2019 Amendments to the 1989 Rules on Evidence

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I. INTRODUCTION

On 1 May 2020, the 2019 Amendments to the 1989 Rules on Evidence (2019 Amendments) became effective.[1] Prior to the 2019 Amendments, the last major revision of the Rules on Evidence was effected in 1989.[2] By way of comparison, the Federal Rules of Evidence, which first took effect in 1972, underwent 27 amendments; the latest taking effect on 1 December 2020.[3] This is not to say, however, that the procedural rules governing evidentiary matters remained static in the intervening period. Between 1989 and 2019, the Supreme Court released various issuances and issued jurisprudential guides that changed the landscape of Philippine law on evidence.[4] Though laudable in breadth and scope, these rulings and issuances left much to be desired.

Thus, the Supreme Court, by virtue of its rule-making power under Article VIII, Section 5 (5) of the Constitution,[5] organized the Committee on

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1. SUPREME COURT OF THE PHILIPPINES, 2019 AMENDMENTS TO THE 1989 REVISED RULES ON EVIDENCE (A.M. NO. 19-08-15-SC) (2020) [hereinafter PRIMER ON THE REVISED RULES ON EVIDENCE].

2. *See* 1989 REVISED RULES ON EVIDENCE (superseded in 2019).

3. *See* FED. R. EVID. (U.S.) & Legal Information Institute, Historical Note to the Federal Rules of Evidence, *available at* https://www.law.cornell.edu/rules/fre (last accessed Oct. 31, 2023) [https://perma.cc/AK93-D7KK].

4. *See, e.g.*, RULES ON ELECTRONIC EVIDENCE, A.M. No. 01-7-01-SC (Aug. 1, 2001); RULE ON DNA EVIDENCE, A.M. No. 06-11-5-SC (Oct. 2, 2007); & JUDICIAL AFFIDAVIT RULE, A.M. No. 12-8-8-SC (Jan. 1, 2013).

5. PHIL. CONST. art. VIII, § 5 (5). It states,

> Section 5. The Supreme Court shall have the following powers:
>
> ...
>
> (4) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the integrated bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

Id.

the Revision of the Rules of Court, with a Subcommittee specifically for the revision of the Rules of Evidence (Subcommittee).[6] In initiating the amendments, the Supreme Court sought to "make the law more responsive and accessible to the needs of court-users"[7] and to "adapt to technological advancements."[8]

Indeed, the 2019 Amendments marks a significant shift in Philippine remedial law, one that requires thorough reckoning to bring their estimable goals to fruition. This is done in this Article.

II. RULE 128

> Section 3. Admissibility of evidence. — Evidence is admissible when it is relevant to the issue and is not excluded by the *Constitution*, the law[,] or these Rules.(3a)[9]

To be admissible, evidence must be relevant and competent.[10] The basic and overriding rule of evidence is the Rule of Relevancy, that is, "[t]o be admissible, the evidence must tend to prove a material issue in the light of

6. PRIMER ON THE REVISED RULES ON EVIDENCE, *supra* note 1, at 2.

7. *Id*. at iii.

8. *Id*. at 4.

9. 2019 AMENDMENTS TO THE 1989 REVISED RULES ON EVIDENCE, rule 128, § 3 (emphasis supplied).

10. Tan, Jr. v. Hosana, G.R. No. 190846, 783 SCRA 87, 99 (2016). In ruling that a void contract may be admissible to prove the amount paid by the buyer to the seller in a case that the buyer is attempting to recover the amount already paid, the Court held —

> Evidence is admissible when it is relevant to the issue and is not excluded by the law of these rules. There is no provision in the Rules on Evidence which excludes the admissibility of a void document. The Rules only require that the evidence is relevant and not excluded by the Rules for its admissibility.
>
> *Id*.

human experience."[11] The Rule of Relevancy, as understood under the 1989 Revised Rules on Evidence, was maintained under the 2019 Amendments.[12]

Rule 128, Section 3 defines competent evidence as that which is not "excluded by the Constitution, the law[,] or these Rules."[13] The invocation of the Constitution in Section 3 of Rule 128 serves as a reminder that, aside from the rules on admissibility under substantive and procedural laws, the Constitution likewise provides for exclusionary rules of evidence.[14]

In *People v. Sapla y Guerrero*,[15] the Court recognized the primacy of the Constitution in appreciating evidence gathered in violation of an accused's right against unreasonable searches and seizures.[16] The "fruit of the poisonous tree" doctrine cumulatively expresses the Constitutional rules which provide that evidence obtained in violation of the Constitution (i.e., through an illegal search or illegal arrest) are inadmissible,[17] to wit —

> Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature[,] and for any purpose[,] shall be inviolable[;] and no search warrant or warrant of arrest shall issue[,] except upon probable cause to be determined personally by the judge[,] after examination under oath or affirmation of the

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11. ANTONIO R. BAUTISTA, BASIC EVIDENCE 4 (2004 ed.). *See also* REVISED RULES ON EVIDENCE, rule 128, § 4. Rule 128, § 4 provides —

> 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.

Id.

12. *See* REVISED RULES ON EVIDENCE, rule 128, § 4. *See also* 1989 REVISED RULES ON EVIDENCE, rule 128 § 4.

13. REVISED RULES ON EVIDENCE, rule 128, § 3.

14. SUPREME COURT OF THE PHILIPPINES, 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE (A.M. NO. 19-10-20-SC) 1 (2020) [hereinafter EXPLANATORY NOTES].

15. People v. Sapla, G.R. No. 244045, 938 SCRA 127 (2020).

16. *Id*. at 157.

17. The Supreme Court explained the rationale behind the fruit of the poisonous tree doctrine thus, "[t]he rules [are] based on the principle that evidence illegally obtained by the State should not be used to gain other evidence because the [original] illegally obtained evidence taints all evidence subsequently obtained."

People v. Samontañez, G.R. No. 134530, 346 SCRA 837, 859 (2000).

