E.g. Photographs of murder victim which the court considers too gruesome may be kept out of evidence on this ground. A person's private part can also be excluded.

3. **Offensiveness to the sensibilities**
   Object evidence which are repulsive or offensive to sensibilities should be rejected, even if they are relevant to the fact in issue, if they are not absolutely necessary for the administration of justice.

Under what conditions may the court allow scientific experiments done in its presence?

1. Relevant

2. Substantially similar conditions to those existing at the time of the actual event being litigated.
3. Expert testimony for experiments or tests of a complicated nature. The experts must then testify in court as to the:
    a. Conduct of the test
    b. Reality of the testing procedures

Polygraph Tests (Lie Detector)
General rule
Polygraph tests are not allowed by the court.

Exception
The results of a polygraph test are admissible only if the following conditions are met:

1. **Written Stipulation**
   The parties must all sign a written stipulation agreeing to admission of the test results.

   In criminal cases, the prosecutor, accused and accused's counsel must all sign the stipulation. Thus, test results clearly may not be admitted in a criminal case without the accused's consent. And the court may not compel an accused to submit to a polygraph examination because of the privilege against self-incrimination.

2. **Judicial Discretion**
   Notwithstanding a written stipulation, the admissibility of test results is still subject to the trial court's discretion.

3. **Right of Cross-examination**
   If the polygraphs and the examiner's opinion are offered in evidence, the opposing party has the right to cross-examine the examiner as to his or her qualifications and training, and limitations and possibilities for error in polygraph testing, and in the trial court's discretion, any other matters that appear to be pertinent.

4. **Limited use by jury**
   If the polygraph evidence is received, the trial court will instruct the jury that the examiner's testimony does not tend directly to prove or disprove any element of the crime but, at most, tends to indicate that at the time of the examination the accused was or was not telling the truth.

   It has been held in a case that the results of lie detector test is not necessarily credible. Its efficacy depends upon time, place and circumstances when taken and the nature of the subject. If the subject is hard and the circumstances were not conducive to affect the subject emotionally, the test will fail.

Section 2. Documentary Evidence- Documents as evidence consist of writings or any material containing letters, words, numbers, figures, symbols or other modes of written expressions offered as proof of their contents. (n)

B. DOCUMENTARY EVIDENCE

A document is a writing that serves to demonstrate or prove something.

Do they include photographs and video or sound recordings on tapes or CDs? Why?
No, because written means put down in a form to read, not spoken or oral. Photographs are viewed. Tapes and CD's are listened to.

1. BEST EVIDENCE RULE

Section 3. Original document must be produced; exceptions. — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:
(a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;
(b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;
(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and
(d) When the original is a public record in the custody of a public officer or is recorded in a public office. (2a)

Section 4. Original of document. —
(a) The original of the document is one the contents of which are the subject of inquiry.
(b) When a document is in two or more copies executed at or about the same time, with identical contents, all such copies are

equally regarded as originals.
(c) When an entry is repeated in the regular course of business, one being copied from another at or near the time of the transaction, all the entries are likewise equally regarded as originals. (3a)

Where there are several originals of a document, must the party presenting one copy account for the other copies?
No. The party must produce one only.

Is the machine copy of the printed copy an original?
Both are originals provided each has been signed.

Is the plain machine copy of signed copy an original?
No.Where there are 2 or more originals, any of them may be used without accounting for the others.

What is the original evidence of the contents of a libelous publication?
If a writer sends an article to a newspaper for publication and the article turns out to be libelous, to prove who the author is, the original is the manuscript sent to the editor, but to prove the libelous publication, the original is the article appearing in any copy of the same edition of the newspaper.

Does the best evidence rule apply where what is sought to be proved is the identity of the author?
No.

Can these testimonies be allowed?
1. *He is indebted to me if the debt is evidenced by a promissory note that has not been produced.* Yes.
2. *I held a mortgage in his property if mortgage is not presented.*Yes.
3. *My daughter was born on April 8, 1998 if she a birth certificate.* Yes.
4. *He sold that lot to me if the seller executed a deed of sale.* Yes.
5. *I own that property on the corner if he has a transfer.* No.

RULES ON ELECTRONIC EVIDENCE (AM 01-7-01-SC)

Scope; coverage; meaning of electronic evidence; electronic data message

RULE 1 – COVERAGE
Section 1. Scope. – Unless otherwise provided herein, these Rules shall apply whenever an electronic document or electronic data message, as defined in Rule 2 hereof, is offered or used in evidence.

Section 2. Cases covered. – These Rules shall apply to all civil actions and proceedings, as well as quasi-judicial and administrative cases.

Electronic Evidence, Electronic data message

RULE 2 – DEFINITION OF TERMS AND CONSTRUCTION
Section 1 (h) – "Electronic document" refers to information or the representation of information, data, figures, 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 may be proved and affirmed, which is received, recorded, transmitted, stored, processed, retrieved or produced electronically. It includes digitally signed documents and any print-out or output, readable by sight or other means, which accurately reflects the electronic data message or electronic document. For purposes of these Rules, the term "electronic document" may be used interchangeably with "electronic data message".

An electronic document, also known interchangeably as electronic data message, based on the definition of the rules does not only refer to the information itself. It also refers to the representation of that information. Whether the information itself or its representation, for the document to be deemed electronic, it is important that it be received, recorded, transmitted and stored, processed retrieved or produced electronically.I The rule does not absolutely require that the electronic document be initially generated or produced electronically.

Probative value; method of proof
Electronic documents are the functional equivalent of a paper-based documents. Whenever a rule of evidence make reference to the terms of a writing, document or other forms of writing, such terms are deemed to include electronic documents.

RULE 9 – METHOD OF PROOF
Section 1. Affidavit evidence. – All matters relating to the admissibility and evidentiary weight of an electronic document may be established by an affidavit stating facts of direct personal knowledge of the affiant or based on authentic records. The

affidavit must affirmatively show the competence of the affiant to testify on the matters contained therein.

Section 2. Cross-examination of deponent. – The affiant shall be made to affirm the contents of the affidavit in open court and may be cross-examined as a matter of right by the adverse party.

Authentication of electronic documents and signatures

RULE 5 – AUTHENTICATION OF ELECTORNIC DOCUMENTS
Section 1. Burden of proving authenticity. – The person seeking to introduce an electronic document in any legal proceeding has the burden of proving its authenticity in the manner provided in this Rule.

Section 2. Manner of authentication. – Before any private electronic document offered as authentic is received in evidence, its authenticity must be proved by any of the following means:
(a) by evidence that it had been digitally signed by the person purported to have signed the same;
(b) by evidence that other appropriate security procedures or devices as may be authorized by the Supreme Court or by law for authentication of electronic documents were applied to the document; or
(c) by other evidence showing its integrity and reliability to the satisfaction of the judge.

Section 3. Proof of electronically notarized document. – A document electronically notarized in accordance with the rules promulgated by the Supreme Court shall be considered as a public document and proved as a notarial document under the Rules of Court.

Rule 6 – Electronic Signature
Section 1. Electronic signature. – An electronic signature or a digital signature authenticated in the manner prescribed hereunder is admissible in evidence as the functional equivalent of the signature of a person on a written document.

Section 2. Authentication of electronic signatures. – An electronic signature may be authenticated in any of the following manner:
(a) By evidence that a method or process was utilized to establish a digital signature and verify the same;
(b) By any other means provided by law; or
(c) By any other means satisfactory to the judge as establishing the genuineness of the electronic signature.

Section 3. Disputable presumptions relating to electronic signatures. – Upon the authentication of an electronic signature, it shall be presumed that:
(a) The electronic signature is that of the person to whom it correlates;
(b) The electronic signature was affixed by that person with the intention of authenticating or approving the electronic document to which it is related or to indicate such person's consent to the transaction embodied therein; and
(c) The methods or processes utilized to affix or verify the electronic signature operated without error or fault.

Section 4. Disputable presumptions relating to digital signatures. – Upon the authentication of a digital signature, it shall be presumed, in addition to those mentioned in the immediately preceding section, that:
(a) The information contained in a certificate is correct;
(b) The digital signature was created during the operational period of a certificate;
(c) No cause exists to render a certificate invalid or revocable;
(d) The message associated with a digital signature has not been altered from the time it was signed; and,
(e) A certificate had been issued by the certification authority indicated therein.

Electronic documents, vis-à-vis the hearsay rule

RULE 8 – BUSINESS RECORDS AS AN EXCEPTION TO THE HEARSAY RULE
Section 1. Inapplicability of the hearsay rule. – A memorandum, report, record or data compilation of acts, events, conditions, opinions, or diagnoses, made by electronic, optical or other similar means at or near the time of or from transmission or supply of information by a person with knowledge thereof, and kept in the regular course or conduct of a business activity, and such was the regular practice to make the memorandum, report, record, or data compilation by electronic, optical or similar means, all of which are

shown by the testimony of the custodian or other qualified witnesses, is excepted from the rule on hearsay evidence.

Section 2. Overcoming the presumption. – The presumption provided for in Section 1 of this Rule may be overcome by evidence of the untrustworthiness of the source of information or the method or circumstances of the preparation, transmission or storage thereof.

Audio, photographic, video and ephemeral evidence

What is an electronic evidence?
Data or info that is electronically generated.

It refers to info by which a right is established or an obligation extinguished or by which a fact may be proved and affirmed, which is received, recorded transmitted stored processed retrieved or produced electronically

What does electronic document include?
It includes digitally signed documents and any print-out or output, readable by sight or other means, which accurately reflects the electronic data, message or electronic document.

What is an electronic data message?
It refers to info generates, sent, received, or stored by electronic, optical or similar means. The term electronic document may be used interchangeably with electronic data message.

What is an ephemeral electronic communication?
It refers to telephone conversations, text messages, chat room sessions, streaming audio, streaming video and other electronic forms of communication the evidence of which is not recorded.

Are electronic documents to be treated differently under the rules of evidence?
No, electronic documents are to be treated as functional equivalent of paper-based documents under the rules of evidence.

Is an electronic document admissible in evidence?
Yes, if it complies with the rules on admissibility of evidence.

Can a document be considered privileged communication solely on the ground that it is in the form of an electronic document?
No, it must be regarded as privileged communication based on some other ground.

When are copies or duplicates of an electronic document regarded as original?
They are regarded as original when they have identical contents

When may such copies not be admissible?
A genuine question raised as to the authenticity of the original. It would be unjust or inequitable to admit a copy in lieu of the original.

Who has the burden of proving the authenticity?
The proponent of such evidence.

How is an electronic document authenticated?
1. By having it digitally signed
2. By evidence that other appropriate security procedures/ devices were applied to the document (as authorized by the SC)
3. By other evidence showing its integrity and reliability to the satisfaction of the judge

What electronically kept data are not barred by the hearsay evidence rule?
Business activities, banking transactions, etc.

When does the presumption of truth enjoyed by such business accumulated data cease?
When it is overcome by evidence of the untrustworthiness of the source of info or the method or circumstance of preparation.

Before answering a question asked of him, a witness asked leave of court to check the figure he has written on records that he brought with him to refresh his memory about the matter, can the adverse counsel interject the objection that the best evidence then are the records he brought with him?
No. The rules allow the witness to use a memorandum as aid in testifying in court provided he may be questioned regarding that memorandum.

Can payment be proved by testimonial evidence if the receipt was issued covering the payment?
Yes. The best evidence rule merely bars the testimony that says, “The plaintiff issued me a receipt in which he acknowledged having received P20k from me” That refers to the content.

But it is different if the testimony says I went to see plaintiff and I paid him 20k.

This will be allowed because he is testifying about a fact of which he has personal knowledge that he paid plaintiff 20k.

Can an affidavit as an original document be regarded as the best evidence of the facts states in it?
No, the original affidavit is but the best evidence of the matters it contains, nothing more.
It certainly is not the best evidence of the truth of what it contains, which is an altogether different thing.

If the contents of a document stated on the complaint are not disputed by the answer, is there still a need for plaintiff to produce the document when he testifies on what it states?
No.

What happens if the witness testifies?
It is deemed admitted.

When counsel asked the witness for the deed of sale in question, the latter produced and identified a mere photo copy but the adverse counsel did not object, or the objection to the admission of the photocopy deemed waive?
No, counsel did not ask the witness for the contents of the deed of sale. Since he was merely ask to identify a photocopy of the same, the objection should be made when it is formally offered, not when it was merely identified.

2. SECONDARY EVIDENCE

Section 5. When original document is unavailable. — When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated. (4a)

Section 6. When original document is in adverse party's custody or control. — If the document is in the custody or under the control of adverse party, he must have reasonable notice to produce it. If after such notice and after satisfactory proof of its existence, he fails to produce the document, secondary evidence may be presented as in the case of its loss. (5a)

Section 7. Evidence admissible when original document is a public record. — When the original of document is in the custody of public officer or is recorded in a public office, its contents may be proved by a certified copy issued by the public officer in custody thereof. (2a)

Section 8. Party who calls for document not bound to offer it. — A party who calls for the production of a document and inspects the same is not obliged to offer it as evidence. (6a)

What is the remedy of a party when original document is not available?
Present secondary evidence.

When the original doc is lost, destroyed, or cannot be produced, the offeror upon proof of: (a) its execution and existence and (b) cause of unavailability is without bad faith, may prove its contents:

a. By a copy
b. Recital of its contents in some authentic documents
c. By testimony of witness, in the order stated

Secondary evidence is admissible when the original documents were actually lost or destroyed.

*N.B.:*Secondary evidence of the contents of a written instrument is admissible upon a showing that the original is in the custody of a person beyond the jurisdiction of the court.

But prior to the introduction of such secondary evidence, the proponent must establish the former existence of the document. The correct *order* of proof
N.B.: order may be *changed* if necessary in the discretion of the court) is as follows:

a. Existence
b. Execution
c. Loss
d. Contents *(Herrera, p. 184)*

What must the party presenting secondary evidence prove beforehand?
He must prove that he exerted reasonable diligence and good faith in the search for or attempt to produce the original. (Powerpoint) Otherwise stated, that a diligent search has been made in the place where it is most likely to be found and that the search has not been successful. (Herrera, p. 188) The degree of diligence to be used must largely depend upon the circumstances of the case. *(Herrera, p. 189)*

To present secondary evidence, a party needs to prove among other things, the due execution or existence of the original document. How will he prove this? *(Herrera, pp. 187-188)*
Through the *TESTIMONY* of either:

PROOF OF EXECUTION AND DELIVERY
I. **PROOF OF EXECUTION AND DELIVERY**, BY ANY PERSON OR PERSONS:

a. Who executed the document;
b. Before whom its execution was acknowledged;
c. Who was present and saw it executed and delivered;
d. Who after its execution and delivery, saw it and recognized the signatures;
e. To whom the parties to the instrument had previously confessed the execution thereof.
f.

II. **DESTRUCTION**, BY ANY PERSON *KNOWING*THE FACT.

III. **LOSS**

a. By any person who knew the fact of loss;
b. Anyone who has made, in the judgment of the Court, a sufficient examination in the place or places where the document or papers of similar character are usually kept by the persons in whose custody the document lost was, and has been unable to find it;
c. Anyone who has made investigation which is sufficient to satisfy the Court that the instrument is indeed lost;
d. Proof of lack of record. A written statement signed by an officer having the custody of an official record or by his deputy that after diligent search no record or entry of specified tenor is found to exist in the record of his office, accompanied by a certificate as above provided, is admissible as evidence that the records of his office contain no such record or entry.

How are the contents of the written instrument proved?
IV. PROOF OF CONTENTS; BY WHOM

a. Who signed the document;
b. Who read it;
c. Who heard it read knowing or it being proved from other sources that the document so read was the one in question;
d. Who was present when the contents of the document were talked over between the parties thereto to such an extent as to give him reasonably full information as to its contents;
e. To whom the parties to the instrument have confessed or stated the documents thereof.*(Herrera, p. 190)*

PROOF OF CONTENTS: KINDS OF SECONDARY EVIDENCE
When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents:

a. By a copy thereof;
b. By a recital of its contents and in an authentic document;
c. By recollection of witness.

PEOPLE V. TANJUTCO

FACTS:
Felipe Tanjutco was accused of the crime of Qualified theft by Roman Santos. The former was the private secretary of Santos, and as such was entrusted with the duty of depositing large sums of money in the bank for and in behalf of Santos. Tanjutco, with grave abuse of confidence stole and carried away various sums of money amounting to P400,086.19, belonging to Santos.

Santos maintained 4 accounts with the bank. He would instruct the accused to deposit money with an indication of the account number. The accused, after depositing, would obtain a duplicate of the deposit slip duly stamped by the bank. This duplicate deposit slip would later on be shown to Mr. Santos to satisfy the latter that the money was duly deposited. The duplicate would be returned to the accused for safe keeping.

For its part, the bank kept the original of the deposit slips and a separate ledger for each account of every depositor. The ledgers were prepared in duplicate and the bank sent the duplicate to the depositor after the end of each month.

Later on, however, the accused was temper to use part of the money entrusted to him. Sometime, he deposited a smaller amount than that he received from his employer. At times, he did not deposit anything at all, although he received money for deposit. The accused used falsified duplicate deposit slips which he showed to Mr. Santos. And when he received the monthly customer's ledger, he likewise falsified them by entering in the falsified ledger the correct amount he received from Mr. Santos for deposit in place of the amount actually deposited. It was this falsified ledger which the accused showed to Mr. Santos monthly.

ISSUE:
The accused does not dispute that a number of duplicate deposit slips and monthly bank statements, supposed to have been submitted by him to complainant Roman Santos, were found to be falsified. What he is contesting here it the lower court's finding that he, appellant, authored such falsifications, which conclusion, he claims, is not supported by the evidence.Is this correct?

HELD:
No. It is true that not a single witness testified to having personally seen the accused in the act of falsifying the duplicate deposit slips or bank statements. But direct evidence on this point is not imperative. The accused even admitted, not only of having manipulated the records of his employer, but also of having been able, by that means, to abstract an undetermined amount from the funds of the latter. No other conclusion could be drawn from the foregoing facts than that the falsified documents were the ones prepared by appellant to hide his misdeeds. Even assuming these evidences to be circumstantial, they nevertheless constitute legal evidence that may support a conviction, affording as they are basis for a reasonable inference of the existence of the fact thereby sought to be proved.

Contrary to the accused's contention, there is even no necessity for all these duplicate deposit slips to be identified one by one, before they may properly be considered against the accused. These slips were not only bundled into a bunch and formally presented as Exhibit Q; they had also been consistently referred to as one of the bases of the prosecution's claim that the misappropriation amount totalled P400,086,19.

It must be remembered that the prosecution had to prove the amount allegedly embezzled by the accused. This, the prosecution tried to do by establishing the amounts received by the accused-appellant and comparing it with those deposited in the bank; the resulting difference being treated as the amount abstracted from the funds of the complainant. Under this theory, the ledgers and bank statements naturally are not just secondary, but the primary evidence of the deposits made, while the monthly bank statements found in the files of complainant Roman Santos which were supposed to confirm the amounts he had ordered the accused-appellant to be deposited, are the best evidence of the amounts actually entrusted to the latter. Consequently, the trial court committed no error in ruling in favor of the admissibility of the above-mentioned exhibits.

AIR FRANCE V. CARRASCOSO

FACTS:
Plaintiff, a civil engineer, was a member of a group of 48 Filipino pilgrims that left Manila for Lourdes on March 30, 1958. On March 28, 1958, Air France, issued to Carrascoso a "first class" round trip airplane ticket from Manila to Rome. From Manila to Bangkok, Carrascoso travelled in "first class", but at Bangkok, the Manager of the airline forced Carrascoso to vacate the "first class" seat that he was occupying because, in the words of a witness, there was a "white man", who, the Manager alleged, had a "better right" to the seat. When asked to vacate his "first class" seat, Carrascoso refused and told the Manager that his seat would be taken over his dead body. A commotion ensued, and, according to said witness, many Filipino passengers came all across to Mr. Carrascoso and pacified Mr. Carrascoso to give his seat to the white man. Carrascoso reluctantly gave his "first class" seat in the plane.