> complainant and the witnesses he may produce, and particularly describing the place to be searched[,] and the persons or things to be seized.[18]
>
> Section 3. (1) The privacy of communication and correspondence shall be inviolable[,] except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law.
>
> (2) *Any evidence obtained in violation of this*[,] *or the preceding section shall be inadmissible for any purpose in any proceeding.*[19]
>
> ...
>
> Section 12. (1) 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. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived[,] except in writing and in the presence of counsel.
>
> (2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.
>
> (3) *Any confession or admission obtained in violation of this*[,] *or Section 17 hereof shall be inadmissible in evidence against him.*
>
> (4) The law shall provide for penal and civil sanctions for violations of this section[,] as well as[,] compensation to and rehabilitation of victims of torture or similar practices, and their families.[20]
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> ...
>
> Section 17. No person shall be compelled to be a witness against himself.[21]

In addition to the exclusionary rules found in the Constitution and the Rules on Evidence, the following exclusionary rules are found in statutes:

STATUTE	EXCLUSIONARY RULE
Anti-Wire Tapping Law	Section 4. Any communication or spoken word, or the existence, contents, substance, purport, effect[ ] or meaning of the same or

18. PHIL. CONST. art. III, § 2 (emphasis supplied).

19. PHIL. CONST. art. III, § 3 (1) & (2) (emphasis supplied).

20. PHIL. CONST. art. III, § 12 (1)-(4) (emphasis supplied).

21. PHIL. CONST. art. III, § 17 (emphasis supplied).

STATUTE	EXCLUSIONARY RULE
	any part thereof, or any information therein contained, obtained or secured by any person in violation of the preceding sections of this Act shall not be admissible in evidence in any judicial, quasi-judicial, legislative[,] or administrative hearing or investigation.[22]
Anti-Torture Act of 2009	Section 8. Applicability of the Exclusionary Rule; Exception. — Any confession, admission[,] or statement obtained as a result of torture shall be inadmissible in evidence in any proceedings, except if the same is used as evidence against a person or persons accused of committing torture.[23]
Anti-Terrorism Act of 2020	Section 23. Evidentiary Value of Deposited Materials. — Any listened to, intercepted, and recorded communications, messages, conversations, discussions, or spoken or written words, or any part or parts thereof, or any information or fact contained therein, including their existence, content, substance, purport, effect, or meaning, which have been secured in violation of the pertinent provisions of this Act, shall be inadmissible and cannot be used as evidence against anybody in any judicial, quasi-judicial, legislative, or admi-nistrative investigation, inquiry, proceeding, or hearing.

22. An Act to Prohibit and Penalize Wire Tapping and Other Related Violations of the Privacy of Communication, and for Other Purposes [Anti-Wire Tapping Law], Republic Act No. 4200, § 4 (1965).

23. An Act Penalizing Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment and Prescribing Penalties Therefor [Anti-Torture Act of 2009], Republic Act No. 9745, § 8 (2009).

STATUTE	EXCLUSIONARY RULE
	xxx Section 33. No Torture or Coercion in Investigation and Interrogation. — The use of torture and other cruel, inhumane[,] and degrading treatment or punishment, as defined in Sections 4 and 5 of Republic Act No. 9745 otherwise known as the "Anti-Torture Act of 2009," at any time during the investigation or interrogation of a detained suspected terrorist is absolutely prohibited and shall be penalized under said law. Any evidence obtained from said detained person resulting from such treatment shall be, in its entirety, inadmissible and cannot be used as evidence in any judicial, quasi-judicial, legislative, or administrative investigation, inquiry, proceeding, or hearing.[24]

Further, Section 2 of the Rules on Electronic Evidence provides,

> Section 2. *Admissibility*. — An electronic document is admissible in evidence if it complies with the rules on admissibility prescribed by the *Rules of Court* and related laws and is authenticated in the manner prescribed by these Rules.[25]

III. RULE 129: WHAT NEED NOT BE PROVED

> 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

24. An Act to Prevent, Prohibit and Penalize Terrorism, Thereby Repealing Republic Act No. 9372, Otherwise Known as the "Human Security Act of 2007" [Anti-Terrorism Act of 2020], Republic Act No. 11479, §§ 23 & 33 (2020).

25. RULES ON ELECTRONIC EVIDENCE, rule 3, § 2, 12th Cong. (July 17, 2001) (emphasis supplied). *See also* An Act Providing for the Recognition and Use of Electronic Commercial and Non-Commercial Transactions, Penalties for Unlawful Use Thereof, and Other Purposes [Electronic Commerce Act], Republic Act No. 8792 (2000) (emphasis supplied).

> 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 *National Government of the Philippines*, the laws of nature, the measure of time, and the geographical divisions. (1a)[26]

Matters which are subject of judicial notice are "taken as true without the offering of evidence by the party who should ordinarily have done so. *This is because the Court assumes that the matter is so notorious that it will not be disputed*."[27]

In *Spouses Latip v. Chua*,[28] the Court laid down the requisites for a matter to be a proper subject of judicial notice, to wit —

> Generally speaking, matters of judicial notice have three material requisites: (1) the matter must be one of common and general knowledge; (2) it must be well and authoritatively settled and not doubtful or uncertain; and (3) it must be known to be within the limits of the jurisdiction of the court. The principal guide in determining what facts may be assumed to be judicially known is that of notoriety. Hence, it can be said that *judicial notice is limited to facts evidenced by public records and facts of general notoriety*.[29]

The case also points out that

> judicial notice is not judicial knowledge. The mere personal knowledge of the judge is not the judicial knowledge of the court, and he is not authorized to make his individual knowledge of a fact, not generally or professionally known, the basis of his action. Judicial cognizance is taken only of those matters which are 'commonly' known.[30]

The amendment to Rule 129, Section 1 clarifies that the official acts of the branches of government which are subject to mandatory judicial notice refer to the official acts of the national government of the Philippines.[31] It appears that this excludes from the subject of mandatory judicial notice the acts of local government units and the government units of the autonomous

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26. REVISED RULES ON EVIDENCE, rule 129, § 1 (emphasis supplied).

27. BAUTISTA, *supra* note 11, at 14 (citing JOHN HENRY WIGMORE, EVIDENCE IN TRIALS AT COMMON LAW (3d ed., 1940) (emphasis supplied).

28. Latip v. Chua, 619 Phil. 155 (2009).

29. *Id.* at 165 (emphasis supplied).

30. *Id.*

31. EXPLANATORY NOTES, *supra* note 14, at 2.

regions, as well as the proprietary acts of government-owned and controlled corporations.[32]

Jurisprudence, however, instructs that the acts of municipal corporations may be the subject of either mandatory or discretionary judicial notice under certain circumstances.

In *U.S. v. Blanco*,[33] it was ruled that Municipal Trial Courts "may, and should, take judicial notice of municipal ordinances in force in the municipality in which they sit."[34]

In *U.S. v. Hernandez*,[35] the Court ruled that the Courts of First Instance (now the Regional Trial Courts) have the "authority to take judicial notice of the existence of the municipal ordinances in force in their respective districts" in the exercise of their appellate jurisdiction.[36] In cases invoking the original jurisdiction of the Regional Trial Courts, the courts will not generally take mandatory judicial notice of municipal ordinances, unless there is a statute providing for such authority.[37]

In *Gallego v. People*,[38] it was ruled that the Court of Appeals may take judicial notice of municipal ordinances in cases brought up to it on appeal.[39] In *Gallego*, the Court clarified that in instances where the law or the rules do not specifically authorize the courts to take mandatory judicial notice of municipal ordinances, the same may be the subject of discretionary judicial notice upon the theory that the existence of such ordinances is capable of unquestionable demonstration.[40]

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32. WILLARD B. RIANO, EVIDENCE (THE BAR LECTURE SERIES) 81 (2016 ed.) (citing Asian Terminals, Inc. v. Malayan Insurance Co., Inc., G.R. No. 171406, 647 SCRA 111, 130-31 (2011)).

33. United States v. Blanco, 37 Phil. 126 (1917).

34. *Id.* at 127.

35. United States v. Hernandez, 31 Phil. 342 (1915).

36. *Id.* at 347.

37. *Id.* at 355 & City of Manila v. Garcia, et al., G.R. No. L-26053, 19 SCRA 413 (1967).

38. Gallego v. People, G.R. No. L-18247, 8 SCRA 813 (1963).

39. *Id.* at 815.

40. *Id.* & REVISED RULES ON EVIDENCE, rule 129, § 2.

> Section 2. *Judicial notice, when discretionary.* — A court may take judicial notice of matters which are of public knowledge, or are capable of

In relation to official acts of the judicial department, a court must

> take judicial notice of its own acts and records in the same case, of facts established in prior proceedings in the same case, of the authenticity of its own records of another case between the same parties, of the files of related cases in the same court, and of public records on file in the same court.[41]

Thus, a court may only take judicial notice of its own acts in the same case. By way of exception, the court may take judicial notice of the records and proceedings of another case "when the other case has a close connection with the matter in controversy in the case at hand."[42]

> Section 3. *Judicial notice, when hearing necessary*. — During the *pre-trial and the trial*, the court, *motu proprio or upon motion*, *shall hear* the parties on the *propriety of taking* judicial notice of any matter.
>
> Before judgment or on appeal, the court, *motu proprio or upon motion*, may take judicial notice of any matter and *shall hear* the parties thereon if such matter is decisive of a material issue in the case. (3a)[43]

As amended, Rule 129, Section 3 requires the court to hear parties on the propriety of taking judicial notice of any matter as early as the pre-trial stage or at any time during trial.[44] The Subcommittee pointed out that under Rule 18, Section 2 (h) of the 2019 Amendments to the 1997 Rules of Civil Procedure,[45] pre-trial is a proper time to discuss the propriety of taking judicial

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> unquestionable demonstration, or ought to be known to judges because of their judicial functions. (2)
>
> REVISED RULES ON EVIDENCE, rule 129, § 2.

41. National Grid Corporation of the Philippines v. Bautista, G.R. No. 232120, 956 SCRA 574, 587 (2020).

42. Trinidad v. People, G.R. No. 239957, 893 SCRA 228, 230 (2019).

43. REVISED RULES ON EVIDENCE, rule 129, § 3 (emphases supplied).

44. *See id*.

45. RULES OF CIVIL PROCEDURE, rule 18, § 2 (h). The provision states,

> Section 2. *Nature and purpose*. — The pre-trial is mandatory and should be terminated promptly. The court shall consider:
>
> ...
>
> (h) Such other matters as may aid in the prompt disposition of the action.
>
> *Id*.

notice of a matter because this is the time when "such other matters as may aid in the prompt disposition of the action" are discussed.[46]

The amendment allowing the court to "*motu proprio* or upon motion" hear parties on the propriety of taking judicial notice of a matter was effected as the wording seemed more appropriate than "on its own initiative" or "upon request."[47]

In addition, the Subcommittee explained that the phrase "propriety of taking" was added to clarify that the purpose of the hearing is to ascertain whether the matter involved is the proper subject of discretionary judicial notice.[48]

In the second paragraph, the phrase "after trial" was deleted from the sentence regarding when a matter may be taken judicial notice of because the phrase "before judgment" already covers the period "after trial."[49]

> Section 4. *Judicial admissions*. — An admission, *oral* or written, made by the 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 *the imputed* admission was *not*, *in fact*, made. (4a)[50]

The changes in Rule 129, Section 4 appear to be cosmetic. As explained by the Subcommittee, the change from "verbal" to "oral" is not meant to change the meaning, but was a proposal made by Judge Aloysius Alday, because "verbal" refers to the use of words, which may be oral or written.[51]

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46. EXPLANATORY NOTES, *supra* note 14, at 2. The former Rule 129, § 3 states,

> Section 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)

1989 REVISED RULES ON EVIDENCE, rule 129, § 3.

47. EXPLANATORY NOTES, *supra* note 14, at 2.

48. *Id*.

49. *Compare* 2019 AMENDMENTS TO THE 1989 REVISED RULES ON EVIDENCE, rule 129, § 3 *with* 1989 REVISED RULES ON EVIDENCE, rule 129 § 4.

50. REVISED RULES ON EVIDENCE, rule 129, § 4 (emphases supplied).

51. EXPLANATORY NOTES, *supra* note 14, at 3.

In *Atillo III v. Court of Appeals*,[52] the Court held that there are instances when an admission made in a pleading may be contradicted,[53] thus —