ISSUE:
Was Carrascoso entitled to the first class seat he claims?

HELD:
Yes. On the fact that Carrascoso paid for, and was issued a "First class" ticket, there can be no question. Apart from his testimony (Exhibits "A", "A-1", "B", "B-1," "B-2", "C" and "C-1"), and defendant-airline's own witness, Rafael Altonaga, confirmed Carrascoso testimony and testified as follows:

Q. In these tickets there are marks "O.K." From what you know, what does this OK mean?
A. That the space is confirmed.
Q. Confirmed for first class?
A. Yes, "first class".

Airfrance tried to prove by the testimony of its witnesses Luis Zaldariaga and Rafael Altonaga that although Carrascoso paid for, and was issued a "first class" airplane ticket, the ticket was subject to confirmation in Hongkong. The court cannot give credit to the testimony of said witnesses. Oral evidence cannot prevail over written evidence, and plaintiff's testimony (Exhibits "A", "A-l", "B", "B-l", "C" and "C-1") belie the testimony of said witnesses, and clearly show that the plaintiff was issued, and paid for, a first class ticket without any reservation whatever.

Furthermore, as hereinabove shown, defendant-airline's own witness Rafael Altonaga testified that the reservation for a "first class" accommodation for Carrascoso was confirmed. The court cannot believe that after such confirmation defendant had a verbal understanding with Carrascoso that the "first class" ticket issued to him by defendant would be subject to confirmation in Hongkong.

If, as Airfrance underscores, a first-class-ticket holder is not entitled to a first class seat, notwithstanding the fact that seat availability in specific flights is therein confirmed, then an air passenger is placed in the hollow of the hands of an airline. What security then can a passenger have? It will always be an easy matter for an airline aided by its employees, to strike out the very stipulations in the ticket, and say that there was a verbal agreement to the contrary. What if the passenger had a schedule to fulfill? We have long learned that, as a rule, a written document speaks a uniform language; that spoken word could be notoriously unreliable. If only to achieve stability in the

relations between passenger and air carrier, adherence to the ticket so issued is desirable. Such is the case here. The lower courts refused to believe the oral evidence intended to defeat the covenants in the ticket.

Judgment of the Court of Appeals is affirmed. Petitioner is liable to pay Carrascoso moral and exemplary damages, and an amount representing the difference in fare between first class and tourist class plus attorneys' fees and the costs of suit.

When a party intentionally destroyed the original document, erroneously believing that it had lost its usefulness. Does that bar him from presenting secondary evidence?
No, since he acted in good faith. A party is not precluded from introducing secondary evidence of the contents of a destroyed instrument although he himself destroyed the instrument deliberately and voluntarily, if, at the time he did so, he acted under an erroneous impression as to the effect of his act or under other circumstances which render his act free from all the suspicion of intentional fraud. (Herrera, p. 192) The rule requires that the loss, destruction or non-production of the original should be "without bad faith on the part of the offeror." (Herrera, p. 193)

Would it be enough for just one witness to testify on the contents of the original document after the prerequisites for using secondary evidence has been met?
General Rule: Yes
Exception: When the law requires a specific kind and quantum of secondary evidence to prove contents (i.e., notarial will)

N.B.: According to 2 Jones: Secondary evidence is inadmissible to take the place of that which has evidentiary force only by authority of express statutory enactment.

What is the remedy of a party if the original is in the adverse party's control?
The requesting party must give reasonable notice to the adverse party to produce the original. If the latter fails to produce it, the former can present secondary evidence.

When the original is in the custody or under the control of the party against whom the evidence is offered, he must have reasonable notice to produce it, before secondary evidence may be presented. There is no exception to this rule.

N.B.: When the original of a letter or notice has been received by the addressee who acknowledges receipt thereof in a signed carbon copy, there is no need for a notice to produce the original inasmuch as the signed carbon copy is also an original under Sec. 4(b) of this Rule.

Requisites for the admissibility of secondary evidence:
(1) Opponent's possessions (or control) of the original
(2) Reasonable notice to the opponent to produce the original
(3) Satisfactory proof of its existence
(4) Failure or refusal of opponent to produce the original in court

Is there a particular form required for notice to produce?
No, in fact, oral demand in open court is sufficient.

N.B.: A notice to a party to produce papers in his possession is sufficient to authorize the admission of parol evidence, if the notice is so framed that there can be no reasonable doubt as to what papers are meant.

The notice is not invalidated by mistakes which are not actually misleading – for example, inaccuracy of an alleged copy of an instrument attached to the notice to produce

While the notice should be framed with exactness and certainty, describing the papers desired where that is possible, it has been held not to be necessary to specify the exact documents. According to this view, the notice is sufficient if the party served may reasonably understand that a certain document is required.

Suppose adverse party has the control over the original but actual possession is with third person, is notice to adverse party sufficient?
Yes, because he still has control.

*N.B.:*Regarding the first requisite, as abovementioned, for the admissibility of secondary evidence, it is not necessary to show that the original is in the actual possession of the adversary. It is enough that the circumstances are such to indicate that the writing is in his possession or control.

Does the adverse party's refusal to produce result in the presumption that it would be against his interest?
No, if the refusal is justified. The refusal would simply enable the requesting party to present secondary evidence.

N.B.: It is not required that the party entitled to the custody of the instrument should, on being notified to produce by, admit having it in possession. The party calling for such evidence may introduce a copy thereof as in the case of

loss. Hence, secondary evidence is admissible where he denies having it in possession. The party calling for such evidence may introduce a copy thereof as in the case of loss. For, among the exceptions to the best evidence rule, is "when the original has been lost, destroyed or cannot be produced in court," the originals of the vouchers in question must be deemed to have been lost, as even the corporations admits such loss. (Villa Rey Transit Inc. vs. Ferrer)

A notice to produce a writing in the possession or under the control of the opponent does not place the opponent under compulsion to produce the writing but simply opens the door to secondary evidence to prove the content of the writing if the writing itself is not produced in compliance with the notice. Consequently, if the proponent wants to be certain that the writing is actually produced, he can accomplish this only by use of a *subpoena duces tecum*, or by the use of pre-trial procedures and a pre-trial order.

After the neglect or refusal of the party notified to produce the primary evidence, secondary evidence may be introduced by the opposite party. In such a situation, every reasonable intendment will be in favor of the secondary evidence, if it is vague or uncertain. And it is then too late for the party having possession of the primary evidence to use in rebuttal or to meet the secondary evidence of the other party with like evidence.

If there is failure to produce the original despite reasonable notice, the adverse party is afterwards forbidden to produce the document in order to contradict the other party's copy or evidence of its contents or may also be regarded as a judicial admission in advance of the correctness of the first party's evidence.

The non-production by the accused of the original document (who had access to a certified or true copy thereof) unless justified under the exceptions in Sec. 2, Rule 130 of the Rules of Court, gives rise to the presumption of suppression of evidence adverse to him.

Is the party who requested the production of original document bound to offer it?
No.

N.B.: Sec. 8 of Rule 130 of the Rules of Court states "a party who calls for the production of a document and inspects the same is not obliged to offer it as evidence."

The mere production of documents upon the trial, pursuant to a notice duly served, does not make such documents evidences; it is not until the party who demanded their production examines them and offers them in evidence that they assume the status of evidentiary matter.

When can a mere summary of numerous accounts be admitted?
Only when
(1) The record is voluminous;
(2) Made accessible to adverse party who may test the correctness of summary by cross examination

You are only interested in the **result** of the numerous accounts. Example, you only want to determine the **gross sales** of San Miguel Corporation.

Note:
According to Herrera, the requisites for this exception to apply are:
(1) There must be proof of voluminous character of records
(2) The records and accounts should be made accessible to the adverse party so that the correctness of summary may be tested on cross-examination
(3) The general result sought to be proved is one capable of being ascertained by calculation

In such a case, one who is sufficiently competent and who examined the particular writings may be permitted to state the rule ascertained by him.

With regard to Sec. 3 (c) of Rule 130 of the Rules of Court, a summary or the general result of the examination may be given in evidence by any person who has examined the documents and who is skilled in such matters, provided the result is capable of being ascertained by calculation. To the application of this rule, it is essential that the original records or writings be first duly identified and that a sufficient foundation be laid as to entitle the records or writings themselves to be admitted in evidence. Also the admissibility of the records themselves as evidence must be established and they must be available to the opposite party for cross-examination.

What if the adverse party challenges the detailed contents of the records if account for being hearsay or inauthentic?
The originals have to be produced for inspection and assigned to court-appointed auditors for verification.

What is the rule when the original document is of public record?
May be proved by certified copy issued by the public officer having custody thereof.

N.B.: See Section 7 of Rule 130 of the Rules of Court

Proof of official record – The record of public documents referred to in paragraph (1) of Sec. 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer

having the legal custody of the record or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office. (Sec. 24, Rule 132)

What attestation of copy must state – Whenever a copy of a document or record is attested for the purpose of evidence, the attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer, if there be any, or if he be the clerk of a court having a seal, under the seal of such court. (Sec. 25, Rule 132)

3. PAROLE EVIDENCE RULE

Section. 9. Evidence of written agreements. – When the terms of an agreement have been reduced to 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.

However, a party may present evidence to modify, explain or add to the terms of the written agreement if he puts an issue in his pleading:

(a) An intrinsic ambiguity, mistake or imperfection in the in the written agreement;
(b) The failure of the written agreement to express the true intent and agreement of the parties thereto;
(c) The validity of the written agreement; or
(d) The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement.

The term "agreement" includes wills.

Purpose of the rule
To give stability to written agreement and remove the temptation and possibility of perjury, which would be afforded if parol evidence was admissible.

Written instrument is more reliable and accurate than human memory.

It purports the memorialization of an agreement.

Meaning of the rule
Require in the absence of showing and fraud, mistake or accident, the exclusion of parol or extrinsic evidence by which a party seeks to contradict, vary, add to or subtract from the terms of a valid written agreement.

The rule prohibits parol evidence only where it is sought to be used to vary or contradict the terms of an integrated (finalized) written agreement.

If awriting is complete on its face, the parol evidence rule simply does not apply because the parties did not obviously did not intend the writing as integration. The rule would not bar parol evidence on matters not covered in the writing.

Requisites for the application of parol evidence rule:
1. When there is a valid contract
2. When terms of agreement reduced to writing.
3. Between parties and their successors in interest.
4. There is dispute as to the terms of the agreement.

Partial Integration
When a writing is incomplete on its face, the parol evidence rule simply does not apply because the parties obviously did not intend the writing as an integration. The agreement would then only be "partially integrated," and the rule would not bar parol evidence on matters not covered in the writing.

Is parole evidence applicable to receipts?
A receipt (written acknowledgement handed by one of the party of the manual custody of money) is not intended to be an exclusive memorial, and that facts ay be shown irrespective to be an exclusive memorial, and the facts may be shown irrespective of the terms of the receipt. Receipt is merely a written admission of a transaction independently existing, and like other admissions, is not conclusive. (Lucio Cruz v. CA)

Deed is not conclusive evidence of everything that it may contain. It is not only evidence of the date of its execution, not it is acknowledgement of a particular consideration an objection to other proof of other and consistent consideration. (Id)

Salonga (respondent) filed a complaint against Cruz for collection and damages. Salonga alleged that Cruz borrowed from the former Php 35,0000 evidence by receipt "Received the amount cash from Salonga

and Quimbo on May 4, 1982". Cruz denied contracting any loan, but claimed he was lessee of the fishpond of Yabut and that he and Salonga entered into an agreement whereby the latter would buy fish for the fishpond, that Salonga subleased the same fishpond fro one year.

Cruz contended that he received an amount nit as a loan but as a consideration for the pakyaw agreement and payment of the sub-lease of the fishpond, and that it was Salonga who still owed him.

CA, held in favor of Salonga. The amounts paid were not for the pakyaw, but were loans extended. Parol evidence was given by Cruz and his two witnesses.

Parol evidence is not applicable to this case. Section 9, Rule 130 is predicated on the existence of a document embodying the terms of an agreement but Exhibit D does not contain such agreement. It is only a receipt attesting to the fact that Cruz received from Salonga a sum of money. Not intention by the parties to be the sole memorial of their agreement. (It does not even mention the transaction that gave rise to its issuance.)

What is the theory of integration of jural acts (previous acts)
Previous acts and contemporaneous transaction of the parties are deemed integrated and merged in the written instrument which they have executed. When parties have reduced their agreement to writing, it is presumed that they have made the writing the only repository.

All conversations and parol agreement between the parties PRIOR to or CONTEMPORANEOUS with the written agreements are considered to have been merged therein so that they cannot be given in evidence for the purpose of changing the contract. Consequently, all prior or contemporaneous collateral stipulations, which do not appear in writing are presumed to have been waived and abandoned by the, and therefore not provable.

Can oral testimony be presented to show that the term "cash" used in the written agreement had been verbally changed by parties to "credit" before they signed it?
No, it is in violation of the PE Rule.

The owner authorized the agent to sell the land to X. Later the agent agreed in writing to cancel the agency. Can the agent testify that he agreed to have the agency cancelled upon the owner's verbal assurance that he will be entitled to commission?
No. Since cancellation of the authority was in writing, the verbal understanding was not admissible because it was in violation of the PE Rule.

A agreed to sell his car to B who in turn verbally sold his Rolex to A. When A sued B for payment on the car, can B present evidence of his sale of Rolex to A with a consequent setoff?
Yes, since the second agreement has a separate subject matter, although contemporaneously agreed upon with the sale of car.

What is a collateral oral agreement?
A contract made prior to or contemporaneous with another agreement and if oral and not inconsistent with written contract is admissible within exception to parol evidence rule.

Requisites:
1. Collateral in form (not a part of the integrated written agreement in any way)
2. It is not inconsistent with the written agreement in any way (including both the express and implied provisions of the written agreement)
3. It is not so closely connected with the principal transaction as to form, part and parcel thereof.

Parol evidence rule does not apply when collateral oral agreement refers to separate and distinct subjects.

When an agreement on a certain subject is embodied in a writing, all other statements of the parties thereto concerning that subject, and inconsistent with the writing may not be proved by parole evidence.

The rule does not necessarily require, the presentation of the writing itself but allows secondary evidence of the contents of the written agreement, which may be oral. The writing itself comes into play under the best evidence rule which requires the production of the original document when the contents of the writing is the subject of inquiry. But then this is subject t the secondary evidence rule.

On May 1 X leased an apartment to Y. Can X present evidence regarding a verbal agreement on:

a. Rental agreed upon on May 5?
Yes, the term is entered into after the execution of the agreement.

b. Rent which bears interest of 5%/month if not paid?
No.

c. No pets may be allowed?
No, since this ought to have been a term of the lease contract because it is a restriction.

d. A agreed to reduce the rent to 9K/month

Yes, because the parties are free to change their minds AFTER the contract.

A executed a deed of sale of a car in favor of B. C later claimed that it belonged to him. Is C barred by PER from testifying that he owns the car?
No, because he is not a party to the contract (deed of sale) between A and B.

Same parties: Partnership – operation of restaurant. Sale – mobile. Barred by PER?
No, because they are different subject matters.

Can a party to an agreement present evidence as the condition agreed upon surrounding the execution of the contract?
Yes, as a condition precedent, because there is yet no perfected contract.
Parol evidence rule applies to wills.

One of the parties to an agreement wants to present evidence that he and the other party subsequently decided verbally to terminate the agreement (presumably written). can the court allow him?
Yes. Parties cannot be presumed to have intended the written instrument to cover all possible subsequent agreements which would actually be separate transactions

A, the building owner, entered into an agreement with B, the building contractor, for the repair of his building, subcontracted the painting works to C. may A who included C in a subsequent suit for a poor painting job, testify that he (A) heard C commit, before he entered into the subcontact with B, to guarantee a good job?
Yes. C is not a party to the agreement. Strangers to the contract are not bound by the parole evidence rule.

Under what circumstances may a party present evidence to modify, explain or add to tht terms of a written agreement?
He may present such evidence if he puts "in issue in his pleading"any of those enumerated under *Section 9, Rule 130.*

When is the ambiguity in a written agreement intrinsic or patent?
J. Abad:
Intrinsic or patent - Apparent on the face of the writing (obvious) and requires something to be added to make it clear (parties didn't think it ambiguous)

Allowed if put in issue in the pleading - intrinsic ambiguity. If not pleaded, the judge then would need to cure the ambiguity by interpreting the intent or will of the parties.

Herrera:
Patent ambiguity – one which is not hidden but which appears from the face of the instrument. The uncertainty cannot be explained by parol evidence

Can parole evidence be presented when the ambiguity is intrinsic or patent?
No. It depends when the issue is raised in the suit or not. If raised parties can present testimonies to cure ambiguity (parole evidence). If not, then no parole evidence because it will create a non existent term. Court must interpret it through intent of the parties.

if the owner leases an apartment to the tenant "for two years at the rate of 10thou" but does not state whether that rental rate is monthly or annual. can parol evidence be allowed to cure the ambiguity?
Evidence may presented to clarify patent ambiguity that appears on the face of the agreement provided that the issues are raised in the pleadings

X, donates a vaguely described land to Y. Can parole evidence be presented to identify the land?
This involves an extrinsic ambiguity. Evidence may presented to clarify patent ambiguity that appears on the face of the agreement provided that the issues are raised in the pleadings.

When is ambiguity in a written agreement latent?
The ambiguity is latent or hidden when the writing on its face appears clear and unambiguous but collateral matters make the meaning uncertain

Herrera:
Latent ambiguity – no ambiguity is apparent to the person construing the instrument until from the evidence it is found that there is no more than one person or thing answering the description given. The ambiguity does not appear on the face of the instrument, but lies in the person or subject whereof it speaks.

Reyes sold a car to Ramos, but there are 2 Ramoses. May parol evidence be presented to clarify such intrinsic/latent ambiguity?
Yes to show who the real buyer is. Also where description of land fits two parcels parole evidence may be presented to show which one. (Always remember to put in issue the ambiguity so that parties may be allowed to present parole evidence to cure such ambiguity).

When is an ambiguity in a writing intermediate?

Intermediate ambiguity - Words seem clear but is actually equivocal and admits of two interpretations

E.g. The contract says "dollar" but not say if US or HK dollars, "ten" but does say if long ton or short ton, or "ounces" but does not state if it is the 12.Each of these May be regarded as latent ambiguities. parole evidence may be allowed as long as tendered as an issue

Herrera:
Intermediate ambiguity – Where the ambiguity consists in the use of equivocal words designating the person or subject-matter, parol evidence of collateral or extrinsic matter may be introduced for the purpose of aiding the court in arriving at the meaning of the language used.

S agrees to sell his car to B for p200k. S owns 2 cars, may parol evidence be presented to show which car was the subject of the sale?

This too is an intermediate ambiguity. Ambiguity is patent. Put this in issue so parties can present parole evidence

What would be the best evidence that the writing is incomplete or imperfect?
The writing itself

What pleaded "imperfection" will allow parol evidence to modify an agreement?
Inaccurate statements of incompleteness of writing; presence of inconsistent provisions

A and B entered into a contract of sale of a car that did not mention the price. is the document/agreement of sale complete?
Contract of Sale perfected by mere meeting of the minds. But the omission is patent here. Parole evidence may be presented provided the issue is leaded by the parties. Parole evidence is allowed to fill in the gaps since evidently the writing was incomplete or perfect

JULIO V. DALANDAN

The writings, in being considered for the purpose of satisfying the statute of frauds, are to be considered in their setting, and that parol evidence is admissible to make clear the terms of a trust the existence of which is established by a writing.

FACTS:

Clemente Dalandan entered into an obligation which was secured by the land of Victoria Julio. Clemente failed to fulfill such obligation which led to the foreclosure of the land of Victoria Julio.