> Granting *arguendo* that [Lhullier] had in fact made the alleged admission of personal liability in his Answer, We hold that such admission is not conclusive upon him. Applicable by analogy is our ruling in the case of *Gardner v. Court of Appeals* which allowed a party's testimony in open court to override admissions he made in his answer. Thus —
>
> > The fact, however, that the allegations made by Ariosto Santos in his pleadings and in his declarations in open court differed will not militate against the findings herein made nor support the reversal by respondent court. As a general rule, facts alleged in a party's pleading are deemed admissions of that party and are binding upon it, but this is not an absolute and inflexible rule. An answer is a mere statement of fact which the party filing it expects to prove, but it is not evidence. As [Ariosto Santos] himself, in open court, had repudiated the defenses he had raised in his [answer] and against his own interest, his testimony is deserving of weight and credence. Both the Trial Court and the Appellate Court believed in his credibility and we find no reason to overturn their factual findings thereon.'
>
> Prescinding from the foregoing, it is clear that in spite of the presence of judicial admissions in a party's pleading, the trial court is still given leeway to consider other evidence presented. This rule should apply with more reason when the parties had agreed to submit an issue for resolution of the trial court on the basis of the evidence presented. As distinctly stated in the stipulation of facts entered into during the pre-trial conference, the parties agreed that the determination of [Lhullier's] liability shall be based on the Memoranda of Agreement designated as [Annexes] 'A,' 'B[,]' and 'C' of the Complaint. Thus, the trial court correctly relied on the provisions contained in the said Memoranda of Agreement when it absolved [Lhuillier] of personal liability for the obligation of [Amancor] to petitioner.[54]

For criminal cases, Paragraph 4 (f) (v) of the Revised Guidelines for Continuous Trial of Criminal Cases states that "[c]ourts must strictly comply with the Guidelines to be Observed in the Conduct of Pre-Trial under A.M. No. 03-1-09-SC."[55] Paragraph I (B) (8) of A.M. No. 03-1-09-SC is the relevant provision in relation to admissions, stating: "All agreements or

52. Atillo III v. Court of Appeals, G.R. No. 119053, 266 SCRA 596 (1997).

53. *Id.* at 604.

54. *Id.* at 604-05 (citing Gardner v. Court of Appeals, G.R. No. L-59952, 131 SCRA 585, 600 (1984).

55. REVISED GUIDELINES FOR CONTINUOUS TRIAL OF CRIMINAL CASES, A.M. No. 15-06-10-SC, ¶ 4 (f) (v) (Apr. 25, 2017).

admissions made or entered during the pre-trial conference shall be reduced in writing and signed by the accused and counsel, *otherwise, they cannot be used against the accused*."[56]

Thus, admissions of the accused in criminal cases must additionally comply with the above provision before they can be used against him or her. In *Tan v. People*,[57] the Court overturned the conviction of the accused, thus —

> Further, in the parties' Joint Stipulation of Facts before the Sandiganbayan, one of facts they agreed on was:
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> > 2. That on 27 June 1996 a Memorandum of Agreement was entered into between the Municipality of Maasin, Iloilo represented by Mayor Rene Mondejar as the First Party, International Builders Corporation (IBC) represented by Helen Edith Lee Tan as the Second Party, for the Rechanneling of the Tigum River path at Barangay Naslo, Maasin, Iloilo.
>
> As the aforesaid Joint Stipulation of Facts was reduced into writing and signed by the parties and their counsels, thus, they are bound by it and the same becomes judicial admissions of the facts stipulated.
>
> ...
>
> With the foregoing, the Sandiganbayan is precluded from ruling that the MOA was actually executed sometime in September 1997 as it would run counter to the stipulated fact of the parties that it was entered into on 27 June 1996, which stipulation was not shown to have been made through palpable mistake.[58]

Corollarily, in *People v. Castillo y Lumayro*,[59] the Court held that the admission of the accused upon his arrest without the aid of counsel cannot be used as proof of the lack of firearm license sufficient to sustain a conviction of illegal possession of firearm. The Court stated that "[a]dditionally, as pointed out by both the appellant and the Solicitor General, the extrajudicial admission was made without the benefit of counsel. Thus, we hold that the appellant may only be held liable for the crime of simple homicide under Article 249 of the Revised Penal Code."[60]

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56. PROPOSED RULE ON GUIDELINES TO BE OBSERVED BY TRIAL COURT JUDGES AND CLERKS OF COURT IN THE CONDUCT OF PRE-TRIAL AND USE OF DEPOSITION-DISCOVERY MEASURES, A.M. No. 03-1-09-SC, ¶ I (B) (8) (July 13, 2004) (emphasis supplied).

57. Tan v. People, G.R. No. 218902, 806 SCRA 217 (2016).

58. *Id.* at 237-39.

59. People v. Castillo, G.R. No. 131592-93, 325 SCRA 613 (2000).

60. *Id.* at 622.

IV. RULE 130: RULES OF ADMISSIBILITY

A. Documentary Evidence

> Section 2. *Documentary evidence*. — Documents as evidence consist of writing, *recording*, *photograph* or any material containing letters, words, *sounds*, numbers, figures, symbols, *or their equivalent*, or other modes of written expression offered as proof of their contents. *Photographs include still pictures*, *drawings*, *stored images*, *x-ray films*, *motion pictures*[,] *or videos*. (2a)[61]

The amendment to Rule 130, Section 2 broadens the definition of documentary evidence. Documentary evidence now includes recordings, photographs, or any material with sounds or their equivalent offered as proof of their contents.[62] This expanded definition was taken from the Federal Rules of Evidence[63] and Rule 1001 of the Uniform Rules on Evidence[64] "to embrace in the broadest possible terms essentially every memorial that preserves written and spoken languages, including recorded sounds."[65]

In addition, a second sentence was added on photographs, which are not limited to still pictures, but include drawings, stored images, x-ray films, motion pictures, or videos.[66] This provision should be construed as exemplary rather than exclusive "to embrace similar technology and processes that may be developed in the future."[67] This definition of documentary evidence is relevant because of the operation of the Original Document Rule under Rule 130, Sections 3 to 9, and the requirement of Rule 132, Section 20, that every private document must be authenticated before it is admitted in evidence.

Additionally, as the Rules on Electronic Evidence were not repealed by the 2019 Amendments, it is important to ensure compliance with Rule 3, Section 1 of said Rules regarding electronic documents as functional equivalent of paper-based documents, which provides that "[w]henever a rule of evidence refers to the term of writing, document, record, instrument,

61. REVISED RULES ON EVIDENCE, rule 130, § 2 (emphases supplied).

62. *See id*.

63. *See* FED. R. EVID., rule 1001.

64. *See* UNIF. R. EVID., rule 1001 (U.S).

65. EXPLANATORY NOTES, *supra* note 14, at 4.

66. REVISED RULES ON EVIDENCE, rule 130, § 2.

67. EXPLANATORY NOTES, *supra* note 14, at 4.

memorandum[,] or any other form of writing, such term shall be deemed to include an electronic document as defined in these Rules."[68]

V. ORIGINAL DOCUMENT RULE

> Section 3. *Original document must be produced; exceptions*. — When the subject of the inquiry is the contents of a document, *writing*, *recording*, *photograph*[,] *or other record*, no evidence shall be admissible other than the original document itself except in the following cases:
>
> (1) When the original *is* lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;
>
> (2) 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, *or the original cannot be obtained by local judicial processes or procedures*;
>
> (3) 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;
>
> (4) When the original is a public record in the custody of a public officer or is recorded in a public office; and
>
> (5) *When the original is not closely related to a controlling issue*. (3a)[69]

Rule 130 (B) (1) was renamed from "Best Evidence Rule" to "Original Document Rule." The change in denomination was made because the "Best Evidence Rule" applies only to documents or writings, and "there is no requirement that parties introduce the best available evidence bearing on other matters they seek to prove in court."[70] The rule, however, remains the same — the original of the document must be presented when the subject of the inquiry is the contents of a document.[71]

68. RULES ON ELECTRONIC EVIDENCE, rule 3, § 1 (emphasis supplied). *See also* Electronic Commerce Act.

69. REVISED RULES ON EVIDENCE, rule 130, (B) (1) § 3 (emphases supplied).

70. EXPLANATORY NOTES, *supra* note 14, at 5.

71. REVISED RULES ON EVIDENCE, rule 130, (B) (1) § 3.

The rule applies to documents, writings, recordings, photographs, or other records.[72] This amendment was made to reflect the expanded definition of "documentary evidence" under Rule 130, Section 2.[73]

The exceptions to the Original Document Rule are substantially taken from Rule 1004 of the Uniform Rules on Evidence and Rule 1004 of the Federal Rules of Evidence.[74]

The first exception under Rule 130, Section 3 (a), when the original need not be presented was not changed.[75] It is important to note that there are requirements before the first exception may apply, thus —

> (1) The unavailability of the original must be without bad faith;
>
> (2) The predicate for the introduction of secondary evidence must be punctiliously laid ... The correct order of proof, which may be changed according to the discretion of the court, is as follows: *existence*, *execution*, *loss*, *contents*; and
>
> (3) In this jurisdiction, there must also be proof of a diligent search in order to establish loss of the original.[76]

In *Citibank Mastercard v. Teodoro*,[77] the Court held that if there is more than one original of the document, all originals must be accounted for as lost before secondary evidence may be admitted to prove the contents of the document.[78]

Under the exception in the amended Rule 130, Section 3 (b), another ground when the original need not be presented is "when the original cannot be obtained by local judicial processes or procedures." This is merely a codification of a jurisprudentially recognized exception. In *Philippine National Bank v. Olila*[79] and *Chartered Bank of India, Australia & China v. Tuljarama*,[80]

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72. *Id.*

73. *Id. See also* REVISED RULES ON EVIDENCE, rule 128 § 2.

74. EXPLANATORY NOTES, *supra* note 14, at 5. *See* UNIF. R. EVID., rule 1004 & FED. R. EVID., rule 1004.

75. REVISED RULES ON EVIDENCE, rule 130, (B) (1) § 3 (a).

76. BAUTISTA, *supra* note 11 at 29-30; (citing De Vera v. Aguilar, G.R. No. 83377, 218 SCRA 602, 606-09 (1933) & Government of the Philippine Islands v. Martinez, 44 Phil. 817, 828-33 (1918)) (emphasis supplied).

77. Citibank, N.A. Mastercard v. Teodoro, G.R. No. 150905, 411 SCRA 577 (2003).

78. *Id.* at 585.

79. Philippine National Bank v. Olila, 98 Phil. 1002 (1956).

80. Chartered Bank v. Imperial and National Bank, 48 Phil. 931 (1921).

the Court ruled that when the original is outside the jurisdiction of the court, as when it is in a foreign country, secondary evidence is admissible.[81]

Rule 130, Section 3 (e) is a new exception to the Original Document Rule.[82] This exception provides that the original need not be presented if it is not related to the controlling issue. On the one hand, Rule 128, Section 4, provides that "[e]vidence must have such a relation to the fact in issue as to induce belief in its existence or non-existence."[83] On the other hand, Rule 128, Section 3, requires that evidence, to be admissible, must be relevant.[84] Thus, if it is not related to a controlling issue, would it even be admissible whether the original was presented?

As explained, however, this exception was copied from the United States where it is known as the exception for collateral matters,[85] and is meant to prevent overly rigid or technical application of the original document rule. The following are the examples given: incidental references by a witness to road signs, street names, addresses, license plate numbers, billboards, newspaper headlines, names of commercial establishments, brand names, tickets, and similar writings will normally be permitted, unless the terms of the writing have particular significance in the litigation.[86]

> Section 4. Original of document. —
>
> (1) An "original" of a document is the document itself or any counterpart intended to have the same effect by a person executing or issuing it. An "original" of a photograph includes the negative or any print therefrom. If data is stored in a computer or similar device, any printout or other output readable by sight or other means, shown to reflect the data accurately, is an "original."
>
> (2) A "duplicate" is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures,

81. EXPLANATORY NOTES, *supra* note 14, at 5 (citing *Philippine National Bank* 98 Phil. 1002 & *Chartered Bank* 48 Phil. at 931).

82. REVISED RULES ON EVIDENCE, rule 130 § 3 (e).

83. *Id*. rule 128, § 4.

84. *Id*. rule 128, § 3. *See id*. rule 130 § 3 (e).

85. FED. R. EVID., rule 1004. Rule 1004 provides that "[a]n original is not required and other evidence of the content of a writing, recording, or photograph is admissible if: ... the writing, recording, or photograph is not closely related to a controlling issue." *Id*.

86. EXPLANATORY NOTES, *supra* note 14, at 5.

> or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduce the original.
>
> (3) A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original, or (2) in the circumstances, it is unjust or inequitable to admit the duplicate in lieu of the original.(4a)[87]

Rule 130, Section 4 is a complete overhaul of what is considered an original document.[88] It was derived from Rule 1001 (d) of the Federal Rules of Evidence.[89] According to the Subcommittee, an original is not necessarily "the first writing, recording[,] or photograph made, but rather refers to the writing, recording[,] or photograph that is at issue in the litigation. The determination of whether a writing or recording is an 'original' depends upon what is [sought to be proved]."[90]

Rule 130, Section 4 (a) incorporates Rule 4, Section 1 of the Rules on Electronic Evidence as to what is considered an "original" of an electronic document under the Original Document Rule.[91] Under the cited rule, a "printout or output readable by sight or other means, shown to reflect the data accurately" is considered an original of an electronic document.[92]

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87. 1989 REVISED RULES ON EVIDENCE, rule 130, (B) (1) § 4 (emphasis supplied).