Clemente executed a document which provisions provided that he acknowledges his liability to Victoria Julio for the foreclosure of her land and that he would replace the land with another one of the same size. However, Clemente also provided in the provisions that his children may not be forced to give up the harvest of the farm and neither may the land be demanded immediately.

After the death of Clemente, Victoria requested from the Clemente's heirs the delivery of the land. The defendants invoked the provisions which allow them to possess the harvest and the land. Victora then demanded upon the defendants to fix a period within which they would deliver the parcels.

Victoria avers that a trust was created. But defendants aver that recognition of the trust may not be proved by evidence aliunde in accordance with Article 1443 of the CC that "no express trusts concerning an immovable or any interest therein may be proved by parol evidence."

ISSUE:
Whether a trust was created

HELD:
Yes. The court, in resolving this case had to look at the meaning which the parties chose to attach to the document. In examining the document, the idea conveyed is that the naked ownership of the land was indeed transferred to Victoria, however, the fact that the possession and the fruits of the land were to go to Clemente's children raises the question on whether the ownership was absolutely transferred.

The SC ruled that no oral evidence is necessary because the express trust imposed upon defendants appears in the document itself. For, while it is true that said deed did not in definitive words institute defendants as trustees, a duty is therein imposed upon them — when the proper time comes — to turn over both the fruits and the possession of the property to Victoria Julio. Article 1444 of the Civil Code states that: "No particular words are required for the creation of an express trust, it being sufficient that a trust is clearly intended."What is important is whether the trustor manifested an intention to create the kind of relationship which in law is known as a trust. It is unimportant that the trustor should know that the relationship "which he intends to create is called a trust, and whether or not he knows the precise characteristics of the relationship which is called a trust."

Plaintiff also claims that the land which Clemente will exchange was not specifically described. The SC ruled that although it imperfectly speaks of a "farm of more than 4 hectares", the land is easily identifiable since the land was described as “the only land owned by Clemente at the time of the execution”. Therefore such obscurity in the contract can easily be resolved.

"in so far as the identity of land involved" in a trust is concerned, "it has also been held that the writings, in being considered for the purpose of satisfying the statute of frauds, are to be considered in their setting, and that parol evidence is admissible to make clear the terms of a trust the existence of which is established by a writing,..."

The buyer of a used car sued the seller to enforce a one-year guarantee not included in the deed of sale, against engine breakdown based on a false representation that the engine was new. can the buyer offer parole evidence to prove existence of the guarantee?
Yes.*(Incomplete)*

Suppose the lease agreement did not contain a period. may parol evidence be presented to show that the parties verbally agreed to a 2-year lease?
Yes. No period in agreement - the lease agreement is imperfect since essence of lease is for a certain period. *(Incomplete)*

A sued B to enforce a deed of sale of a piece of conjugal land, the validity of which deed of sale is challenged in court for lack of conjugal consent. Can the court allow B to testify that A had not complied with the requirement?
(Incomplete)

What kind of pleaded "mistake" will allow parol evidence to modify an agreement?
Mistake of Fact.

What are required before parol evidence may be admitted on the ground of mistake?
Must show that

1. Mistake is one of fact
2. Common to both parties
3. Alleged in the pleadings
4. Can be proved by clear and convincing evidence

Suppose the agreement errs in describing the subject, like an error in the motor number of the car that was sold. does that make the agreement void?
No. Mistake in the identity of the car can be ascertained by other descriptions in the agreement

A sold his land in writing to B but with a right of repurchase upon return of the price plus interest. may parol evidence be admitted to show that the parties intended a mortgage agreement?
Yes, provided the issue is pleaded.

Can parol evidence be presented to show the invalidity of the contract between the parties?
Yes. On grounds provided for by law (i.e. fraud, intimidation, violence, undue influence, illegality of subject, lack of consideration).

If oral testimony regarding the terms of an agreement betweent the parties is presented and not objected to, can the court consider such testimony?
Yes. Deemed a waiver

What does the term "agreement" include that is essentially not a form of contract?
Will

N.B.: The Parol Evidence Rule forbids varying of contracts (rule of substantive law). The Best Evidence Rule forbids receiving evidence of the contents other than the original document (forms even if it does not vary document). The Statute of Frauds forbids parol evidence to prove certain contracts to prevent enforceability.*(Herrera)*

4. INTERPRETATION OF DOCUMENTS

> ***Section 10. Interpretation of a writing according to its legal meaning. – The language of a writing is to be interpreted according to the legal meaning it bears in the place of its execution, unless the parties intended otherwise.***

Language of writing
It is not the province of the court to alter a contract by construction or to make a new contract for the parties; its duty is confined to the interpretation of the one which they made for themselves without regard to its wisdom or folly as the court cannot supply material stipulations or read into the contract words which it does not contain.

Section 12. Interpretation according to intention; general and particular provisions. – In the construction of an instrument, the intention of the parties is to be pursued; and when a general and particular provision are inconsistent, the latter is paramount to the former. So a particular intent will control a general one that is inconsistent with it.

Intent of parties
In the construction of an instrument, the intention of the parties is to be pursued, because their will has the force of law between them. The intention of the parties at the time of the execution must prevail. Where the true intent and agreement of the parties is established, it must be given effect and prevail over the bare words of the written contract. If the words appear to be contrary to the evident intention of the parties, the latter should prevail over the former.

In order that the intention of the parties may prevail against the terms of the contract:

a. Such intention must be clear; or
b. Proved by competent evidence
c.

The evident intention which prevails against the defective working of the contract, is not that of one of the part is, but the *general intent.*

Law of the contract
That which is agreed to in a contract is the law between the parties. Thus, obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.

The parties to a contract may select the law by which it is governed. In such a case, the foreign law is adopted as a "system" to regulate the relations of the parties, including questions of their capacity to enter into the contract, the formalities to be observed by them, matters of performance, and so forth.

Instead of adopting the entire mass of foreign law, the parties may just agree that specific provisions of a foreign stature shall be deemed incorporated into their contract "as a set of terms." By such reference to the provisions of a foreign law, the contract does not become a foreign contract to be governed by the foreign law. The said law does not operate as a statute but as a set of contractual terms deemed written in the contract.

Section 11. Instruction construed so as to give effect to all provisions. – In the construction of an instrument where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all.

Section 13. Interpretation according to circumstances. – For the proper construction of an instrument, the circumstances under which it was made, including the situation of the subject thereof and of the parties to it, may be shown, so that the judge may be placed in the position of those whose language he is to interpret.

Section 19.Interpretation according to usage. — An instrument may be construed according to usage, in order to determine its true character.

Rules of interpretation
Where the terms of a contract are clear and leave no doubt upon the intention of the parties, the literal meaning of its stipulations shall control.When the words or the language thereof is clear and plain or readily understandable by any ordinary reader thereof, there is absolutely no room for interpretation or construction anymore.

NCC, Art. 1370: If the words appear to be contrary to the evident intention of the parties, the latter shall prevail over the former.

In order to judge the intention of the parties, their contemporaneous and subsequent acts shall be principally considered.Where there is an ambiguity caused by conflicting terminologies in the document, it becomes necessary to inquire into the *reason behind the transaction and other circumstances accompanying it* so as to determine the true intent of the parties.The title of the contract does not necessarily determine its true nature.Should there be a controversy as to what they really had intended to enter into, but the way the contracting parties do or perform their respective obligations, stipulated or agreed upon may be shown and inquired into, and should such performance conflict with the name or title given the contract by the parties, the former must prevail over the latter.

Words which have different signification shall be understood in that which is most in keeping with the *nature and object* of the contract.

Where the contract is contained in several documents, all of them must be taken together to determine the intention of the parties.

The interpretation of obscure words or stipulations in a contract shall not favor the party who caused the obscurity *(Art. 1377, NCC).*

When it is absolutely impossible to settle doubts by the rules established in the preceding articles, and the doubts refer to incidental circumstances of a gratuitous contract, the least transmission of rights and interests shall prevail. If the contract is onerous, the doubt shall be settled in favor of the greatest reciprocity of interests. If the doubts are base upon the principal object of the contract in such a way that it cannot be known what may have been the intention or the will of the parties, the contract shall be null and void *(Art. 1378, NCC).*

How is the language of writing to be interpreted?
According to the legal meaning in the place of execution

Whose interpretation will the court consider in construing a contract?
The interpretation that parties intended

May the parties to a contract select the law by which it is to be governed?
Yes. There no law against it

When a foreign law is adopted as the law of the contract what aspects of contract would be foreign law govern?
Substantive aspect – foreign law
Procedural – lex fori (with the "exceptions": borrowing statute; contravention of social justice/public policy)*(Cadalin v. POEA Administrator)*

Would such contract be regarded as a foreign contact or a domestic contract?
If the whole law is adopted in the contract, the contract itself is considered foreign. But when only certain provisions of the law are adopted, then the contract remains domestic.*(Cadalin v. POEA Administrator)*

May the parties just adopt specific provisions of a foreign law as part of their contract?
Yes.

Would it then be regarded as a foreign contract?

No. It will be regarded as a local contract

If the terms of a contract are clear, is there room for interpretation?
No.

But supposing that the words appear to be contrary to the intention of the parties?
Intention of the parties will prevail.

Are the parties bound by the name or title given the contract?
No. The title of a contract does not necessarily determine its true nature. The Acts of the contracting parties, subsequent to, in connection with, the performance of the contract must be considered in the interpretation of the contract.

If the parties had performed the contract, conlicting words appear… *(incomplete)*
Where the true intent and agreement of the parties is established, it must give effect and prevail over the bare words of the written contract.

If the vendor never intended to sell a piece of land because t did not belong to him, can it be considere as sold, althought it was included by error to describing what was sold?
No because the parties did not intend it.

If the contract on its face shows a sale with right of repurchase but the real agreement of parties appear to be that of a loan with mortgage, which will prevail?
Intention of the parties. The real agreement will prevail (loan mortgage).

How will you construe an instrument that has several provisision or particulars?
In the construction of an instrument, when a general and aparticular provision is inconsistent, the latter is paramount to the former. So a particular intent will control a general one that is inconsistent with it.

What is the liability of one who mortages his property to secure the debt of another without expressly assuming personal laibility for such debt?
One who mortgages his property to secure a debt of another, without expressly assuming personal liability for such debt, cannot be compelled to pay the deficiency remaining after the mortgage is foreclosed.

A CBA states that the "company will answer up to 9k per calendar year for the hospital and surgical experiences of such employee xxx" would this apply to employee for her caesarian operation even if the company already provided for leave benefits?
Yes, since a caesarean operation involves surgery. These leaves are benefits distinct from hospitalization benefits. Reasonable and practical interpretation must be placed on contractual provisions.

The manager of a business had authority to "exact payment by legal means". does this deny him the power to file a lawsuit to collect debts due the business?
No. Filing a suit is inherent.

When a general and a particular provision are inconsistent, which will prevail?
Particular provisions will prevail

For the proper construction of writing, how may the judge be placed in the position of those whose language he is to interpret?
The circumstances under which the instrument was made, including the situation thereof and of the parties to it, may be shown.

What will the court do where the parties have themselves place an interpretation to their contract or the forms?
The court must follow such interpretation as indicating the intention of the parties.

How will the intent of the parties be ascertained where their contract is contained in several documents?
All documents must be taken together to determine the intent of the parties

Section 14.Peculiar signification of terms. — The terms of a writing are presumed to have been used in their primary and general acceptation, but evidence is admissible to show that they have a local, technical, or otherwise peculiar signification, and were so used and understood in the particular instance, in which case the agreement must be construed accordingly. (12)

When may the words of a writing be given a peculiar rather than a general interpretation?
General rule is that it is presumed to have been used in their general rather than peculiar meaning. But see sec 14, Rule 130:

Section 15.Written words control printed. — When an instrument consists partly of written words and partly of a printed form, and the two are inconsistent, the former controls the latter.

Between written words and partly printed words, which one prevails?
Written words.

Section 16.Experts and interpreters to be used in explaining certain writings. — When the characters in which an instrument is written are difficult to be deciphered, or the language is not understood by the court, the evidence of persons skilled in deciphering the characters, or who understand the language, is admissible to declare the characters or the meaning of the language.

When may experts be called to interpret writing or give them meaning?
When (a) the characters are difficult to decipher or (b) the language is not understood by the court.

Section 17.Of Two constructions, which preferred. — When the terms of an agreement have been intended in a different sense by the different parties to it, that sense is to prevail against either party in which he supposed the other understood it, and when different constructions of a provision are otherwise equally proper, that is to be taken which is the most favorable to the party in whose favor the provision was made.

How is an agreement to be construed when the different parties to it have intended its terms in a different sense?
Thast sense is to prevail against either party in which he supposed the other understood it.

But suppose the different constructions of a provision are otherwise equally proper, how is it to be construed
That is to be taken which is the most favorable to the party in whose favor the provision was made.

How are obscure words or stipulations to be interpreted?
Interpreted against one who caused the obscurity. The cardinal rule is that the interpretation shall not favour the party who caused the ambiguity.

What is a contract of adhesion?
A contract in which one of the parties imposes a ready-made form of contract, but which the other party may accept or reject, but which the latter cannot modify.

How are ambiguities in contracts of adhesion construed?
A contract of adhesion may be struck down as void and unenforceable, for being subversive to public policy, only when the weaker party is imposed upon in dealing with the dominant bargaining party and is reduced to the alternative of taking it or leaving it, completely deprived of the opportunity to

bargain on equal footing. And when it has been shown that the complainant is knowledgeable enough to have understood the terms and conditions of the contract, or one whose stature is such that he is expected to be more prudent and cautious with respect to his transactions, such party cannot later on be heard to complain for being ignorant or having been forced into merely consenting to the contract.*(Philippine Commercial International Bank v. Court Of Appeals And Rory W. Lim, G.R. No. 97785).*

> ***Section 18.Construction in favor of natural right. — When an instrument is equally susceptible of two interpretations, one in favor of natural right and the other against it, the former is to be adopted.***

When an instrument is equaly susceptible of 2 interpretations, one in favor of natural right and the other against it, which wil be adopted?
In favor of natural right.

How is vagueness in a gratuitous contracts interpreted?
To effect the Least possible transmission of rights or interests.

How is the true character of an instrument determined?
According to usage. The usage or custom of the place shall be borne on mind in the interpretation of the ambiguities of a contract, and shall fill the omission of stipulations which are ordinarily established.

C. TESTIMONIAL EVIDENCE

WHO MAY BE WITNESSES

> ***Section 20. Witnesses; their qualifications. — Except as provided in the next succeeding section, all persons who can perceive, and perceiving, can make their known perception to others, may be witnesses.***
>
> ***Religious or political belief, interest in the outcome of the case, or conviction of a crime unless otherwise provided by law, shall not be ground for disqualification. (18a)***

All persons who can perceive, and perceiving, can make their known perception to others, may be witnesses.

Can the bias of a witness disqualify him?
Religious or political belief, interest in the outcome of the case, or conviction of a crime unless otherwise provided by law, shall not be ground for disqualification.

When do you determine if a person is not qualified to be a witness?
The competency of the witness should be disposed as soon as it arises (i.e. when he is examined in court, when his depositions are taken or before he is examined on his judicial affidavit) and before the witness is allowed to testify to the facts in issue.

N.B.: Insane: judicial affidavit - lucid at day he testified.

When will interest in the subject matter of the action or its outcome disqualify a witness?
Under the Dead man's statute.

Is a defendant who has been declared in default disqualify from testifying in the case?
No. The defendant can still testify.

Can a convicted criminal testify?
Conviction of a crime unless otherwise provided by law, shall not be ground for disqualification.

> ***NCC, ART 821***
> ***Art. 821. The following are disqualified from being witnesses to a will:***
> ***(1) Any person not domiciled in the Philippines;***
> ***(2) Those who have been convicted of falsification of a document, perjury or false testimony.***
>
> ***RULE 119, SEC 9(E)***
> ***Section 17. Discharge of accused to be state witness. xxx;***
> ***(d) Said accused does not appear to be the most guilty; and***
> ***(e) Said accused has not at any time been convicted of any***

Who cannot be witnesses under specific circumstances?
See NCC, Art. 821 and Rule 118, Sec. 99(e).

Can a person who witnessed a thing be compelled to testify? (testify against your will?)
Yes. Public has the right to every man's evidence. Testimonial duty is fundamental in any organized society or justice becomes impotent

How can a witness be compelled to testify as is his duty?
By subpoena (*ad testificandum).* Witnesses subpoenaed by the court are duty bound to *testify (Rule 21),* except the following:

1. chief executive
2. judges of superior courts
3. Members of confress during sessions
4. ambassadors
5. consuls and other diplomatic officials when there is a treaty holding them exempt.

Is a subpoena an independant judicial process that need not be issued in connection with a pending case?
No. It is issued only in pending cases

What are the 2 kinds of witness incompetency?

1. Absolute incompetency, forbidden to testify on any matter
2. partial incompetency, forbidden to testify only in certain matters specified under sections 22 and 23, Ruel 130 due to interest or relationship, or to privileges of other parties.

What abilities must a witness have?

1. To observe, the testimonial quality of perception;
2. To remember, the testimonial quality of memory;
3. To relate, the testimonial quality of narration; and
4. To recognize a duty to tell the truth, the testimonial quality of sincerity.

OATH OR AFFIRMATION

Is the taking of an oath or affirmation to tell the truth required for giving testimony?
Yes. It is a settled rule that in the administration of justice, testimony should be given only after the witness has taken an oath or affirmation that he will tell the truth

The witness must be capable of understanding the duty to tell the truth

Suppose a party fails to object to testimony made without a prior oath, is the testimony admissible?
Yes. If a party fails to object to the taking of the testimony of a witness without the administration of an oath, he is deemed to have waived if the party fails to inquire whether the witness has been sworn.

Must an oath invoke divine help?
No. Our jurisdiction permits witnesses to testify either under obligation of an "oath" or a solemn "affirmation" (Sec. 1, Rule 132) The use of the phrase "oath or affirmation" was designed to afford flexibility in dealing with certain religions, adults, atheists, conscientious objectors, mental defectives or children. Whenever an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

TEST OF COMPETENCY
The test of competency to testify is whether the individual has sufficient understanding to appreciate the nature and obligation of an oath and sufficient capacity to observe and describe correctly the facts in regard to which he is called to testify

Can a witness be disqualified on ground of failing memory?
No. A witness is not to be excluded as incompetent by reason of the fact that his memory is somewhat defective, or because his means of knowledge may not be equal to that of other persons who might have been called as witnesses. These matters affect the credibility and not the competency of witnesses.

When must objection to competency be raised?

Judicial affidavit rule: time written testimony is offered but it could be made as soon as facts showing incompetency is discovered/appears

What is effect of failure to object to the competency of the witness?
It will be considered waived

Is the ruling of the judge on the competency of the witness appealable?
No. This is merely interlocutory. It will not be disturbed on appeal unless it is clearly erroneous. File an appeal later on instead.

What is the remedy for erroneous disqualification of witness?
Without going into the merits of the question raised by the petitioner, suffice it to say that a writ of *certiorari* lies only when an inferior tribunal exercising judicial functions has acted without or in excess of its jurisdiction or with grave abuse of discretion and there is no appeal or other adequate, plain and speedy remedy in the ordinary course of law. Granting, *arguendo*, that the ruling of the respondent court is erroneous, *the remedy to correct the mistake is by appeal.* To allow parties litigant to come to this Court for the correction of errors committed in the course of the trial, which may be done on appeal, would unduly burden this Court with cases to be brought to it on appeal. *(Icutanim v. Hernandez, G.R. No. L-1709, June 8, 1948)Remanded the case.*

Can a man who became blind after the event testify to what he saw?
Yes since it is personal knowledge.

Can one who became deaf testify on what he heard before becoming deaf?
Yes since it is personal knowledge.

Can a witness who is capable of perceiving but is incapable of narration testify?
No. He can't express himself. There is no power of speech.

Can a police officer who conducted an ocular inspection of the scene of violence testify on the "bloodstain" and distances (but not an eyewitness)?
Yes. In *Addenbrook v. People, 20 SCRA 494,* the testimony of a patrolman who conducted an ocular inspection of blood stains and distances was held a competent witness *to testify on what he found* during the ocular inspection.

He may not testify on the facts of the actual crime, as this would be mere hearsay, however he may testify on the evidence which he found during the ocular inspection (blood stains, etc)

WHO CANNOT BE WITNESSES

> ***Sec. 21. Disqualification by reason of mental incapacity or immaturity- The following persons cannot be witnesses;***
>
> ***(a) 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;***
>
> ***(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. (19a)***

MENTAL IMMATURITY

May a witness prove his qualification?
Ordinarily, persons who are tendered as witnesses are presumed to be sane and competent to testify until the contrary is shown; and the burden rests on the person asserting the contrary to show, not only that the witness is mentally weak, but that the weakness is of such nature and extent as to render him incompetent to relate the facts of the case or to comprehend the nature and obligations of an oath.

Also, the fact that a person has been recently found of unsound mind by a court of competent jurisdiction and that he is an inmate of an asylum for the insane is *prima facie* evidence that he is of unsound mind, and imposes the burden on the party offering him to show his competency.

What does mental incapacity include?
Any mental aberration which renders the witness incapable of conveying ideas by words or signs and give intelligent answers to questions propounded.

Are psychotics who suffer from major mental disorders and whose contact with reality is usually impaired, absolutely excluded?
No. As long he is able to Comprehend an oath, is able to observe, remember what he has observed and give a correct account of his testimony. Testimony must be offered during lucid interval.

What is the presumption when insanity has once existed?
The insanity is presumed to continue to exist until contrary is shown.

What is the effect if the transaction subject of his testimony took place during his insane period?
Mental unsoundness of the witness at the time the fact to be testified to occurred, affects only his credibility.

Is a mental retardate per se disqualified from being a witness?
No. A mental retardate is not per se disqualified from being a witness. As long as his senses can perceive fact and he can convey his perceptions in court, he can be a witness.

Does monomania (irrational preoccupation with one subject) disqualify a witness?
Yes. Although it has been maintained that the testimony of a monomaniac should not be admitted, the weight of authority seems to sustain the view that monomania upon a subject, not in issue, does not necessarily render the witness incompetent if, in the opinion of the court, he can give a correct account of what he has seen or heard.

ADMISSIBILITY OF THE TESTIMONY OF A DEAF MUTE

PEOPLE V. HAYAG

The modern rule is to the effect that deaf and dumb persons are not incompetent as witnesses merely because they are deaf and dumb if they are able to communicate the facts by a method which their infirmity leaves

available to them, and are of sufficient mental capacity to observe the matters as to which they will testify and to appreciate the obligation of an oath;

FACTS:
Daniel Hayag was sentenced by CFI of Davao del Norte to life imprisonment for raping Esperanza Ranga, a 32 year old farm girl and a deaf-mute. Hayag, 50, a married man with 8 children, who finished grade 6, admitted that he had sexual intercourse with Esperanza 9 times. Esperanza was examined and found to be pregnant although the record did not show whether she gave birth. There was no medical examination of Esperanza immediately after the rape was allegedly perpetrated.

ISSUE:
Whether Virginia Ranga, 26, a public school teacher, a college graduate, and the victim's sister, correctly and credibly interpreted and verbalized the sign language of Esperanza
Whether Hayag is guilty of rape

HELD:
No and No. Jurisprudential rules regarding communication with a deaf mute – *The modern rule is to the effect that deaf and dumb persons are not incompetent as witnesses merely because they are deaf and dumb if they are able to communicate the facts by a method which their infirmity leaves available to them, and are of sufficient mental capacity to observe the matters as to which they will testify and to appreciate the obligation of an oath;* but where the person is not so educated as it is possible to make him understand the questions which are put to him he is not competent.

The method to be employed in eliciting the testimony of a deaf-mute should be that which is best suited to attain the desired end, the particular method of examination resting largely in the discretion of the trial court.

The best method rule- The best method should be adopted. And there is authority to the effect that the method adopted will not be reviewed by an appellate court in the absence of a showing that the complainant party was in some way injured by reason of the particular method adopted.

The prosecution failed to establish the guilt of the accused beyond reasonable doubt. The culpability of Hayag cannot be made to rest on the uncorroborated story of Esperanza, as conjectured by her sister and mother. Lack of tenacious resistance on the part of Esperanza Ranga, her delay in reporting the alleged rape to her mother and the absence of an immediate medical examination of her private organ are circumstances creating reasonable doubt as to the commission of the rape. She did not suffer any physical injuries. Her dress was not torn. She did not attempt to free herself from the clutches of Hayag.

Esperanza's story was not recounted by her directly in her own words but was made known by means of sign language which was interpreted by her sister, Virginia. The trustworthiness of that interpretation is doubtful. The defense objected to such interpretation. The probability of error or fabrication in such a case is very manifest. The court and the accused have no means of checking the accuracy of the verbalization made by the interpreter who is herself interested in sending the accused to prison.As per testimony of Virginia, the mode by which she and Esperanza communicate is not the standard mode adopted by those who have studied sign language and that they communicated by means of improvised signs. Some words were not capable of being signed such as "invisible words" like the word "truth" or answering a "why" question. Virginia admitted that there were deficiencies in her mode of communication with Esperanza.

Esperanza only confided to her mother that she was raped only forty days after the incident. Her story was not corroborated. The uncorroborated testimony of the offended woman may be sufficient under certain circumstances to warrant a conviction for rape. Yet, from the very nature of the charge and the ease with which it may be made and the difficulty which surrounds the accused in disproving it, it is imperative that such testimony should be scrutinized with the greatest caution. In all such cases the conduct of the woman immediately following the alleged assault is of the utmost importance as tending to establish the truth or falsity of the charge. Indeed it may well be doubted whether a conviction of the offense of rape should ever be sustained upon the uncorroborated testimony of the woman unless the court is satisfied beyond a reasonable doubt that her conduct at the time when the alleged rape was committed and immediately thereafter was such as might be reasonably expected from her under all the circumstances of the case.

MENTAL INCAPACITY

May children of tender age testify in a criminal case?
Yes. Caveat: Chilren are susceptible to misleading suggestions.

A witness is not deemed incompetent to give testimony simply because he or she is of tender age. This Court has repeatedly held that the testimony of a minor or minors of tender age will suffice to convict a person accused of a crime so long as it is otherwise credible. Indeed, it has even been held that the testimony of children of sound mind is likely to be more correct and truthful than that of older persons so that once established that they have fully understood the character and nature of an oath, their testimony should be

given full faith and credence.*(People of the Philippines v. Rodico, G.R. No. 107101 October 16, 1995*

What are the requirements for child's competency as a witness? [ORC]

1. Capacity of obervation
2. Capacity of recollection
3. Capacity of Communication

And in ascertaining whether a child is of sufficient intelligence according to the foregoing requirements, it is settled that the trial court is called upon to make such determination.*(People v. Mendoza, G.R. No. 113791, February 22, 1996)*

Other elements in determining the competency of the child:

1. A sense of obligation to speak the truth (understanding of the nature and value of an oath)
2. Memory sufficient to retain an independent recollection of the observation made.

Is the capacity of the child to be determined based on his age alone?
No. The capacity of children to testify as witnesses is to be determined, not by the fact of age alone, but by the unerstanding and intelligence of the individual child.

A child was 3 y/o at the time of the accident and 5 at the time of trial. When asked, he did not know where he lived, where he went to church, or with whom he was living. Can he testify?
No. Clearly intelligence and understanding was absent during the time of the accident, therefore he cannot qualify as a competent witness

Is it required that the child is able to define the meaning of the word "oath"?
No. On capacity to understand the nature and obligation of an oath – this does not imply that he should be able to define the meaning of the word. "Oath", an adequate sense of the impropriety of the falsehood is all that is necessary, eventhough he may have never heard of the word before.

Will child's statement that he knows bad from good, that lying is bad, and that he will be punished if he lies, coupled with a promise to tell the truth be sufficient in place of an oath?
Yes.

What are the periods of time for testing the competency of children?
First, to the date of the occurrences which are under inquiry, for it us then that "just impressions" are to be received; Second, to the date upon which the witness is offered as a witness, for it is then that the capacity for "relating truly" is to be ascertained.

What is the probative value fo the testimony of a child? Two schools of thought.
1. The first is to approach a child's testimony with caution. (A child may have been taught what to say, or his imagination may induce him to relate something he has heard or read in a story as a personal experience)

2. The second school of thought considers the testimony of a boy as the best in the world. (Children of sound mind are likely to be more observant of incidents which take place within their view than older persons, so their testimony is likely to be more correct and truthful than that of older persons, and where once established that they have fully understood the nature and character of an oath, their testimony should be given full faith and credit)

SPOUSAL IMMUNITY/MARITAL DISQUALIFICATION RULE

> ***Section 22. Disqualification by reason of marriage. – 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.***

What may the husband or the wife not testify "for" or "against" each other?
During the marriage, neither the husband nor the wife may testify *for or against each other* without the consent of the affected spouse.

When does a spouse have "incapacity" and when does he has "privilege" regarding the testimony involving the other spouse?
Privilege —when he/she cannot testify AGAINST the other spouse
Incapacity — when he/she cannot testify FOR the other spouse

What are the reasons for this rule?

1. FOR – to avoid perjury
2. AGAINST – to avoid domestic disunity
3. To guard the security of private life
4. To prevent a spouse from punishing the other spouse by giving hostile testimony

What is the reason for forfeiting the disqualification when a spouse testifies in a civil case against the other or in a criminal case for a crime committed against the other?
Because the identity of interests disappears and the consequent danger of perjury ceases

What are the requisites for marital disqualification?
1. One of the spouses is a party to the case
2. The spouses are legally married
3. Testimony offered during the marriage
4. Case is not one against the other

Can the wife charged with illegal possession of prohibited drugs testify that the drugs belonged to her husband who is not charged?
Yes, because the husband is not a party to the case.

Can the wife of an accused testify as a witness for another accused in the same case?
Yes as a general rule. Provided the defense raised by the several accused are distinct and independent of each other.

Will the rule apply to a bigamous wife, a live-in partner, or a fiancé?
No, a legal marriage is required.

SURVIVORSHIP DISQUALIFICATION RULE/DEAD MAN'S STATUTE

> ***Section 23. Disqualification by reason of death or insanity of adverse party. — Parties or assignor 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.***

Dead Man Statute
A plaintiff or his assignor, who sues the executor or an agent of the deceased based on a claim against his estate, cannot testify regarding any statement made by the decedent prior to his death.

In the case of *Go Chi Gun vs. Co Cho*, the Dead Man's Statute did not bar plaintiff from testifying on the fraud deceased committed since the suit against the children is not in their representative capacities. When children are called to defend that they got, and make the defense that he might have had, may be said to represent deceased in that suit. The question is to whom his right should have descended, in such a contest children cannot be said to represent the deceased.

Application
1. To parties-plaintiffs or their assignors or persons in whose behalf a case is prosecuted
2. Where such case or proceeding is against a defendant executor or administrator or other representative of a deceased person or against a person of unsound mind
3. Involving a claim or demand against the estate of such deceased person or person of unsound mind
4. Incompetency is confined to the giving of objected testimony on any matter of fact occurring before the death of the deceased person or before the insane became of unsound mind

Reason for the rule
In the interest of fairness, a person who's dead can no longer refute any testimony given against him and to prevent perjury.

Requisites for the application of the rule
1. It is the party or assignor who testifies in the case
2. The case is against the executor, agent, or administrator of the deceased
3. The action is a claim or against the estate
4. The testimony refers to any statement or act made by deceased prior to his death

The witness offered for examination is a party plaintiff, or the assignor of said party, or a person in whose behalf a case is prosecuted
1. Such plaintiff must be the real party in interest and not a mere nominal party.
2. The disqualification does NOT apply: when the counterclaim has been interposed by the defendant as the plaintiff would thereby be testifying in his defense or when the deceased contracted with the plaintiff through an agent and said agent is alive and can testify, but the testimony of the plaintiff should be limited to acts performed by the agent.
3. Assignor, defined:Assignor of a cause of action which has arisen, and not the assignor of a right assigned before any cause of action has arisen
4. Interest in the outcome of the suit, per se, does not disqualify a witness from testifying

The case is against the executor or administrator or other representative of a person deceased or of unsound mind

1. It is necessary that the said defendant is being sued and defends in such representative capacity and not in his individual capacity
2. Even if the property has been judicially adjudicated to the heirs, they are still protected under the rule
3. The protection would extend to the heirs of the deceased and the guardians of persons of unsound mind

The case is upon a claim or demand against the estate of such person who is deceased or of unsound mind

1. The rule does **not** apply where it is the administrator who brings an action to recover property allegedly belonging to the estate or the action is by the heirs of a deceased who represented the latter
2. This is *restricted to debts or demands enforceable by personal actions* upon which money judgments can be rendered.
3. An action for damages for breach of agreement to devise property for services rendered is a claim against an estate

The testimony to be given is on <u>matter of fact occurring before the death</u>, of such deceased person or before such person became of unsound mind.

*N.B.:*Negative testimony (testimony that a fact did not occur during the lifetime of the deceased) is NOT covered by the prohibition – as such fact exists even after the decedent's demise

Does the rule bar a non-party to the case?
No, a stranger to the case may testify. It applies only to party plaintiff or his assignor who brought the suit

The plaintiff testify against the deceased when he was still alive. But when a new trial was ordered, he had already died. Does the rule apply?
No, the test for application was the time the testimony is being offered.

Can the plaintiff present evidence of the deceased's fraudulent transaction with him?
Yes, but fraud must be established by evidence aliunde, and not by the same evidence that is sought to be prevented. See the case of Ong v. Chua where witness was allowed to testify on it because the existence of fraud was first established by sufficient and competent evidence.

Does the rule apply where the estate of the deceased has interposed a counter claim against the plaintiff?
No, since the plaintiff has the right to testify in his defense against the counter claim.

Does this rule cover plaintiff's testimony that a fact did not occur when he deceased was still alive?
It does not since such testimony does not dwell on the things he did when he was still alive

Does the rule cover the testimony of the plaintiff who is in present possession of a PN signed by deceased?
No. The PN is a documented transaction that if forged can be proved as one even after deceased has passed away.

The administrator of the estate of deceased applied for registration of land belonging to latter. May the oppositors testify against the application?
Yes, since in essence it is an action the deceased filed against the oppositors who are defending themselves.

Does the rule of incompetency apply in cadastral cases?
It does not apply.

May the plaintiff partner testify against a deceased partner in an action against the partnership?
Yes, the action is against the partnership, not the partner.

Does the rule embrace the counterclaim of a surviving party?
Yes. Counterclaim is an independent claim.

Suppose in an action filed against it, estate set up counterclaim against plaintiff, can plaintiff testify to occurrence before death to defeat counterclaim?
Yes. As defendant in the counterclaim, he is not disqualified from testifying as to matters of fact occurring before the death of the deceased, said action not having been brought against but by the estate or representative of the deceased.

Case of *Go Chi Gun v. Co Cho*. does the deadman's statute operate to bar plaintiff from testifying on the fraud deceased committed?
No, since the suit against the children is not in their representative capacities. When children are called to defend that they got, and make the defense that the deceased might have had, if living, may be said to represent deceased in that suit. The question is to whom his right should have descended, in such a contest children cannot be said to represent the deceased.

What are those that took place during life of deceased which covered by the rule?
It covers things that took place in his presence or within his hearing and that he might testify on if he were alive *(Legarda v. Jurudent 46 OG 631)*

So may plaintiff testify on facts outside of the personal dealings with deceased or what deceased told him?
Yes, only purpose of the law is to close the mouth of living person as to a matter in which the deceased had a part.

May plaintiff testify to transaction he made with a living agent of the deceased?
Yes, but testimony confined to those transactions. The injustice sought to be avoided does not exist since agent could refute testimony.

Does the rule bar testimonies favorable to deceased?
No. This is the same conclusion also where the representative is not a party.

If defendant dies or becomes incompetent after being examined in court, may plaintiff testify on matter testimony of deceased or insane person covered?
Yes, to cover only testimony given by the deceased.

Would the same ruling apply if deceased gave testimony in a former trial before he died?
No, unless testimony has been reintroduced in new case by the representative.

PRIVILEGED COMMUNICATION

Section 24. Disqualification by reason of privileged communication. — The following persons cannot testify as to matters learned in confidence in the following cases:

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. On the other hand, incompetency is a ground for disqualification which may be invoked by the opposing party to prevent a person from being presented as a witness.

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.

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

Reason for the rule
To protect relationships that law encourages. Relationship between the parties are more important than obtaining testimony of one of them.

The following can assert the privilege:
1. A privilege is personal in nature, thus the holder (the person whose interest or relationship is SOUGHT to be protected; like the client or patient) of the privilege; and
2. Authorized persons and persons to whom privileged communication were made (guardian of an insane)

*N.B.:*The disqualification applies to both civil and criminal cases except as to the doctor-patient privilege, which is applicable only in civil cases. Unless waived, the disqualification under Sec. 24 remains even after the various relationships therein have ceased to exist. The privilege cannot be invoked where confidential information is made in contemplation of death or in furtherance or perpetuation of fraud. Unless waived, the disqualification applies to both civil and criminal cases except as to the doctor-patient privilege, which is applicable only in civil cases. Unless waived, the disqualification under Sec. 24 remains even after the various relationships therein have ceased to exist. The privilege cannot be invoked where confidential information are made in contemplation of death or in furtherance or perpetuation of fraud.

How are privileges construed?
They operate to bar otherwise competent testimony. Construed narrowly to limit their application

Can someone else invoke the privilege for the person entitled to it?
No, the privilege is personal to the holder.

If privilege is jointly held by two persons, who can claim the privilege?
Each of them can claim.

Is there an exception where someone can invoke the privilege for the benefit of one entitled to it?
Yes, by someone authorized to do so, and in case of a legally incompetent, his or her guardian can assert the privilege.

Can executor or administrator of deceased waive the privilege?

Yes, since these privileges generally survive the death of the holder of privilege.

If holder of privilege is absent when testimony is sought to be introduced, who else can assert it?
The court on its own motion or on motion of any party will exclude the privileged testimony.

Suppose the court failed to exclude testimony on its own, who can claim error in admitting the testimony?
It is only the holder of the privilege who can claim error in admitting.

May the person to whom the privileged statements were made, such as the attorney receiving confidential communication from a client, assert the privilege?
No, if the holder of the privilege is present. But yes, if the absent holder who is still alive and has not waived the privilege.

BETWEEN HUSBAND AND WIFE/MARITAL PRIVILEGED COMMUNICATIONS

(a) The husband or the 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 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

What is the scope of the privileged character of the communication between the husband and wife?
The husband or wife, cannot, during or after the marriage, be examined without the consent of the other as to any communication received in confidence.

What is the exception?
The husband or the 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 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 (Sec. 24a)

Reason for this privilege
Society has an interest in preserving peace of families and in maintaining the sacred institution of marriage. Its strongest safeguard is to preserve with zealous care any violations of those hallowed confidences inherent in and inseparable from the marital status.

Requisites of this privilege
1. The spouses are legally married;
2. The privilege claimed is with respect to a confidential communication between the spouses during the said marriage;
3. The communication is made confidentially; and
4. The spouse against whom such evidence is being offered has not given his or her consent to such testimony.

What do the words "any communication" include?
It includes (1) oral utterances, (2) written messages, and (3) acts.

To "communicate" is to convey the knowledge or information of a thing. It is limited to expressions intended by one spouse to convey a meaning or message to the other. Example: "Darling, I killed Pedro."