88. *Compare id. with* 1989 REVISED RULES ON EVIDENCE, rule 130 (B) (1) § 4.

89. FED. R. EVID., rule 1001 (d). The provision states —

> Rule 1001. Definitions That Apply to This Article. In this article:
>
> ...
>
> (d) An 'original' of a writing or recording means the writing or recording itself or any counterpart intended to have the same effect by the person who executed or issued it. For electronically stored information, 'original' means any printout — or other output readable by sight — if it accurately reflects the information. An 'original' of a photograph includes the negative or a print from it.

Id.

90. EXPLANATORY NOTES, *supra* note 14, at 6.

91. RULES ON ELECTRONIC EVIDENCE, rule 4, § 1. The Rules on Electronic Evidence states that "[a]n electronic document shall be regarded as the equivalent of an original document under the Best Evidence Rule if it is a printout or output readable by sight or other means, shown to reflect the data accurately." *Id. See also* Electronic Commerce Act.

92. *Id.*

The Subcommittee, however, pointed out that printout is an "original" only of data stored on a computer or diskette.[93] Meanwhile, negatives and any prints therefrom are considered original documents for purposes of photographs.[94]

In relation to facsimile transmissions, the Court ruled in *MCC Industrial Sales Corporation v. Ssangyong Corporation*[95] that they are not considered electronic data messages and are not original documents,[96]

> We, therefore, conclude that the terms 'electronic data message' and 'electronic document,' as defined under the Electronic Commerce Act of 2000, do not include a facsimile transmission. Accordingly, a facsimile transmission cannot be considered as *electronic evidence*. It is not the functional equivalent of an original under the Best Evidence Rule and is not admissible as electronic evidence.[97]

Rule 130, Section 4 (b) is identical to Rule 4, Section 2 of the Rules on Electronic Evidence[98] — which, in turn, was adopted from Rule 1001 (e) of

93. EXPLANATORY NOTES, *supra* note 14, at 6.

94. *Id.*

95. MCC Industrial Sales Corporation v. Ssangyong Corporation, G.R. No. 170633, 536 SCRA 408 (2007).

96. *Id.* at 454.

97. *Id.* at 455 (emphasis supplied).

98. *See* REVISED RULES ON EVIDENCE, rule 130, (B) (1) § 4 (b). *See also* RULES ON ELECTRONIC EVIDENCE, rule 4, § 2. The provision states,

> Section 2. Copies as equivalent of the originals. — When a document is in two or more copies executed at or about the same time with identical contents, or is a counterpart produced by the same impression as the original, or from the same matrix, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which is accurately reproduces the original, such copies or duplicates shall be regarded as the equivalent of the original. Notwithstanding the foregoing, copies or duplicates shall not be admissible to the same extent as the original if:
>
> (a) a genuine question is raised as to the authenticity of the original; or
> (b) in the circumstances it would be unjust or inequitable to admit a copy in lieu of the original.

Id.

the Federal Rules of Evidence.[99] As it now reads, duplicates are admissible without need of showing why the original cannot be presented subject to the exceptions listed in Section 4 (c), Rule 130.[100] "The rationale behind the amendment is to eliminate best evidence objections to copies made in clearly reliable ways, except where the objecting party can offer a good reason to support the production of the original."[101]

> Section 7. *Summaries.* — When the contents of documents, records, photographs, or numerous accounts are voluminous and cannot be examined in court without great loss of time, and the fact sought to be established is only the general result of the whole, the contents of such evidence may be presented in the form of a chart, summary, or calculation.
>
> The originals shall be available for examination or copying, or both, by the adverse party at a reasonable and place. The court may order that they be produced in court. (n)[102]

Rule 130, Section 7 is a new provision on *Summaries*, although it hues closely to some of the requirements in the old Rule 130, Section 3 (c), which described what originals of business entries were.[103] It likewise serves as an

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99. EXPLANATORY NOTES, *supra* note 14, at 7. *See also* FED. R. EVID., rule 1001 (e).

> Rule 1001. Definitions That Apply to This Article. In this article:
>
> ...
>
> (e) A 'duplicate' means a counterpart produced by a mechanical, photographic, chemical, electronic, or other equivalent process or technique that accurately reproduces the original.

FED. R. EVID., rule 1001 (e).

100. *See* 2019 AMENDMENTS TO THE 1989 REVISED RULES ON EVIDENCE, rule 130, (B) (1) § 4 (a)-(c).

101. EXPLANATORY NOTES, *supra* note 14, at 7.

102. REVISED RULES ON EVIDENCE, rule 130, (B) (2) § 7 (emphasis supplied).

103. *See id. See also* 1989 REVISED RULES ON EVIDENCE, rule 130, (B) (1) § 3 (c). The old Rule 130, § 3 (c) states,

> 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:
>
> ...
>
> (c) When the original consists of numerous accounts or other documents which cannot be examined in court without

exception to the general rule that originals of documentary evidence must be presented in court and was taken substantially from Rule 1006 of the Federal Rules of Evidence.[104] It has been noted that "[t]he admission of summaries of voluminous books, records, or documents offers the only practicable means of making their contents available to judge [ ]."[105]

VI. PAROL EVIDENCE RULE

> Section 10. *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, *as* 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 written agreement if he *or she* puts in issue in *a verified* pleading:
>
> (1) An intrinsic ambiguity, mistake[,] or imperfection in the written agreement;
>
> (2) The failure of the written agreement to express the true intent and agreement of the parties thereto;
>
> (3) The validity of the written agreement; or
>
> (4) The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement.
>
> The term 'agreement' includes wills. (9a)[106]

> great loss of time and the fact sought to be established from them is only the general result of the whole[.]

Id.

104. EXPLANATORY NOTES, *supra* note 14, at 8. Rule 1006 of the Federal Rules of Evidence states,

> Rule 1006. Summaries to Prove Content. The proponent may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court. The proponent must make the originals or duplicates available for examination or copying, or both, by other parties at a reasonable time and place. And the court may order the proponent to produce them in court.

FED. R. EVID., rule 1006.

105. *Id*.