When is an act done by a spouse a form of communication to the other?
When the act is done in the presence of the other spouse and the act sends a message to the latter.

Any fact which came to wife's knowledge by reason of the confidential relationship is included in the privilege. Example: Husband counts money in the presence of wife and the money later become subject of litigation.

Are acts of one spouse not done confidentially regard as privileged communication?
No. Confidentiality is required.

The husband comes home drunk. Can the wife testify about his coming home drunk in a case where he is a party?
Yes, being drunk cannot be regarded as "communication received in confidence." The state of drunkenness cannot be construed as a form of communication.

Is it the same with the state of insanity of the husband?
Yes. *(5 Moran 168)*

The wife catches the husband whispering on the phone to another woman. Can the wife testify on this against the husband in a case where he is a party?
Yes. Acts done by one spouse while acting, not in the confidence of the other spouse, but surreptitiously and in circumstances indicating an attempt to withhold knowledge thereof from the latter are not confidential

communications; and the other may testify as to such acts although they are adverse to the actor spouse.

Do communications between spouses carry with them a presumption of confidentiality?
Yes, they are presumed confidential.

Suppose the husband talks to the wife in the presence of a housemaid, does the element of confidentiality remain?
No, the housemaid is a third person. Allowing her to hear it indicate that the husband has no intention of keeping what he tells his wife in confidence.

The husband told his wife that he was promoted in his work. Is that a confidential communication?
No, since it is not a matter that the husband will ordinarily expect his wife to keep in secret.

Suppose a neighbor overhears the husband tell his wife that he had bought stolen goods. Can the wife testify against her husband about what he told her?
It remains that the wife received the husband's communication to her in confidence but it is not confidential as to the neighbor who overheard it. But judicial attitude of US courts change *markedly when the eavesdropper has been precluded by the recipient spouse* on the theory that the eavesdropper has become that spouse's agent.

Suppose the husband said it in the presence of their children. Is the communication confidential?
No if the children are adults – they are considered as third persons. But if they are too young to comprehend, the information remains confidential.

Are conversation between husband and wife about estafa that they were both taking part in protected conversations?
No, they are not regarded as marital communications for the purposes of the marital privilege. The privilege does not protect conjugal crimes.

Does the privilege apply to the wife's observation of the physical or mental condition of her husband?
No, since no "communication" is involved.

The wife saw a mark on her husband's chest in their bedroom when he removed his shirt. Should she be permitted to testify?
No, because the husband's act of undressing in front of his wife would involve reliance on marital confidentiality.

Are communications between the couple before they were married or after their divorce privileged?
No, they must be made during the marriage.

Does the privilege apply when the spouses are actually separated and hostile to each other without any hope for reconciliation?
No more. But where there is still hope of reconciliation, privilege communication can be recognized.

Can a third party testify against one spouse on a matter disclosed to him by the other spouse?
As a rule yes, but where there is collusion, 3rd party is barred by the rule since he is treated as the disclosing spouse's agent.

If the husband gives to his mistress some of his wife's letters to him, telling the mistress to give them to the police, may the husband invoke the privilege as to those letters?
No as to him, it had ceased to be confidential communication when he gave them to the mistress.

Does this privilege continue even when the marriage is annulled or when one of the spouses dies?
Yes, those made in the confidence of the marriage relation continue to be privileged, unless it is a dying declaration.

The wife testified after their marriage had been annulled that she did not see during their marriage any sign that her husband was drunk in a party. Is her testimony covered by the privilege?
No, the rule does not apply to facts that the spouse learned by means equally accessible to other people.

Mario, the husband, told his wife Nora, that he accidentally ran over a child. Who may exercise the privilege?
Most authors hold that the privilege belongs only to Mario, who made the communication when he is sued for negligence.

How is the privilege waived?
1. By failure to object
2. By calling spouse as witness on cross-examination
3. By any conduct that may be construed as implied consent.

How do you distinguish this privilege from marital disqualifications?
1. The privilege applies regardless of whether the spouses are parties or not; marital disqualification only when one or both are parties;

2. The privilege applies to testimonies on confidential communication only;
3. Marital disqualification applies to testimony on any fact.
4. Marital disqualification ceases after dissolution of marriage.

ATTORNEY-CLIENT PRIVILEGE

> ***(b) 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;***

Scope of the privileged communication between the attorney and client
An attorney cannot without the consent of his client be examined:
1. As to the communication made by the client to him;
2. Or his advice given thereon;
3. Nor can an attorney's secretary, stenographer or clerk be sought to be examined without the consent of both the client and the attorney.

Purpose
To encourage full disclosure by a client with confidence in his attorney in matters affecting his rights and obligations without danger of having disclosures forced from the attorney on the witness stand.

Is betrayal of trust by an attorney for revelation of any of the secrets learned by him in his professional capacity punishable by law?
Yes. *(Art 209, RPC)*

Requisites:
1. A lawyer and client relationship exists
2. The privilege is invoked with respect to a confidential communication between them made in the course of or with a view of professional employment; and
3. The client has not given consent to the attorney's testimony thereon; or if the attorney's secretary, stenographer or clerk is sought to be examined, that both the client and the attorney have not given their consent thereto.

Who may claim the privilege?
It is the client or someone he has authorized who may claim the privilege.

Does the rule protect the attorney?
No, only the client. The attorney needs his client's consent to testify to such communication.

May the client himself be compelled to testify as to privileged communication?
No, unless he waives the privilege.

May the attorney invoke the privilege for his client?
Yes, he may refuse to testify on the privileged matter until he has obtained the consent of his client.

Suppose the client is not a party to the action in which the lawyer's testimony is sought. Does the privilege still apply?
Yes. The privilege may be claimed whether or not the client is a party to the action in which the testimony is sought. The claim may be made either by the client or his attorney.

May the court enforce the privilege if counsel does not raise an objection?
Yes, it may enforce the privilege of its own motion.

Suppose the attorney interviews a prospective client and they did not come to an agreement as to his fees, does the privilege still apply when the attorney declined the case?
Yes, as to matters disclosed during the interview. Actual employment is not necessary.

Suppose the person consulted as a lawyer turns out not to be one. Does the privilege apply?
It depends if the privilege hinges on the client's belief that he is consulting a lawyer and his manifested intention to seek professional legal advice.

On whom lies the burden of establishing the privilege?
The person asserting it.

Is an agreement regarding the payment of attorney's fees confidential?
No.

If one consults an attorney not as a lawyer but as a friend or a business adviser, or an accountant, is the consultation privileged?
No, the consultation is not professional nor the statement privileged.

Will the privilege apply if the service by the attorney is made available by administrative practitioners who are not necessarily lawyers?

Conflicting rules exist but preponderance of views is that it will apply even if the services he performs are available from non-lawyers.

Does the consultation have to be in view of litigation?
No. The communications need not relate to any litigation at all. It is sufficient if the statements have been made in the course of legitimate professional transactions between attorney and client as such, and relate to matters as to which the client has sought the attorney's professional aid or advice, although some of the earlier cases restricted the application of the rule to communications relating to litigation.

Who has the burden of showing that the communication is privileged?
The burden rests on the one who seeks to have it excluded. However, if the proffered statement relates to a matter which is so connected with the employment as to create a presumption that it was drawn out by the relation of attorney and client, it is privileged from disclosure.

The client in an ejectment case tells his lawyer, "I like going out on a blind date" is this covered by the privilege?
No, the privilege does not cover impertinent communication.

A lawyer, advised his friend to invest in XYZ shares. Is the advice covered by the privilege?
No, it should have been made in the course of professional employment. The privilege does not extend to information which appears to have been received by the witness in the character of a friend and not as counsel.

Can the lawyer be required to testify on whether or not his client went to his office walking with a limp?
The weight of authority is that what the lawyer observed in common with anyone and not intended as a communication to him is not protected.

The client opens the drawer of his desk to display a revolver and the lawyer saw it. Is it privileged?
Yes, since the apparent intent is to communicate the presence of the gun, this is akin to telling the lawyer that he had a gun.

When an accused is charged with stealing gold bars, can the lawyer testify that he received his retainer fee in gold bars?
No, it is privileged.

Where the client delivers a stolen property to his attorney, can the attorney be queried about such property?
Conflicting decisions exist. It is virtually impossible to draw the line between an act of confidence, which is privileged and acquiring knowledge of a preexisting fact. A lawyer cannot aid his client in concealing object evidence of his crime. An attorney should not be barred to disclose the circumstances of acquisition, since to preclude the attorney's testimony would offer the client a uniquely safe opportunity to divest himself of incriminating evidence without leaving an evidentiary trial.

If the client sends a deed of sale to his attorney, would such deed be regard as privileged communication from the client?
2 views are given:

a) If the client sent the deed of sale to his attorney, accompanied by some request or instruction, it would be privileged.
b) If it was only to entrust possession – not privileged since its production may be ordered by the court if it was in the hands of the client, thus, it will be equally subject to such an order if it is in the hands of his attorney.

May an attorney be required to testify regarding his possession of money or property belonging to the client?
Yes, they are not communications.

Would communications to the attorney that the client intended to be revealed to third persons be considered privileged?
No, since the element of confidentiality is wanting.

The defendant wrote a letter to his lawyer but it found its way to the hands of a third person who presents it in evidence, is the letter privileged?
No. Applicable by analogy is the rule that one who overhears a communication, whether with or without the client's knowledge is not within the privilege. The same rule ought to apply to one who surreptitiously reads or obtains possession of a document in original or copy.

If in the course of rendering professional services to a client, the attorney employs assistants are the communications privileged?
Yes, if purpose is for the planning and management of cases. The presence of intermediaries will be assumed not to militate against the confidential nature of the consultation, and presumably this would not be made to depend upon whether the presence of the agent, clerk or secretary was in the particular instance reasonably necessary to the matter in hand.

Information obtained by an expert engaged by an attorney is not within the attorney-client privilege where the information was not revealed by communication from the client but was available to the public

The lawyer sues his client for non-payment of his fees. Does the

privilege continue?
No, only so far to enforcement of his rights. The weight of authority seems to support the view that when client and attorney become embroiled in a controversy between themselves, as in action by the attorney for compensation, the seal is removed from the attorney's lips. As to what controversy between them do not limit their holdings to litigations between them, but have said that whenever the client, even in litigation between third persons, makes an imputation against the good faith of his attorney in respect to his professional services, the curtain of privilege drops so far as necessary to enable the lawyer to defend his conduct. The privilege must not stand in the way of the lawyer's just enforcement of rights to be paid a fee and to protect his reputation.

It's the client who sues the lawyer for negligence in handling the case, privilege?
No, the seal is removed to the extent he is to defend himself.

The client told his lawyer to tell the police that the lawyer is with him when he kills his enemy on the following day?
No, the privilege of non-disclosure does not extend to the advice made by the client to his attorney in furtherance of a criminal act. The lawyer has the public duty to disclose if employed in any unlawful or wicked act.

While communications made after the wrongful act are privileged, those made beforehand in contemplation of fraud or crime are not. However the rule has been held to extend to communications which the attorney, from the circumstances, must have known to relate to an intended fraud upon client's creditors. But if attorney and client enter into a conspiracy to violate the law, they should not be allowed to conceal the unlawful purpose under the cloak of professional privilege.

The client disclosed part of a privilege communication he made to his attorney. May he invoke the privilege later as to the rest of the communication?
No, it would not be fair for him to use part advantageous to him and bar the part that is not.

If on cross examination in court, the client reveals conditional communication to his lawyer, can he seek its deletion from the record?
No.

WAIVER OF PRIVILEGE

Waiver must be voluntary.
Waiver may be found not merely from words or conduct expressing to relinquish such right, but also from conduct such as partial disclosure which would make it unfair for the client to invoke the privilege thereafter.

What is the effect of failure to invoke the privilege on cross examination?
The usual rule is that the client's failure to claim the privilege when to his knowledge testimony infringing it is offered is a waiver unless there are some circumstances which show that the client was surprised or misled.

What is the effect on the privilege if the client calls his attorney to testify on communications between them?
Privilege is waived.

In such case, can the attorney be compelled to give testimony?
Yes. Since the attorney- client privilege is for the benefit of the client it may be waived by him and the attorney is bound by the client's waiver and has no choice but testify.

Does the attorney have the right to waive the privilege?
No, except only so far to enforcement of his rights.

Client asks his lawyer to testify to facts he learned outside their professional relation, would that be a waiver of the privilege?
No. If a client uses the lawyer to prove matter which he would only have learned in the course of his employment this would be considered as a waiver but merely to call the lawyer to testify to facts known by him apart from his employment should not be deemed a waiver. That would attach a too harsh condition on the exercise of the privilege.

After the client dies, may the privilege be waived by his representatives?
Yes, the guardian ad litem may make the waiver in regard to matters relevant to the lawsuit he was appointed.
Client testifies in a suit where he is a party and tells the same story he told his lawyer, would it be a waiver of conversation with his attorney?
No, the communication that is privileged, not the facts related to him. Mere voluntary taking of the stand by the client as a witness in a suit to which he is a party and testifying to facts which were the subject of consultation with his counsel is no waiver of the privilege. If on the direct examination, however, he testifies to the privileged communication, in part, this is waiver as to the remainder of the privileged consultation about the same subject.

What is the duration of the privilege?
It subsists beyond death or termination of relationship. Matters disclosed in professional confidence may not be revealed by the attorney, or the client be

compelled to testify thereto, although the litigation has ceased or the relation of attorney client has terminated by death or otherwise or although the testimony is offered in an action between other persons. The privilege is permanent and may be used against a stranger after death. However, statements which have been made by a client to his attorney by way of instructions to be carried out after the client's death, and must be necessarily disclosed, are privileged only during the client's life.

Exception: When the client's will is attacked. The lawyer may disclose confidential information to uphold the will.

What would be an exception to this apparently unending privilege?
Executor or administrator, ends it or on the face of the will ends it.

May the lawyer disclose confidential communication to uphold the will of the testator?
Yes, this is an exception

PHYSICIAN-PATIENT PRIVILEGE

> ***(c) 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 capacity, and which would blacken the reputation of the patient;***

Reason for the Privilege
Intended to facilitate and make safe full and confidential disclosure by the patient to the physician of all facts, circumstances, and symptoms, untrammeled by apprehension of their subsequent and enforced disclosure and publication on the witness stand, to the end that the physician may form a correct opinion, and be enabled safely and efficaciously to treat his patient.

N.B.: It may be waived if no timely objection is made to the physician's testimony.

Requisites:
1. The privilege is claimed in a civil case.
2. The person against whom the privilege is claimed is one duly authorized to practice medicine, surgery or obstetrics.
3. Such person acquired the information while he was attending to the patient in his professional capacity.
4. The information was necessary to enable him to act in that capacity.
5. The information was confidential, and if disclosed, would blacken the reputation of the patient.

Four (4) Fundamental Conditions for the Privilege:
1. The communication must originate in a confidence that they will not be disclosed.
2. This element of confidentiality must be essential to the full and satisfactory maintenance of the relation between the parties.
3. The relation must be one which in the opinion of the community ought to be sedulously fostered.
4. The injury that would inure to the relation by the disclosure of the communication must be greater than the benefit thereby gained for the correct disposal of litigation.

Scope of the Privilege
The physician may be considered to be acting in his professional capacity when he attends to the patient for curative, preventive, or palliative treatment. Thus, only disclosure which would have been made to the physician to enable him "safely and efficaciously to treat his patient" are covered by the privilege.

"Professional capacity" means when the doctor attends to a patient for curative treatment or for palliative or preventive treatment.

N.B.: There is no privilege is information is given in the presence of third parties. The casual presence of a third person destroys the confidential nature of the communication between doctor and patient, and thus destroys the privilege.

Test: The test is whether a third person was an agent of the doctor in a professional relationship.

Necessity of Professional Relationship
The privilege of exclusion does not exist, where it appears that the physician was acting in the discharge of duties for some other person, for example, where he conducted an examination at the instance of the adverse party or by direction of the court in order to ascertain the physical and mental condition of the person for the purposes of the trial.

It has been held that a professional relationship as defined by statute does not exist between the patient and a pharmacist, and accordingly it has been held that the prescription records of the pharmacist are not protected by the privilege.

Communications with Nurses, Interns or Assistants

The person to whom the confidential communication or information was imparted must have been a professional physician and acting in his professional capacity, or someone logically within the chain of professional communication.

Thus it extends to communications which have been addressed to the physician's assistants, including a professional nurse who appears to have acted as the physician's assistant or agent.

Relevancy of the Communication to Professional Employment
The information must be relevant to the purpose of employment and considered helpful or necessary to the performance of the physician's professional duty to the patient. *But* in some cases, great liberality has been shown in recognizing the privilege where the communication reflects the general condition of the patient, although somewhat remote from the particular ailment for which the physician was consulted.

The physician may also testify to facts which he has obtained knowledge from personal acquaintance with the deceased, either before or after the relationship of physician and patient began.

When Doctor Testifies as an Expert
The privilege, though duly claimed, is NOT violated by permitting a physician to give expert opinion testimony in response to a strictly hypothetical question in a lawsuit involving the physical mental condition of a patient whom he has attended professionally, where is opinion is based strictly upon the hypothetical facts stated, excluding or disregarding any personal professional knowledge he may have concerning such patient.

Information from Examination of Body
Information acquired by a physician from an examination, inspection, or observation of the patient, after he has submitted himself to such examination may appropriately be said to be acquired from the patient as if the same information had been orally communicated by the patient.

If the information has been obtained from observation and inspection of the patient's body, the privilege applies regardless of whether or not such information was necessary for the patient's treatment.

Post-mortem or Autopsical Information
There is a difference of opinion as to whether or not death of the patient terminates the period during which a physician can acquire information which is within the protection of the privilege. Under s statute protecting information which has been acquired by a physician while attending a patient professionally, it has been held that information which has been gained by physicians by observations while attempting unsuccessfully to resuscitate a patient is privilege.

Some of the authorities opine that a corpse cannot be a patient, and that facts which have been disclosed by an autopsy or post mortem examination cannot be held to have been acquired by the examining physician in confidence, and hence that the physician may testify thereto.

Communications in Furtherance of a Crime
The rule cannot be invoked as a shield for the commission of a crime and communications, however confidential they may be, are not within the privilege if made in the furtherance of an unlawful or criminal purpose.

However, the fact that a person is on trial on a criminal charge will not permit the disclosure of the communication, where it was made in good faith to secure medical aid.

Note: The privilege applies not only to communication but also to opinions or prescriptions of physician. Even though statements by third persons to the patient's physician may be within the privilege if in the channel of communication and confidential, the privilege ends with the death of the patient and such third party communications thereafter made are not protected.

Scope of the Privilege (Jurisprudence):

1. Includes testimony, affidavit, certificate, and medical records of hospitals containing privileged matters
2. Testimony of a physician in a sanitarium that patient entered without a baby and later on left with one is not prohibited
3. If a doctor is employed to ascertain the ailment of the adverse party, there is not privilege. But if he later on visited the same person upon request of the latter, and prescribed treatment, it is privileged.
4. Privilege s not applicable where physician is sent by court to examine mental and physical condition of person.
5. Testimony of patient's husband is allowed
6. The privilege may be claimed when the patient was accompanied by a friend and was present during examination (exception to the third party rule)
7. Blacken the reputation (as distinguished from character) of the patient. Not all information obtained confidentially by the physician is privileged. It must be one that tends to blacken the reputation of the patient.

Waiver: Express or Implied

Express - A contractual stipulation waiving the privilege, such as is frequently included in applications for life or health insurance, or in the policies themselves if valid and effectual.

Implied-

- Waiver by failing to object
- Waiver by testimony of patient (But merely testifying as to his physical condition or state of health, a party is held not to have waived the benefit of the rule)
- When a testator procures an attending physician to subscribe to his will as an attesting witness.
- Where patient examines physician (as when the patient examines the physician as to matters disclosed, such is a waiver and opens doors to the opponent to examine him about his condition)

It is not fair to permit the patient to reveal his secrets to several doctors and then when his condition comes in issue to limit the witnesses to the consultants favorable to his claims.