106. REVISED RULES ON EVIDENCE, rule 130, (B) (3) § 10 (emphases supplied).

The Parol Evidence Rule in Rule 130, Section 10 is almost untouched, but the amendment has a big impact in practice.[107] Under the amendment, for a party to present evidence to explain, modify, or add to the terms of a written agreement, there must have been a pleading where the issue was raised, and that pleading must be verified. Therefore, it cannot be raised during trial, nor even during pre-trial, without a verified pleading having been previously filed raising said issue. Thus, pleadings which seek to contest the contents of written instruments fall under the exception provided in Rule 7, Section 4 of the 2019 Amendments to the 1997 Rules of Civil Procedure, which states that pleadings do not generally need to be under oath or verified, except when specifically required by law or rule.[108]

In *Ortanez v. Court of Appeals*,[109] the Court explained the rationale for the Parol Evidence rule thus —

> The parol evidence herein introduced is inadmissible. First, private respondent's oral testimony on the alleged conditions, coming from a party who has an interest in the outcome of the case, depending exclusively on human memory, is not as reliable as written or documentary evidence. Spoken words could be notoriously undesirable unlike a written contract which speaks of a uniform language. Thus, under the general rule in Section 9 of Rule 130 of the Rules of Court, when the terms of an agreement were reduced to writing, as in this case, it is deemed to contain all the terms agreed upon and no evidence of such terms can be admitted other than the contents thereof.[110]

Note that the Parol Evidence Rule will not operate to exclude other evidence in certain cases. In *Lechugas v. Court of Appeals*,[111] the Court allowed the testimony of the seller varying the lot subject matter of the deed of sale.[112] The occupant, claiming that the lot bought by the buyer was a different lot owned by the seller,[113] presented the seller as a witness to prove this allegation.[114] The Court held —

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107. *Compare id. with* 1989 REVISED RULES ON EVIDENCE, rule 130, § 9.

108. RULES OF CIVIL PROCEDURE, rule 7, § 4.

109. Ortañez v. Court of Appeals, G.R. No. 107372, 266 SCRA 561 (1997).

110. *Id.* at 565.

111. Lechugas v. Court of Appeals, G.R. No. 39972, 143 SCRA 335 (1986).

112. *Id.* at 342.

113. *Id.* at 339.

114. *Id.*

> As explained by a leading commentator on our Rules of Court, the parol evidence rule does not apply, and may not properly be invoked by either party to the litigation against the other, where at least one of the parties to the suit is not party or a privy of a party to the written instrument in question and does not base a claim on the instrument[,] or assert a right originating in the instrument or the relation established thereby.[115]

This must be distinguished from *Philippine National Railways v. CFI of Albay, Br. I*[116] where the Court ruled that the plaintiffs could not vary the deed of donation signed by their brother because they failed to put in issue the fact that the conditions for the donation were not stated in the deed of donation.[117] In that case, plaintiffs filed a suit to annul a deed of donation in favor of Manila Railways for nonfulfillment of conditions.[118] The Deed of Donation was executed by the deceased owner, who was the brother of the plaintiffs and did not contain the alleged conditions.[119] In ruling against the plaintiffs, the Court noted the fact that the plaintiffs failed to attach a copy of the deed of donation, and concluded that they were not really cognizant of the terms of the donation.[120] In addition, a reading of their complaint made it appear that the conditions were already in the deed of donation, when in fact the conditions were never stated therein.[121]

In *Eagleridge Development Corporation v. Cameron Granville Asset Management, Inc.*,[122] the Court ruled that a document could be inquired into if it is mentioned or referred to in an agreement upon which the claim was based, and this is not violative of the Parol Evidence Rule,[123] to wit —

> Besides, what is forbidden under the parol evidence rule is the presentation of oral or extrinsic evidence, not those expressly referred to in the written agreement. '[D]ocuments can be read together when one refers to the other.'

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115. *Id.* at 343 (citing 2 RICARDO J. FRANCISCO, BASIC EVIDENCE 155 (citing 32 C.J.S. § 79 (1975))).

116. Philippine National Railways v. CIR of Albay, Br. I, G.R. No. 46943, 83 SCRA 569 (1978).

117. *Id.* at 576.

118. *Id.*

119. *Id.* at 571.

120. *Id.* at 577.

121. *Id.* at 571.

122. Eagleridge Development Corporation v. Cameron Granville 3 Asset Management, Inc., G.R. No. 204700, 695 SCRA 714 (2013).

123. *Id.* at 716.

> By the express terms of the deed of assignment, it is clear that the deed of assignment was meant to be read in conjunction with the LSPA.[124]

Thus, in summarizing when parol evidence is admissible, the Court, in *Spouses Paras v. Kimwa Construction and Development Corporation*,[125] held —

> In sum, two (2) things must be established for parol evidence to be admitted: [f]irst, that the existence of any of the four (4) exceptions has been put in issue in a party's pleading or has not been objected to by the adverse party; and second, that the parol evidence sought to be presented serves to form the basis of the conclusion proposed by the presenting party.[126]

Thus, the parol evidence rule operates to exclude other evidence regarding the terms of an agreement when: (1) the agreement was reduced into writing; (2) the parties to the suit are claiming under an agreement; and, (3) the suit is between the parties to the written agreement and/or their successors-in-interest. Where a party relies on matters not found in the written agreement for his or her claims or defenses, he or she must raise any of the grounds found in Rule 130, Section 10, Paragraph 2 in a verified pleading,[127] which, under Rule 6 of the 2019 Amendments to the 1997 Rules of Civil Procedure, may be in the form of a Complaint, Answer, Counterclaim, Cross-claim, Reply, Rejoinder, or Pleading-in-Intervention.[128]

Note that Rule 8, Section 8 of the 2019 Amendments to the 1997 Rules of Civil Procedure require that the adverse party must deny under oath the genuineness and due execution of a written instrument upon which a claim or defense is founded.[129] Rule 6, Section 10 of the same Rules state that the office of a Reply or a Rejoinder is to "deny, or allege facts in denial or avoidance of new matters alleged in, or relating to, [an] actionable document [attached to the Answer or Reply, respectively]."[130] These rules are consistent with the requirement under Rule 130, Section 10 of the 2019 Amendments,

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124. *Id.*

125. Paras v. Kimwa Construction and Development Corporation, G.R. No. 171601, 755 SCRA 241 (2015).

126. *Id.* at 252.

127. *See* REVISED RULES ON EVIDENCE, rule 130, (B) (2) § 7.

128. RULES OF CIVIL PROCEDURE, rule 6.

129. *Id.* rule 8, § 8.