PRIEST/MINISTER-PENITENT PRIVILEGE

(d) 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;

Reason for the Privilege
If the secrecy of confession is not maintained, it would be an annulment of the Confessional Institution.

Requisites:

1. There must be a *priest and penitent.*
2. There must be a confession. (Penitential character)
3. The confession must have been made to a priest his professional character in the course of discipline enjoined by the church to which he belongs.

Note:

1. The confession must be penitential in character – a confession of sins with a view of obtaining pardon and spiritual advice and assistance.
2. Penitent cannot be compelled to disclose his confession.
3. A third person who overheard the confession is not disqualified.

PRIVILEGED COMMUNICATIONS TO PUBLIC OFFICERS

(e) 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.

Reason for the Privilege
The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents and papers pertaining to official acts and transaction, or decisions as well as to government research data used as a basis for policy development, shall be afforded the citizen subject to such limitations as maybe provided by law. *(Sec. 7, Article III, 1987 Constitution)*

Matters Within Privilege

1. Confidential official communication.
2. Communication to the government and its officials regarding violation of law.
3. Communication to a prosecuting attorney regarding the commission of a crime.

*N.B.:*The Supreme Court of the United States has recognized the existence of an executive privilege protecting confidential presidential communications. This privilege is absolute where the communications relate to *military, diplomatic, or national security secrets.* Other communications however, are only *presumptively privileged* and must yield todemonstrated specific needed for essential evidence in a criminal trial.

Requisites:

1. The holder of the privilege is the government, acting through a public officer.
2. The communication was given to the public officer in confidence.
3. The communication was given during the term of office of the public officer or afterwards.
4. The public interest would suffer by the disclosure of the communication.

N.B.:

1. If a communication is made to a public officer in official confidence but later is made publicly by him, its confidential character is lost; hence no privilege exists not to reveal.

2. "Public interest" means more than just curiosity. It means something in which the public, not only a particular locality, has some interest by which the legal right or liabilities of the community at large are affected.
3. The privilege of a public officer not to reveal information is strictly construed. The burden is upon the party seeking to suppress the evidence to show that it is within the terms of the rule.

PRIVILEGED INFORMATION ON BANK DEPOSITS

*Sec. 2 of RA 1405:*All deposits of whatever nature with banks or banking institutions in the Philippines including investments in bonds issued by the Government of the Philippines, its political subdivisions and its instrumentalities, are hereby considered as of an absolutely confidential nature and may not be examined, inquired or looked into by any person, government official, bureau or office, except upon written permission of the depositor, or in cases of impeachment, or upon order of a competent court in cases of bribery or dereliction of duty of public officials, or in cases where the money deposited or invested is the subject matter of the litigation.

Reason for the Privilege
The mantle of confidentiality is thrown around bank deposits in order to encourage people to deposit their funds in banks.

When Disclosure Allowed:
1. When so authorized in writing by the depositor himself;
2. In case of impeachment proceedings under the Constitution;
3. Upon order of a competent court in cases of bribery or dereliction of duty of a public official;
4. Where the money deposited or invested is the subject matter of the litigation;
5. In anti-graft cases.

2. TESTIMONIAL PRIVILEGE

Section 25. Parental and filial privilege. — No person may be compelled to testify against his parents, other direct ascendant.

Do they have to be parties to the case?
(Incomplete)

Can a child testify against his parents?
If child voluntarily testify, he can. It's the compulsion that is prevented. The child cannot be compelled but if he wants to testify on his own free will. The rule extends the privilege to the ascendants with respect to descendants since close kinship binds them as well.

Does the rule apply to both civil and criminal cases?
Yes, it applies to both civil and criminal cases.

How about illegitimate children?
No, it must be applied only to a legitimate family.

3. ADMISSIONS AND CONFESSIONS

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

Admission
Any extra-judicial *statement or conduct* by a party to the present litigation (not a non-party witness), that is inconsistent with a position the party presently takes.

It does not have to be an admission 'against' interest; it may even be partially self-serving.The only requirement is that it turns out to be *contrary to the party's present position.*

What admissions of a party may be given in evidence against him?
A statement, oral or written, made by a party, or by someone for whom he is responsible as to the existence of a relevant fact, constitutes an admission receivable in evidence against him.

Does this refer to admission in the proceedings?
No, the admission is outside.

Why is the phrase, "I heard the defendant say that he owes money to the plaintiff" admissible?
Because of Section 26. *(Incomplete)*

Does the admission subject to this rule cover judicial admissions, like allegations in the pleading?
No.

Why is a party's admission against his interest good evidence?
A party will not admit something that is not true. *(US vs. Ching Po)*

Does this rule apply to an ordinary witness who is not a party to the case?
No, it applies only to parties to the case.

What if he admits something in his favor?

Does the admission have to be against the interest of the party making the admission?
No, it may even be partially self-serving. The admission may just be contrary to the party's present position.

What is the special value of an admission?
Presenting an admission against self-interest is much like impeaching a party by contradictory statements.If you say something against yourself it is like impeaching the opposite of your previous statement.

Plaintiff sues the defendant for an unpaid debt, the defendant denies the debt. A witness for the plaintiff testifies that he heard the defendant say that he really owed money to plaintiff. Is the testimony of this witness hearsay evidence therefore INADMISSIBLE against the defendant?
No, it is admissible against the defendant because the basic reason for rejecting hearsay evidence is that it denies the party against whom it is offered the opportunity to cross examine the person who really made the statement.

Moreover it deprives the person the right to cross-examine the person.

a. BUT in admission since it is the party's own, he does not need to cross-examine himself. All he has to do is to take the witness stand
b. BUT the party can rebut the statement to him since only judicial admission is conclusive only to a party. It is assumed that he will not testify against himself unless it is true.

How do you impeach?
By confronting him with a previous statement.

E.g. During trial, the witnesses wrote some letters, statements to their friends, later on they testify with something else. Usually as a rule by confronting him with **contradicting** statement.

Distinguish CONFESSION from ADMISSION.
Confession –a declaration of an accused expressly *acknowledging his guilt* of the offense charged or of any offense necessarily included therein.(SEC 33, Rule 131)

Admission – a statement by the accused, direct or implied, of facts pertinent to other facts, to prove his guilt. According. to People vs. Lorenzo – the accused makes a statement of facts from which his guilt can be inferred.

Suppose the defendant's wife told the witness that her husband really owed the money that he denied owing to the plaintiff. Is it necessary that the wife who makes the admission qualify as a competent witness (she is disqualified if husband is a party; also privileged if she learned in confidence)?
No, the wife's admission need not meet the standards of competency meant for witnesses since she is not the one testifying in court.

The witness heard the defendant say, "I think I have a weak defense against plaintiff's suit." Is this admission that can be presented against the defendant? (it is only an opinion)
No, defendant merely stated a conclusion of law. It is not a proper subject for admission. It is an admission of a fact that the rule covers.

Is a party's self-serving statement a form of admission that will qualify as evidence in the case?
People vs. Piring, the declarations of a party favorable to himself are not admissible.

> ***Section 27. Offer of compromise not admissible. — In civil cases, an offer of compromise is not an admission of any liability, and is not admissible in evidence against the offeror.***
>
> **In criminal cases, except those involving quasi-offenses (criminal negligence) or those allowed by law to be compromised, an *offer of compromised by the accused may be received in evidence as an implied admission of guilt.***
>
> ***A plea of guilty later withdrawn, or an unaccepted offer of a plea of guilty to lesser offense, is not admissible in evidence against the accused who made the plea or offer.***
>
> ***An offer to pay or the payment of medical, hospital or other expenses occasioned by an injury is not admissible in evidence as proof of civil or criminal liability for the injury.***

Offer of compromise in civil cases an admission of liability?
No. Purpose is to encourage settlement.

In criminal cases – compromise by the accused may be received in evidence as an implied admission of guilt.

Exceptions
Quasi-offenses (estafa, bouncing checks, criminal negligence, etc.) and those allowed by law to be compromised.

What is the effect of a plea of guilty to a lesser offense?
Not admissible.

Is an offer to pay or payment of medical hospital or other expenses admissible?
No. (Cite *Sec. 27, Rule 130*)

The Good Samaritan Rule
An offer to pay or the payment of medical, hospital or other expenses occasioned by an injury is not admissible in evidence as proof of civil or criminal liability for the injury, such payment may have been prompted solely by "humanitarian motives."

What is the reason for the rule that an offer is not admissible?
First, the relevancy of the offer will vary according to circumstance. w/ a very small offer of payment to settle very large claim being much more readily construed as a desire for peace rather than an admission of weakness of position.

Second, to promote the settling of dispute. The rule is available as an objection to one who made the offer and is a party to the suit in which the evidence is offered.

During negotiation for settlement, one driver says "I'm sorry that I ran the red light. Let's talk damages.", can this statement be offered as admission of guilt?
Yes, since the statement is not induced by an effort to buy peace. It is not privileged (admission of fact committing a wrong during negotiations). (See p394 for further explanation. What is important is the form of statement, whether it is hypothetical or absolute.)

"Let us assume I was at fault"
Merely hypothetical fact.

"I admit your taxi suffered a big dent so I am increasing my offer of settlement", is this an admission of guilt?"
No, the stated fact is inseparately connected to the offer so such should not be correctly understood except in the light of offer to settle.

Plaintiff sued defendant for payment of debt. Defendant denied owing that plaintiff defrauded him by making it appear that there was a loan. But defendant later offered *to settle his account*s. Does this offer amount to an admission of his unpaid balance and the lack of part.
Yes, acknowledgment of his accountability and not merely for the purpose of buying peace and avoiding litigation.

Rule of payment of medical expenses for injured, Purpose.
The Good Samaritan Rule

RES INTER ALIOS ACTA

> ***Section 28. Admission by third party. — The rights of a party cannot be prejudiced by an act, declaration, or omission of another, except as hereinafter provided.***

Rule of *res inter alios* acta?
The rights of a party cannot be prejudiced by an act, declaration or omission of another, except as the rules provided. *(Sec. 28, Rule 130)*

Res inter alios acta alteri nocere non debet
Things done between strangers ought not to injure those who are not parties to it

What is the reason for this rule?
Not only be rightly inconvenient but also manifestly unjust that a man should be bound by the acts of mere unauthorized strangers. *(See page 398, par. 1)*

Exceptions:
1. Admissions of a co-partner or agent – Sec. 29
2. Admissions by a co-conspirator – Sec. 30
3. Admission by privies (or vicarious admissions) – Sec. 31

ADMISSION BY CO-PARTNER OR AGENT

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

What are required in order for the admission of a party's co-partner or agent to prejudice such party?

1. The act or declaration of a partner or agent of the party;
2. Within the scope of his authority and
3. During the existence of the partnership or agency;
4. After the partnership or agency is shown by evidence other than such act or declaration;
5. May be given in evidence against such party

Abad: "See the requisites that usually create problems in litigation. (Example: Act within the scope of the authority of the partner or the agent, there is evidence other that the acts of declaration.)"

Are entries in the partnership books made by one partner during the partnership admissible?
Yes

How about if they are hostile to another?
Yes, although the credibility may be affected.

What is the ground for receiving the admission of one partner against another?
Not on the ground that they are parties to the record but on the ground that they have Identical Interest and that each is agent for the other and that the acts and declarations of one during the existence of the partnership, while transacting its business and within the scope of the business, are evidence against the other or others.

Declarations of a dormant or deceased partner admissible against the other partners?
Yes, if they relate to one another.

Admissions by a partner?
To be admissible against the firm and the copartners, it must appear that the declarant was acting as a partner about partnership affairs, or that the admission was made in relation to matters within the scope of the partnership.

How is the existence of partnership proved?
Proved by the document of partnership.

Admission of one of the partners not made in the presence of a co-partner, competent evidence to establish the existence of a partnership between them against another partner?
No, not competent evidence.

Statements made by one partner regarding the family affairs of his co-partners?
No, not admissible.

Document signed by an ex-partner stating that the defendant owed?
No. Must be made during the existence of a valid partnership. Same rule applies to the act of declaration of a joint owner, joint debtor with the party.

What is the effect when the persons are jointly obligated or responsible for their conduct?
Example: Joint makers of PN, Joint grantors - When persons are jointly obligated or responsible for their conduct because of their legal relationship a privity of the interests exists between them and it is ordinarily held that the admissions of one with respect to the common obligation may be received in evidence against the others.

Joint?
In the rules of court, it means solidary (*solidum*). Sharing of interests.

Is mere community of interest between several persons sufficient to make the admission of one admissible against all?
No, it is not sufficient. To be admissible, it is essential:

1. that the joint interest be made to appear by evidence other than the admission itself;
2. that the admission relates to the subject-matter of the joint interest; and
3. that at the time the admission was made the person admitting was still jointly interested with the party against whom the admission is offered.

Does the fact that several persons have a common interest in the subject matter involved in the suit render the admissions of one of them competent against the other?
No, they do not have solidary obligations. The administrator or executor has no such legal interest. A mere community of interest between several persons is not sufficient to make the admissions of one admissible against all.

Are admissions of one heir admissible against another co-heir?
Ordinarily not since their interests are several and not joint (or solidary).

Five standards for the admissibility of evidence of statement by an agent when offered against his principal as admissions?

1. When the statement is an operative fact of a transaction and the hearsay rule is not involved,

2. When the principal has authorized the agent to speak on his behalf with reference to specific matters,
3. When the principal has ratified or adopted the statement,
4. When the statement of the agent is of res gestae quality or is made with respect to an act on the scope of the agency and while he is doing it, and
5. When the statement made by the agent "concerned a matter within the scope of a then existing agency."

What is first required before the admissible statement of the agent against the principal may be allowed?
Proof of existence of the agency, other than the admission itself. It must be independently proved.

Statements of the guardian against its ward?
Statements regarding sacrifice and giving away of the ward's property are never held to be binding.

Can the parent or the natural guardians of the minor child waive, in the form of admissions or otherwise, the rights which legally pertain to the children?
No. because there exists an express prohibition against the sale, cession of rights or compromise of the interests and property of minors (a judicial authorization must first be obtained for the benefit of the minors.)

If a party expressly refers another to a third person for statement on any particular subject, is he bound by any statement which may be given on that subject by the third person? (See book, p. 405, c. Reference to another)
Yes. For the latter thus becomes his accredited agent.

In an action where the delivery of goods was a fact in dispute, the defendant proposed to pay if the plaintiff's porter would make an affidavit regarding such delivery; the affidavit was made and it was held that the defendant count not go into further evidence to exempt himself from liability.

In a suit for the price of a piano, the defendant interposed that the piano had been sold on a warranty and turned out to be defective based on an expert… (Ibid) p. 405
Plaintiff declared that he would abide by the findings of the expert, thus he was bound by that statement.

Nature of relation of an attorney who is retained by a client without reference to a pending litigation and what is the scope of his authority?
An attorney who is retained generally or without reference to pending litigation is but an *agent.*

Authority to bind his client by extra-judicial admissions is the same as that of any other agent; nor is his authority enlarged by the fact that he is an attorney-at-law, except in so far as that fact may reflect upon the apparent scope of his agency.

Is the statement of an employee against an employer covered under this law, is it admissible? Why?
Yes, under the principles of agency, constitutes as an admission made by an agent.

ADMISSION BY CONSPIRATOR

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

Requisites:
For the admission of a conspirator to be received against his co-conspirator, it necessary that:
1. The conspiracy be first proved by evidence *other than the admission itself (there must be independent proof of conspiracy);*
2. The admission relates to the common object; and
3. It has been made while the declarant was engaged in carrying out the conspiracy.

When does conspiracy exist?
A conspiracy exists when two or more persons come to an agreement concerning the commission of a crime and decide to commit it.

Does this rule apply as well as to the conspirator's testimony in court?
No. The conspirator's testimony in court is a direct testimony to the facts to which they testify. Sec. 30, Rule 130, on the other hand, applies only when introduction of extrajudicial declarations of a conspirator is sought.

After the six accused conspired to kill the victim but before they consummate the crime, one of them, F, borrowed a bolo from a friend, stating that he and his co-accused were going to kill the victim. *Is this admissible in evidence against F's co accused?*

Yes, so long as the conspiracy was proved by some other evidence.

But is it *admissible against F* if conspiracy is not shown first?
Yes. Because his declaration as to a relevant fact may be given in evidence against him (Gardiner v. Magsalin 73 Phil 114)

After a robbery was committed nearby, Accused X told his neighbour A that *he, Y, and Z, committed it.* Is X's statement admissible against Y and Z?
No. the statement was *made after the existence* of the conspiracy.

Does the proof of the agreement of the conspirators have to rest on direct evidence? Meaning, Must there be a witness who saw them get together and agree to commit a crime?
No. The proof of the agreement need not rest on direct evidence; the agreement itself *may be inferred* from the conduct of the parties or from the mode or manner in which the offense was carried out as well as circumstances surrounding the commission of the offense so long as the conspiracy has been proved by circumstantial evidence. This is also known as the implied conspiracy principle.

When is conspiracy terminated?
Conspiracy exists, if at the time of the commission of the offenses, the defendants had the same purpose and were united in execution. As to one party, conspiracy terminates when he leaves, is indicted, apprehended or confesses.

What is the principle of adoption in conspiracy?
When one joins a conspiracy *after its formation and actively participates in it,* he is considered to have adopted the previous acts and declarations of his fellow conspirators, so that such acts and declarations although done before he joined are admissible against him.

What is the effect of conspiracy on the liability of the conspirators?
One who joins a criminal conspiracy in effect adopts the criminal designs of his co-conspirators as his own; he merges his will into the common felonious intent. *The act of one is the act of all*

How is conspiracy independently proved?
Conspiracy must be shown to exist by direct or circumstantial evidence, as clearly convincing as the commission of the offense. It is generally proved by a number of indefinite acts, conditions, and circumstances, which vary according to the purposes to be accomplished. It must be shown that the defendants pursued their acts with a view of attainment of the same object.

Neither joint nor simultaneous action is per se sufficient indication of conspiracy unless it is shown to have been motivated by a common design,

Can conspiracy result from negligence?
No. There cannot be conspiracy by negligence. Negligence is not a deliberate act. It is merely an act of care. You do not deliberately commit an act of negligence. Conspiracy is not the product of negligence but a product of deliberate acts.

Is proof of an overt act of the conspirator in relation to the crime agreed upon necessary?
As a rule, yes; it is necessary that a conspirator should have performed some overt act as a direct or indirect contribution in the execution of the crime planned to be committed, except when the defendant is the mastermind.

X sat with Y and Z as they planned the robbery and agreed on it. But X got sick on the date set and was unable to join the robbery. Would X be liable with Y and Z for the robbery?
No. There is a need to perform an overt act in relation to crime agreed upon.

Can the act or declaration of a conspirator be introduced against another conspirator before independent evidence of conspiracy has been presented; for example, in the course of the prosecution's presentation of evidence, consisting of a confession of one of the conspirators the defense objected on the ground that there is no prior independent evidence of conspiracy. Admissible?
Yes. The court has discretion in the order of the presentation of evidence, so that the independent evidence may be given before or after the admission of the conspirator is proved.

Under **the rule of multiple admissibility,** even if the confession is not competent against his co-accused on the ground of hearsay or on the ground that no independent proof of conspiracy was yet given, the confession was, nevertheless, admissible **as evidence of the declarant's own guilt.**

Under **the rule of conditional admissibility,** the confession should likewise be admitted as such in order to give the prosecution a chance to get into the record all evidence at its disposal.

A, B, C and D were charged with a crime. A testified during the conspiracy, "I heard B say that C and D were his (B's accomplices)." Is B's statement admissible, granting there is proof of conspiracy by evidence other than such confession?

Yes, if he testifies in court. All requisites of admission by conspirator are present.

Suppose instead that A executed a confession telling the same story. *But he declines to testify in court*. Will his confession be admissible against B, C and D?
Yes and No.
Yes, it is qualifiedly admissible against B only. But no, it is not admissible against C and D because as to the C & D, A's confession will be double hearsay. (I heard B say. This only binds B. But not against C and D)

ADMISSION BY PRIVIES

> ***Section 31. Admission by privies. — Where one derives title to property from another, the act, declaration, or omission of the latter, while holding the title, in relation to the property, is evidence against the former.***

What is the rule regarding admission by privies?
Where one derives title to property from another, the act, declaration or omission of the latter, while holding title, in relation to the property, is evidence against the former.

What does the word "privies" denote?
It denotes the idea of one succeeding to the right of another.

Examples: the heir in respect of the decedent; the legatee in respect of the testator, the donee in respect of the donor. The assignee of right in respect of the assignor. The purchaser in respect to the seller or the purchaser at an execution sale in respect of the execution debtor (Alpuerto v. Perez 38 Phil 785, 790)

What is the reason for this rule?
Because the admission of the former owner has been made *while he holds title to the property,* he was therefore so situated that his interests were such that *he would not have made such admissions to the prejudice of his title or possessions,* ***unless they were true.*** The statement is received on the theory that the person against whom it operates is identified in interest with the parties to the suit.

At the time X held the car as owner, he was heard to say that he had committed to sell it to Y who already made a down payment. But X soon sold and gave that car to Z. Can Y present X's admission as evidence that X had already committed to sell the car to him in an action he filed to set aside the sale to Z?
Yes, X's declaration before the sale that he had committed to sell the car to Y, which tends to prove X's fraudulent intention, is evidence against Z, in an action to set aside the fraudulent sale. *Z may be said to be privy to X's prior commitment to sell the car to Y.*

To be admissible against a subsequent owner of the property, when must the declaration of the former owner be made?
An admission of the former owner of the property to be binding upon the present owner must be made *while he was still its owner.*

When the statement is received as an admission, is it necessary that the person who made the admission be dead or otherwise unavailable?
No. Those who have knowledge of the admissions may prove them.

Are admissions that the seller of the thing made after the sale admissible against the buyer?
No, as a rule, the seller is not permitted to disparage the title *with which he has already parted*, unless it remains in his possession or the buyer acquiesced to the declaration or there is collusion or a combination to defraud.

To defraud his creditor, X sold his car to Y. Subsequently, X was heard to admit that he still owned the car. Can the creditor present X's admission in action to recover the car from Y?
As a rule, such statement after X sold the car is not admissible against Y, unless the intent to defraud is first established by independent evidence and the admission has such relation to the intent to defraud that they fairly constitute a part of the *res gestae.*

ADMISSION BY SILENCE

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

What is the rule governing admission by silence?
An act or declaration made in the presence and within the hearing or observation of a party who does not say anything when *the act or declaration*

is such as naturally to call for action or comment and when proper and possible for him to do so may be given in evidence against him.

What does the maxim *qui tacet consentire videtur* mean?
He who is silent appears to consent.

What is the reason for this rule?
Based on common experience and natural human behavior.

What are the requisites of this rule?
Before the silence of a party can be taken as admission of what is said, it must appear that:

1. The party heard and understood the statement;
2. The party was at liberty to deny the admission;
3. The statement was in respect of some matter affecting his rights or in which he was interested;
4. The facts were within the party's knowledge; and
5. The fact admitted or the inference to be drawn from his silence is material to the issue.

Would it be enough for the party to have heard the statement?
No, it must also have understood it. It does not apply if it is in language unknown to him.

When a person is under custodial investigation for his commission of an offense, is his silence regarding a charge that he committed it admissible in evidence against him?
No. the accused has a right to remain silent according to the Constitution. (Section 12. Art 3)

Can the silence of the accused in a criminal prosecution be construed against him?
No. The constitution prohibits any inference of guilt from the silence of an accused or person who has been arrested detained or investigated for a crime (R.A. 7438)

Would the acquiescence of the accused and his willingness to take part in the re-enactment of the crime imply guilt?
Yes, but only if he made a valid waiver of his right under custodial investigation.

The child's mother rushed to the house of the accused and verbally attacked him for abusing her child. Does his silence amount to admission of the accusation?
Yes because it naturally called for denial. The same is true where an accomplice makes the accusation. (2 Jones, Sec. 13:49)

The police brought the rape victim to the police station where she confronted the accused and pointed to him as her rapist. Does his silence amount to admission of the accusation?
No. Since he has the right to remain silent in custodial investigation and no unfavorable inference could be inferred from the exercise of one's constitutional right.

Suppose the police, on complaint of the owner, found the latter's wristwatch in a pawnshop. Would the accusation made by the wristwatch owner in the presence of the pawnshop operator and not denied by the latter amount to admission of guilt?
Not necessarily where the pawnshop owner had no knowledge of the truth or falsehood of the claim that the wristwatch had been stolen.

What is the effect in a civil case of an unreasonable delay in the enforcement claims?
Unless explained with adequate reason, it is an implied admission of lack of merit of the civil case.

What is the effect of delay in prosecuting a criminal action against the accused? Why?
It creates a suspicion upon the sincerity of the complaining witness.

It is the natural tendency of a person who has witnessed the commission of a crime is to report it at the earliest opportunity. This is particularly true where the victim is closely related to the witness.

What is the exception to this rule?
When delay is satisfactorily explained as when the witness feared reprisal and he came forward as soon as he learned that the accused had been arrested and put in prison.

Is the failure of a shy uneducated houseboy to report the crime admission that crime did not happen?
No. He cannot be expected to go to the authorities immediately.

If a party writes another person a letter, giving his version of the transaction, does the failure of the recipient of the letter to reply amount to admission of the truth of what is stated in the letter?
No. A party cannot make evidence for himself by addressing letters to the adverse party. Letters may not be answered for many reasons. A contrary rule would put "the whole world at the mercy of letter writers."

In what instances would a denial be naturally forthcoming following the receipt of a letter?

1. Where the letter was written as part of a mutual correspondence between the parties; or
2. Where the proof shows that the parties were engaged in some business, transaction, or relationship which would make it improbable that an untrue communication about the transaction or relationship would be ignored, like a letter falsely asserting the existence of a contractual obligation, say a statement of account or bill.

Does this rule apply where a party has broken off negotiations with finality but the other persists in sending the rejected statement of account?

No, because of the final stand was taken, further communication would be fruitless.

How can silence be explained to remove the implication of having admitted what was said in his presence?

- He had no good reason to disclose his reaction
- He refuses to enter into useless discussion or to answer idle curiosity
- He had no opportunity to deny

CONFESSION

> ***Section 33. Confession. — The declaration of an accused acknowledging his guilt of the offense charged, or of any offense necessarily included therein, may be given in evidence against him.***

When is confession of the accused admissible against the accused?

The declaration of an accused acknowledging his guilt of the offense charges, or of any offense necessarily included in such charge, may be given in evidence against him. (Sec. 33)

Is the doctrine of interlocking confession of one accused against his co-accused still valid today?

No more since this doctrine essentially contemplates custodial investigation done without assistance of counsel of choice of the accused.

Is confession the same as admission?

A confession is an accused's express acknowledgment in a criminal case *of his guilt* of the crime charged.

An admission is a direct or implied acknowledgment of the *truth of some fact*, less than a confession and insufficient to warrant a conviction, that would tend to establish the ultimate fact of guilt.

Admission of a party is governed by Section 26 of Rule 130 and provides that the act, declaration or omission of a party as to a relevant fact may be given in evidence against him. Section 33 governs confession.

What confession does the Constitution exclude as evidence?

Section 12, Art. III of the 1987 Constitution provides that any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice.

These rights cannot be waived except in writing and in the presence of counsel. Any confession obtained in violation of these rights as well as the right not to be compelled to be a witness against himself under Section 17 shall be inadmissible.

What are the requisites of valid and admissible confession?

The confession must be

1. Express
2. Voluntary
3. With the assistance of competent and independent counsel;
4. In writing (RA 7438)

What procedure must the investigator observe in obtaining the confession after the persons under investigation has properly waived his rights to silence and to counsel?

The investigator must put the confession in writing and, before requiring the accused to have it signed or thumb marked, if he cannot read and write, his counsel shall read and adequately explain it to the accused in the language he knows.

What must the arresting or investigating police office tell the person under custodial investigation after his arrest?

He must inform the accused that:

1. He has the right to remain silent and that anything he says can and will be used against him in a court of law;

2. He has the right to the assistance of a competent and independent counsel of his own choice; and have him present while he is being questioned;
3. If he cannot afford the services of a lawyer, a counsel shall be appointed to represent him;
4. He must also be asked if he wanted to avail of such rights in the presence of his counsel, or, in the latter's absence, upon a valid waiver, and in the presence of any of the parents, elder brothers and sisters, his spouse, the municipal mayor, the municipal judge, district school supervisor, priest or minister of the gospel, as chosen by him.

What does a non-custodial investigation contemplate?
It contemplates two situations:
1. The general inquiry into an unsolved crime when investigators interviews witnesses at random
2. When suspicion is focused on a particular person and questions are asked from him to elicit admissions or information.

When must the police investigator inform the person he is investigating in connection with an offense regarding his constitutional right?
The rights begin to be available where the investigation is no longer a general inquiry into an unsolved crime but has *began to focus on a particular suspect*, the suspect has been taken into police custody, and the police carry out a process of interrogation that lends itself to eliciting incriminating statements.

Does putting the accused on a police line-up for identification by witnesses form part of custodial investigation?
No. Having someone look at the suspect is not a form of interrogation of the suspect. Custodial investigation begins only when the suspect is interrogated to elicit facts from him regarding the crime.

Is the police free to put the suspect on a police line-up after custodial investigation has begun?
No. After custodial investigation has begun, an identification in police line-up of an accused who is unassisted by counsel is inadmissible. Such lineup is susceptible to improper suggestions to the victims of the crime, leading to a mistaken identification. (People vs. Macam, 238 SCRA 306, Nov. 24, 1994)

X walks into the police station and told the Desk Officer that he killed Y. Is his confession admissible in evidence?
Yes, he has not yet been taken into police custody and so was not under custodial investigation. Spontaneous or spur-of-the-moment confessions are admissible. It may also be regarded as part of the res gestae if said immediately after the commission of the offense.

The employee was asked to explain the cash shortage in his account. Is his admission to his employer that used the money for personal purpose admissible in evidence against him?
Yes. His admission is one not on the occasion of a custodial investigation by the police.

Can the legal officer of the city act as counsel for the suspect under custodial investigation?
No, such counsel must be "competent and independent," preferably of his own choice or engaged or appointed by the Court upon petition of the detainee or person acting on his behalf. The legal officer of the city will not do.

If the counsel of choice is not available, may the police provide a substitute for him?
No. Once the suspect has expressed his preference for a lawyer, this has to be available, interrogation should not proceed.

Would it be enough if counsel were present during the signing of the confession?
No. He should be present during the custodial investigation of the accused at the police station even if the officers explained to the accused his constitutional rights.

Are confessions obtained by trickery admissible?
Yes; 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. According to Moran, such confession does not tend to induce the making of false confession.

Thus, in the US, the court accepts a confession obtained by a detective posing as prisoner or under promise of secrecy and help to escape. Other examples: it may consist of pretension of possessing evidence against the accused or of being a fellow criminal in a simulation of friendship for the accused, or in leading the accused to believe that a companion in crime has made statements implicating the accused.

Some say that the rule on custodial investigation applies in confessions obtained by artifice or deception since such confession is made while he is under police custody. But pretending to be a friendly co-detainee, though deceitful, does not bring the coercive power of the police to bear upon the suspect which is the essence of custodial investigation.

Are confessions procured by threats or promise of reward or leniency admissible?

The old ruling is that such confessions are admissible. But, with the constitutional right to silence and to counsel during custodial investigation, this ruling is of doubtful validity. A confession obtained by threats is not voluntary and should be rejected. A promise of reward or leniency cannot be made without the assistance of counsel.

Do threats or promises by a private person render a confession involuntary?

If it is obtained by improper threats of harm even from a private person, the confession is involuntary. Of course, if it is obtained by threat of criminal prosecution, it is a valid threat and, therefore, the confession is admissible.
On the other hand, the confession is admissible if obtained by a promise of help from a person in authority concerning the case.

Are the rulings on admissibility of confession when there is absence of signs of violence still valid?

Yes. Absence of mark of violence in the body of the accused is an indicator of voluntariness. (People v. Vizcarra 115 SCRA 743)

Are receipts and booking sheet reports admissible?
It depends. No to the extent that they form part of the custodial interrogation process. But otherwise, they are admissible to show the date and time the accused was brought to the police station.

Are the signatures of the accused placed on the materials seized from him admissible in evidence as a confession that they came from him?
In *People v. Salondro 170 SCRA 763*, however, the money bills that the accused signed were admitted in evidence but his signature was not regarded as a confession.

What is the effect if the contents of the confession are confirmed by subsequent facts?
Under the 1987 Constitution, any confession or admission obtained in violation of his rights to silence and to counsel is inadmissible in evidence against him even if the confession is true. (People vs. Nicolas)

Is the confession of one accused admissible against his co-accused?
As a rule, the confession of an accused if validly obtained is admissible only against him, not against his co-accused. A confession implicating a co-accused is hearsay and, therefore, not admissible unless the accused who made the confession repeats his statements in court. (People vs. Ola, 152 SCRA 01, July 3, 1987)

Is the confession of one accused admissible against his co-accused?
As a rule, the confession of an accused, if validly obtained is admissible only against his co-accused. A confession implicating a co-accused is hearsay, and therefore, not admissible unless the accused who made the confession repeats his statements in court. (People vs. Ola, July 3, 1987; 152 SCRA 01)

What instances may the confession of an accused be admissible against his co-accused?

1. When several accused are tried together, the confession made by one an accused in the course of his testimony is admissible against his co-accused if it is corroborated by indisputable proof (People v. Bautista, 49 Phil. 389);
2. If an accused, after having been apprised of the confession of his co-accused, ratifies or confirms the confession, the same is admissible against him (People vs. Narciso, 23 SCRA 844)

What is the effect of independent proof of conspiracy to the confession a conspirator made?
Once conspiracy is established by independent proof, the confession of the accused, if validly obtained, is admissible as corroborative evidence of other facts that tend to establish the guilt of the co-conspirator.

Are illegally-obtained confessions admissible against third persons?
No. Confession is void and is rejected by courts if involuntary, and cannot be used even against third persons.

May the oral confession of the accused be shown by the recollection of a witness who was present?
Yes, provided the witness who heard the confession is competent to testify on what he heard. An oral confession need not be repeated verbatim, but in such case it must be given in its substance.

Can the confession be made in a language not familiar to the accused?
Yes provided there is proof that it had been adequately translated and explained to him.

Does the confession have to be under oath?
No. It does not matter whether it is under oath or not.

Are the exculpatory statements made in the confession admissible in favor of the accused?
Yes. A confession must be considered in its entirety, including inculpatory or exculpatory statements. If the prosecution wants to prove statements of the accused as confession, any exculpatory statement that tends provide justification for what he had done is admissible in his favour.

Example: Accused confessed he killed his wife because he caught her committing adultery, must be represented in its entirery.

Portions may however be rejected if improbable, false or unworthy of credit.

Can a naked confession be sufficient to warrant conviction of the accused?
Yes. A naked confession obtained in a lawfully conducted custodial investigation can be sufficient for conviction *only if corroborated by evidence corpus delicti.*

What are the requisites for the admissibility of extrajudicial confession as circumstantial evidence against a person implicated?
To show probability of a person's participation in the commission of the crime, the following must be present:

1. There must be several confessions implicating the person;
2. The confessions are made independently without collusion;
3. They are identical with each other in essential details;
4. They are corroborated by other evidence on record; and
5. They were made soon after the commission of the crime.

If a confession is shown to be voluntary, can it be presumed to state the truth?
Yes, the presumption is that no person of normal mind will deliberately and knowingly confess the commission of a crime unless prompted to do so by truth or conscience.

Would a plea of guilty to an offense be sufficient to warrant conviction?

A judicial confession is sufficient to sustain conviction of any offense according to Justice Moran.

BUT under Sec. 3, Rule 116, in capital offenses, evidence must be presented and the Court must be satisfied that the plea of guilty was entered with full knowledge of meaning and consequences of his act.

Would a validly obtained extrajudicial confession alone be sufficient to support conviction?
No. It must be corroborated by evidence of *corpus delicti* (Sec. 3, Rule 133), meaning that there should be some evidence tending to show the commission of the crime apart from the confession.

What does corpus delicti mean?
Corpus delicti means the actual commission of the crime charged.

It is made of two elements:

1. That a certain result has been proved (e.g. a person has died); and
2. Some person is criminally responsible for the act.

Are incriminating articles seized from the accused upon a valid arrest admissible in evidence?
Yes. Like the bloodstained T-shirt the accused was wearing when arrested, being in the nature of an evidence in plain view.

May an officer making an arrest take from the person arrested such things as are found on his person?
Only if such money or property

1. Was used in the commission of the crime or
2. Was the fruit of the crime or
3. Might furnish the person with the means of committing violence or escaping, or
4. May be used in evidence in the trial of the cause.

Does the constitutional right under custodial investigation apply to physical examination, photographing, or measuring of the suspect?
No. In fact, the garments or shoes of the accused may be removed or replaced or his body moved to enable the foregoing things to be done without running afoul the proscription against testimonial compulsion.

Does the exclusion rule apply to the affidavit of the prosecution witness allegedly obtained from him by means of force or intimidation and without the assistance of counsel?
The exclusion rule under the 1987 Constitution is addressed to inadmissible confessions executed by the accused himself. But tortured affidavit obtained from a witness who is not accused of the crime is of course also inadmissible having been obtained in violation of law.

Under the Witness Protection Rule, what happens if the application to be admitted in the program is denied?
The sworn statement and any other testimony given in support of said application shall not be admissible in evidence, except for impeachment purposes. (Sec. 11, RA 6891)

4. PREVIOUS CONDUCT AS EVIDENCE

Section 34. Similar acts 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 or similar thing at another time; but it may be received to prove a specific intent or knowledge; identity, plan, system, scheme, habit, custom or usage, and the like.

Reason for the rule
It is founded upon reason, justice and judicial convenience. The lone fact that a person has committed the same or similar act at the same or similar act as some prior time affords, as a general rule, no logical guaranty that he committed the act in question.

Does the parol evidence rule bar evidence of custom or usage to explain or supplement a contract or memorandum of the parties?
No, provided the custom or usage explain or supplement a contract of memorandum of the parties.

In a collision c, can the bus driver present evidence that in the past he often ran at a speed of twenty miles per hour?
Yes, but to be admitted, it is essential that similar acts be sufficiently numerous as to indicate a general course of behavior (Wigmore on Evidence). But most rulings point out that, with very few exceptions evidence of the careful habit of one injured by another's negligence is not admissible to show care on his part at the time of the injury particularly where there are witnesses who know how the injury occurred.

Is evidence of negligent or reckless habits of the injured party admissible?
As a rule no, it is immaterial and does not relate to the issues before the court.

A boy injured on a defective platform of a railroad station, where he was on business at the time, had been on the habit of jumping on moving trains. Is this admissible defense?
No, if there are witnesses to the accident in which a person is killed, evidence of such person's habits or reputation is generally held not admissible to show either care or negligence on his part.

Is evidence of the general custom of others engaged in the same kind of business, occupation, or undertaking, admissible to show whether the method defendant used which resulted in an is a save one? (Malabo talaga yung pagkakalagay ng tanong dun sa ppt ni justice, haha)
It is generally held that in cases where the method used which resulted in injury is not clearly and inherently negligent or dangerous, evidence is admissible of the general custom of others engaged in the same kind of business, occupation or undertaking, as to the particular method under investigation, for the consideration of the jury whatever light it might throw upon the question as to whether or not the method used was or was not negligent under circumstances of the particular case before the court, although such custom is not conclusive on the issue of due care and non – conformity of some proof is due to negligence.

Letter mailing: Is proof that a company's outgoing mail is habitually deposited in a certain place, where it is picked up and carried to a mailbox by a clerk, acceptable as sufficient to prove the mailing of a particular letter, where there is evidence that the letter on question was deposited in the proper place?
Yes.

Sales Receipts: Is evidence that it is a store's custom to give a sales slip with each purchase admissible to show that goods found in the defendant's possession without a sales slip had not been purchased from the store (i.e., were stolden)?
Yes.

Use of checkbook: Is the deceased's habit of paying for all purchase by check admissible to prove that deceased had not been made a party in the purchase because no check had been drawn?
Yes.

Operation of public transportation: Is evidence as to where a bus regularly stops to pick up and discharge passenger admissible evidence that this had been done in a particular day?
Yes.

Company Safety Rules: Is the invariable custom of employees of the company at its garage to test brakes before renting out a car is admissible to show the brakes were in fact tested?
Yes.

What are the exceptions to the general rule that in actions for negligence, evidence of the ordinary practice or custom in the performance of acts similar to the alleged negligent act is admissible?

1. The act in question is clearly or inherently negligent or negligent *per se*.
2. The manner of performing the act is a matter of common knowledge and of which judicial notice is taken.

3. The circumstances are dissimilar where the manner of performing the acts necessarily dependent upon varying agreements and conditions.

UNACCEPTED OFFER

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

What is the rule with respect to an unaccepted offer?
An offer in writing to pay a particular sum of money or to a debtor a written instrument or specific personal property is, if rejected without valid cause, equivalent to the actual production and tender of the money, instrument, or property.

5. TESTIMONIAL KNOWLEDGE

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

Hearsay Rule
Hearsay is oral testimony or documentary evidence as to somebody's (either the testifying witness or someone else's) words or actions outside of court, where they are offered to prove the truth of the very matters they assert. (Wigmore).

Hearsay includes all assertions which have not been subject to opportunity for any cross – examination by the adversary at the trial in which they are being offered against him. It signifies all evidence which is not founded upon the personal knowledge of the witness from whom it is elicited, and which consequently is subject to cross examination (at the trial at which it is offered.)

Reason for the Rule

Underlying the rule against hearsay are serious concerns about the worth (trustworthiness, reliability) of hearsay evidence. This is because such evidence:

1. Was not given under oath or solemn affirmation; and
2. Was not subject to cross – examination by opposing counsel to test the perception, memory, veracity and articulateness of the out – of – court declarant or actor upon whose reliability on which the worth of the out – of – court testimony depends.

Elements of Hearsay

1. An assertion or conduct amounting to an assertion;
2. Made or done by someone other than a testifying witness on the stand; in other; words, by an out – of – court declarant or actor;
3. Which is offered to prove the truth of the matter asserted at the trial in which it is offered.

To what is the testimony of a witness generally confined?
A witness can in general testify only to those fact which he knows of his personal knowledge that is, facts which are derived from his own perception.

On what three things does a witness usually base his testimony?

1. His personal knowledge of the facts as he had observed them (I know it rained because I was outside and I saw the rain fall.)
2. His opinion. (I know it rained because the grounds were wet; or
3. He heard of it from someone who had personal knowledge (I know it rained because Ramon who saw the rain falling from the sky told me about it.)

What is hearsay evidence?
Hearsay is the testimony of a witness in court or the documentary evidence presented in court of somebody's words or actions, uttered or done outside the courtroom, to prove the truth of what the witness or the document states.

The person who uttered the words or prepared the document is not in court and could not be cross examined.

How many persons are involved in a hearsay situation?
Two. The person who personally observed the facts relevant to the case but could not testify in court and the person who, standing as witness in court, relate what he heard from the first person.

What is the reason for rejecting hearsay evidence?

1. It is not given under oath or obligation to tell the truth; and

2. The person who personally observed the fact cannot be cross examined to test his perception (Did you see, hear, or touch the rain?):

Memory (What made you remember that it rained at noon?):
Veracity (What is our assurance that what you told us is the truth?)
Articulateness

Affidavits are under oath. Could they not be relied on to tell the truth?
No, because the affiant cannot be examined.

What are the elements of a hearsay testimony?
1. A fact is asserted;
2. Someone other than the person who observed the fact testifies on that assertion in court; and
3. The assertion in court is made to prove in court the truth of the matter asserted.

Is hearsay testimony limited to verbal or written assertions of fact?
No. Conduct that is intended for words (called assertive conduct) is hearsay when it is offered to prove the truth of the facts communicated/what was intended to be asserted. In other words, actions which are equivalent of words are treated as hearsay if the words would be hearsay.

A professor testified in court that he asked his class which among them got his book. He further testified that Maria raised her hand. Is the professor's testimony in court that Maria raised her hand admissible in evidence?
No. Her raising her hand in reply to the question of the professor who got his book is equivalent to words, "I got your book." The professor's testimony intended to prove that Maria took the book is hearsay evidence.

A police officer testified that on being asked to make identification in a policce lineup of the person who committed a crime, the witness pointed to the accused. Is the testimony of the police officer admissible?
It is hearsay evidence if the testimony of the police officer is intended to prove that the person pointed to commit the robbery. The conduct must not constitute an assertion or has an equivalent to words that the accused committed the robbery, otherwise the testimony will constitute as hearsay evidence.

This is a clear instance of a non-verbal conduct of a person if it is intended by him as an assertion which under the hearsay definition receives the same treatment as oral or written assertions.

How about conduct that does not constitute an assertion or has no equivalent in words, called non-assertive conduct? Is it admissible in evidence?
Yes. It is conduct of a person that does not communicate any fact outside the conduct itself. (Conduct is just clearly nonassertive)

The witness to a murder told the police officer that the killer wore a fur-line jacket. The officer who arrested the accused at his house testified that he asked the accused if he had a fur-line jacket. The accused turned to his wife and asked her, "I don't have one like that, do I dear?" In reaction, the wife fainted. Is the wife's reaction admissible in evidence?
Yes. Here, the conduct of the wife indicated that she was distressed by her husband's question. The conduct is held to be non-assertive and hence not subject to the hearsay rule. Fainting (which is an uncontrollable or reaction) by its very nature precludes any intent to make an assertion.

In a murder case, at the house of the accused, the officer asked the wife for the shirt that the accused was wearing when he came home after the murder. In response, she handed him a shirt. Is the police officer's testimony regarding her action hearsay?
Yes for the wife intended by her action to assert that the shirt she handed over was the one in question.

Are the following non-assertive conduct and therefore admissible? Yes.
1. Conduct manifesting person's consciousness of guilt: Flight or silence in the face of accusation shows consciousness of guilt or fault.
2. Conduct of persons evidencing their belief as to party's condition: The manner his family, friends or associates treat him, although they did not intend to render an opinion on his sanity.
3. Conduct manifesting third person's state of mind: Where the issue is whether x killed himself or was murdered by D, evidence of prior suicide attempts by X is nonassertive conduct evidencing X's state of mind.

In plaintiff's suit for injuries he suffered from falling down from defendant's stairway, is a tenant's testimony that no one had ever complained of defects in the stairs admissible in evidence?
Yes, that the witness interviewed everyone else and found no complaint is a non-assertive conduct to prove that the stairs were safe.

But in a suit against the manufacturer for a product that caused injury to plaintiff, is the manufacturer's testimony that it had not received any

complaint against the product during the years it had been in the market hearsay?
In the U.S., the trial judge excluded the testimony as hearsay, involving the same risks or dangers that affect out-of-court statements.

Is a non-assertive conduct testified by a witness who observed the conduct, a form of hearsay evidence?
Wigmore says that non-assertive conduct is not hearsay. It shows the actor's state of mind and the truth of what his conduct establishes. There is no need to worry about his veracity since he did not consciously adopt a conduct. A person's actions speak louder than words, thus there is an assurance or trustworthiness.

Under the Morgan view, such conduct is hearsay, where it is offered as proof of some fact; it is an implied assertion of the actor's belief regarding such fact and hence is just as objectionable as an express assertion.

Are the following hearsay evidence?
Yes.

1. Testimony of a witness in a separate case against Jose who was not a party in that case.
2. Certified copy of the minutes of the meeting of the student council or a copy of the minutes of the meeting of a municipal council of a municipality, containing a statement that the accused was a man of bad character
3. Medical certificate of injury the victim received where the doctor who issued it is not in court
4. The affidavits of eyewitnesses presented against the accused
5. A certificate of a chief of an office to the effect that a certain is an employee of that office which was based on the affidavits of third persons
6. Baptismal certificate presented as proof of filiation
   6a. But not a birth certificate issued by the government, which is prima facie true
7. A police blotter to prove the crime. But good as independently admissible statement
8. Result of traffic investigation by policeman. But if he appears in court, he can attest to conflicting claims of the drivers and the police sketch he prepared (like the place where the accident occurred because those are facts derived from his own perception
9. Newspaper clipping presented by the accused to show that as reported therein, it was another person who drove the get-way car

Could hearsay evidence within another hearsay be admitted in evidence?
Yes. Hearsay within hearsay is admissible to prove he truth of the included statement, if both the statement and included statement meet the tests of an exception to the hearsay rule.

Can the hospital record of an accident given by the victim upon his arrival at the hospital be allowed?
Yes. The record of the history of an accident given by the victim upon his arrival at the hospital, contained in the hospital record of the patient. The business entries exception permits proof of the fact of the making of a statement by the patient, but admissibility of what he said would depend in turn of course, upon whether his statement was an admission, a *res gestae* or spontaneous statement, a dying declaration or a declaration against interest.

Is the computer print out of heart condition hearsay, since machine could not be examined?
No. Testimony of a witness as to statements made by non-human declarants (e.g. machines, bloodhounds etc.) does not violate the rule against hearsay. Machines and animals, unlike humans, lack a conscious motivation to tell falsehoods, and because the workings of machines (including accuracy and reliability) can be explained by human witnesses who are then subject to cross-examination by opposing counsel.

Another example is when a witness on the stand testifies that the radar equipment "said that D was driving at 90 miles an hour."

Is the assertive conduct of a pet hearsay?
No. Animals lack the conscious motivation to lie.

Are the following independently relevant statements that are admissible in evidence?
Yes.

1. Statements heard from a party to the case, presented as an admission of fact
2. Statements made to serve as a notice requiring action or reply, like landlord's demand
3. Statement that an employee was heard warning the plaintiff about the floor in an area in a store being slippery as evidence that the latter had notice?

Note: Evidence of a witness' prior statements affecting his or her credibility (i.e, prior inconsistent statements offered to impeach credibility, or prior consistent statements offered to rehabilitate) are not hearsay since they are not offered as substantive evidence in support of any fact in issue, i.e, they are not offered to establish the truth of their assertions.

Are the following circumstantial evidence of the fact admissible as independently relevant statements?
Yes.

a. Statement of a person showing his mental condition (I am the President of the universe), knowledge, belief, intention, etc
b. Statement of a person asking if the other parts of the victim's body had been found to prove that he knew that the victim had been cut up
c. Statement of a person which will show his physical condition, as illness and the like
   Provided:
   1. His statement refers to present symptoms (he did not contrive what he told the physician)
   2. It is not of past extreme circumstances causing an injury
   3. It is not made after the controversy has arisen; and
   4. It is not made in anticipation of trial.

Are the following admissible as independently relevant statements?
Yes.

1. In an adultery case, to prove that the husband went to the motel where his wife and lover met, the husband testified hearing his son say that he preferred the restaurant in the hotel where his mother and his Tito ate.
2. The testimony of the police officer that the accused told him the names of his co-conspirators and by reason thereof, "we investigated or arrested the persons" so named".
3. In bigamy, the defendant husband's testimony that his first wife told him she had already secured a divorce from him to show his good faith in entering a second marriage.
4. Statement of one from which may be inferred his knowledge, belief, good or bad faith, motive, or state of mind

Are the following independently relevant statements?
Yes.

a. The witness' testimony that he heard him speak at the time to prove that he was then alive to show knowledge, notice and awareness of some fact
b. In a homicide, where the defense is self-defense, threats by the deceased that he was going to kill the accused
c. In a sale of parcel of land to different buyers, before the second sale, the first buying informed the second buyer that he had already bought the land to prove bad faith of the second buyer who had been forewarned.

Are the statements identifying dates, places, persons, admissible as independently relevant statements?
Yes.

Are the following admissible in evidence?

1. A witness fixed the time he got home because he asked his sister about it and the sister gave a remark that she had been very quick and that made me look at the clock. – **Identity of Time**
2. A witness testifies that he remembers that when the event occurred, he was in Baguio because he had then just received a telegram from his mother. - **Identity of Place**
3. Evidence that a person made statements indicating knowledge of matters likely to have been known only to X is receivable as tending to prove that she was in fact X. - **Identity of Person**

Is a party's self-serving statement a form of admission that will qualify as evidence in the case?
No, the declarations of a party favorable to himself are not admissible.

Why is self-serving statement not admissible?
The maxim is that a man cannot make evidence for himself. The reason for the rule is that what a man says against his own interest may be safely believed; but it is not safe to credit him where he is advocating his interest.

During the Japanese occupation, a creditor swore in a secret affidavit that the circumstances "compelled" him to accept the loan under protest and execute a notarial document that released the mortgage. Is such affidavit admissible in evidence?
No, such affidavit is self-serving evidence.

Are diaries admissible?
No, as a rule they are inadmissible because they are self-serving in nature, unless they have the nature of books of account; but it has been held an entry in a diary being in the nature of a declaration, if it was against interest when made, it is admissible.

When are self-serving statements admissible?

1. When they form part of the *res gestae*, including spontaneous statements, and verbal acts;
2. When they are in the form of complaint and exclamations of pain and suffering;
3. When they are part of a confession offered by the prosecution;
4. Where the credibility of a party has been assailed on the ground that his testimony is a recent fabrication, in which case his prior declaration, even of a self-serving character, may be admitted,

provided they were made at a time when a motive to misrepresent did not exist – "testimonial rehabilitation"

5. Where they are offered by the opponent. The objections which have been pointed out do not apply against the reception of the statements of one party as evidence when such statements are offered by his adversary.
6. When they are offered without objection, the evidence cannot afterwards be objected to as incompetent.

The accused wrote his brother-in-law asking for forgiveness and requesting his sister to withdraw the complaint against him since he was not at fault. Can these be admitted as evidence in favor of the accused?
No, the evidence is self-serving and the statements therein cannot be admitted as evidence in his favour, although the incriminating statement is evidence against him. (*People vs. Piring)*

The defendant admitted acting negligently and causing injuries to another but he pointed out at the same time that he was covered by insurance. May his admission be offered in evidence against him?
Yes, statements obtained by insurance company representatives from the plaintiff in accident cases are readily received in evidence against the plaintiff, even though containing statements of opinion, if such statements are inconsistent with plaintiff's asserted claim. In such cases the question is not primarily one of admissibility but one of weight, which raises pertinent questions as to whether it should be revealed that the statement was procured and written down by an insurance company agent.

Are admissions verbal only?
No, so far as admissibility is concerned, it makes no difference whether the admission is oral or written. But the written admission may be entitled to greater weight because of the elimination of uncertainty as to the nature of the statement and because the fact that it was made may be more convincingly proved.

A party received a letter from someone. Can this be read in evidence against such party?
Yes, letters which have been written to a party and received by him may in some circumstances be read in evidence against him; but, before they can be received as admissions against him, there must be some evidence besides mere possession showing acquiescence in their contents – as proof of some act or reply or statement, thus, making them the adoptive admissions of the party. In such case there must be proof that the one sought to be charged has received the letter.

Are admissions inferred from conduct? (p. 377)
Yes. Admissions are not limited to any particular form. They may be not only in the form of declarations, oral or written, but they may be implied from the conduct or acts of parties. To illustrate, the payment of interest or a part of a debt is an admission of debt. And where a landlord makes repairs, his act is an admission that it is his duty rather than the duty of the tenant to effect repairs.

Assuming to act as an officer is an admission by the person so acting that he is such officer, and that he is subject to the liabilities incident to the office.

Do the following acts imply guilt?
Attempt to conceal/destroy - Yes
Attempt to bribe - Yes
Flight - Yes
Assumption of false name - Yes
Resist arrest - Yes
Escape custody - Yes
Suicide - Maybe/Yes
Settle - Yes
Conduct/act after - Yes

What is deemed admitted in the following acts?
A party looks for money to pay a debt - that he has no money to pay the debt
A party says that he rents a house - that he doesn't own such house
Parents register their child as legitimate - they are married
When after an accident defendant repairs the defects in his premises or adopts added precaution - implies negligence but public policy renders inadmissible - extraordinary precaution - must not encourage indifference to the occurrence of accidents no matter what the cause

But can repairs done subsequent to an accident be admitted for other purposes?
Yes (not for liability) on facts other than negligence, that he owns the premises, condition of the place, contradictory facts preserved by opponent.

May the making of repairs to the property of another be taken as admission that the person making the repair is at fault?
Yes, in actions based on negligence, an inference of negligence is often sought to be drawn from the fact that subsequent to the happening of the injurious occurrence, the defendant has repaired the alleged defect or adopted some new precaution.

Is guilt always presumed from flight?

No. Flight must not, however always be attributed to one's consciousness of guilt, where there are good reasons for doing so.

When is it not an admission of guilt?
If there are good reasons - life at risk.

Non-flight = innocence?
Generally yes, except when accused was previously (positively) identified as the assailant. Appellant's pretended innocence is clearly non-sequitur to his decision not to flee. Apart from the fact that there is no case law holding that non-flight is a conclusive proof of innocence, the argument does not hold weight in the light of the positive identification of the appellant. The material factor here is that there is positive identification of the accused as the author of the crime.

Assailant attended victim's wake, does this negate guilt?
No - may be aimed at diverting attention and not a sufficient ground to exculpate the assailant from the proved criminal liability.

What conduct or demeanor of a party at the trial could be used against him?
Acts which tend to show consciousness of wrongdoing such as false or deceptive explanation, and suborning, fabricating, or suppressing testimony may be used.

How may the testimony of a witness be impeached?
(Rule 132, Section 13) Also known as "laying a predicate" - Counsel must first relate to the witness by way of foundation his prior inconsistent statement with the circumstances of the times and place and the persons present. Counsel must then ask he witness whether he made such statements; and if so, be allowed to explain them.

Does this mean that an admission cannot be presented against a party without first confronting him with it?
No. If the purpose for which the admission is being offered is for such admission to be received as substantive evidence of the facts admitted and not merely to contradict the party.

Hence, no foundation is required by first examining the party when the previous statements of a party are presented not only for the purpose of impeaching him but also to establish an admission; there is no need of giving him such precious opportunity to explain.

If the purpose of presenting a previous statement is to establish an admission made by a party, when must such statement be presented?
The statement must be presented during the party's presentation of his evidence in chief.

When to impeach?
During cross examination or rebuttal but the party must first lay the predicate.

If plaintiff offers part of defendant's statement as admissions, is he bound by the portions that are favorable to the defendant?
No. He may rebut such statements or show them to be erroneous. It is for the court to reject such portions of the statement.

Is the party offering the admissions compelled to offer the whole conversation?
No. He may offer only those favorable to him. But see *Rule 132, Sec. 17,*

Does the rule on admission of a party require that the exact words be repeated?
No. Impossible to recall accounts word for word

Weight as oral admissions - difficult to prove accurately since it relies on the uncertainty of memory and the temptations to distort the language and color of the true facts
Should be taken with scrutiny.

Weight to admissions clearly proved - strongest kind of evidence, especially if in writing/recorded
But not ordinarily conclusive since they are open to rebuttal or explanation and entitled only to such weight as they deserve to assist the trier of the issues of fact in arriving at the truth.