130. *Id.* rule 6, § 10.

requiring that pleadings which seek to modify, explain, or add to a written instrument must be verified.[131]

VII. TESTIMONIAL EVIDENCE

A. Qualification of Witnesses

> Section 22. *Testimony confined to personal knowledge.* — A witness can testify only to those facts which he *or she* knows of his *or her* personal knowledge; that is, which are derived from his or her own perception. (36a)[132]

This section used to be Rule 130, Section 36, under Testimonial Knowledge.[133] It appears that with the renumbering of this section and the deletion of the provision on the *Disqualification by reason of mental incapacity or immaturity* in the old Rule 130, Section 21,[134] every person may be a witness, as long as a person can perceive, and perceiving, can make known their perception to others.[135] This is consistent with several rulings and issuances of the Supreme Court.

Section 6 of the Rule on Examination of a Child Witness provides, in part —

> Section 6. *Competency.* — Every child is presumed qualified to be a witness. However, the court shall conduct a competency examination of a child, *motu proprio* or on motion of a party, when it finds that substantial doubt exists regarding the ability of the child to perceive, remember, communicate,

131. *See* 1989 REVISED RULES ON EVIDENCE, rule 130, (B) (3) § 10.

132. REVISED RULES ON EVIDENCE, rule 130, (C) (1) § 22 (emphasis supplied).

133. *See* 1989 REVISED RULES ON EVIDENCE, rule 130, § 36 (a).

134. The old Rule 130, Section 21 states,

> Section 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)

1989 REVISED RULES ON EVIDENCE, rule 130, § 21.

135. *Id.*

> distinguish truth from falsehood, or appreciate the duty to tell the truth in court.[136]

In *People v. Ibañez y Albante*,[137] the Court applied the provisions of Rule 130, Section 22 and the Rule on Examination of a Child Witness to rule that the witness, who was a minor at the time of the incident and during the trial, could testify, to wit —

> We cannot take Rachel's testimony lightly simply because she was a mere child when she witnessed the incident and when she gave her testimony in court. There is no showing that her mental maturity rendered her incapable of testifying and of relating the incident truthfully.
>
> With exceptions provided in the Rules of Court, all persons who can perceive, and perceiving, can make known their perception to others, may be witnesses. That is even buttressed by the Rule on Examination of a Child Witness which specifies that every child is presumed qualified to be a witness. To rebut this presumption, the burden of proof lies on the party challenging the child's competence. Only when substantial doubt exists regarding the ability of the child to perceive, remember, communicate, distinguish truth from falsehood, or appreciate the duty to tell the truth in court will the court, *motu proprio* or on motion of a party, conduct a competency examination of a child. Thus, petitioners' flimsy objections on Rachel's lack of education and inability to read and tell time carry no weight and cannot overcome the clear and convincing testimony of Rachel as to who killed her father.[138]

The Supreme Court has also ruled that a deaf mute,[139] a person with mental deficiencies,[140] and a person of unsound mind[141] are competent to testify. In addition, a witness for a party does not need to present an authorization from the party to a case before testifying.[142] In *People v. Umali*,[143] the Court ruled that a pending criminal case will not disqualify a person from testifying in court,[144] thus —

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136. RULE ON THE EXAMINATION OF A CHILD WITNESS, A.M. No. 00-4-07-SC, § 6 (Nov. 21, 2000) (emphasis supplied).

137. People v. Ibañez, G.R. No. 197813, 706 SCRA 358 (2013).

138. *Id.* at 373.

139. People v. Aleman, G.R. No. 181539, 702 SCRA 118, 131 (2013).

140. People v. Hamto, G.R. No. 128137, 362 SCRA 277, 284 (2001).

141. People v. Deauna, G.R. Nos. 143200-01, 386 SCRA 136, 155 (2002).

142. Armed Forces of the Philippines Retirement and Separation Benefits System v. Republic, G.R. No. 188956, 694 SCRA 118, 125 (2013).

143. People v. Umali, G.R. No. 84450, 193 SCRA 493 (1991).

144. *Id.* at 502.

> We rule that the fact that said witness is facing several criminal charges when he testified did not in any way disqualify him as a witness.
>
> The testimony of a witness should be given full faith and credit, in the absence of evidence that he was actuated by improper motive. Hence, in the absence of any evidence that witness Francisco Manalo was actuated by improper motive, his testimony must be accorded full credence.[145]

It is important to note the position of the Subcommittee that Rule 130, Section 22 is not the hearsay rule, but a rule limiting testimony as to what witnesses can describe based on firsthand knowledge.[146] Quoting a "well-known book on evidence," the Subcommittee said that

> [t]he objection that a witness lacks firsthand knowledge is in some ways more fundamental than the hearsay objection. There are no formal exceptions to the firsthand knowledge rule. Furthermore, if it can be shown from the surrounding circumstances that a hearsay declarant lacked firsthand knowledge of the subject of his declaration, evidence of that declaration will ordinarily be excluded even if it would otherwise come within some exceptions to the hearsay rule.[147]

In *Bayani v. People*,[148] the Court held that

> [u]nder the above rule, any evidence — whether oral or documentary — is hearsay if its probative value is not based on the personal knowledge of the witness, but on that of some other person who is not on the witness stand. Hence, information that is relayed to the former by the latter before it reaches the court is considered hearsay.[149]

In *Espineli v. People*,[150] the Court made a discussion on hearsay evidence and independently relevant statement as it relates to the cited rule, viz —

> Evidence is hearsay when its probative force depends[,] in whole or in part[,] on the competency and credibility of some persons other than the witness by whom it is sought to produce. However, while the testimony of a witness regarding a statement made by another person given for the purpose of establishing the truth of the fact asserted in the statement is clearly hearsay evidence, it is otherwise if the purpose of placing the statement on the record is merely to establish the fact that the statement, or the tenor of such

145. *Id.* (citing People v. Melgar, G.R. No. 75268, 157 SCRA 718, 725 (1988) (citing People v. Alcantara, G.R. No. L-49693-94126, SCRA 425, 436 (1983))).

146. EXPLANATORY NOTES, *supra* note 14, at 12.

147. *Id.*

148. Bayani v. People, G.R. No. 155619, 530 SCRA 84 (2007).

149. *Id.* at 84-85.

150. Espineli v. People, 735 Phil 530 (2014).

> statement, was made. Regardless of the truth or falsity of a statement, when what is relevant is the fact that such statement has been made, the hearsay rule does not apply and the statement may be shown. As a matter of fact, evidence as to the making of the statement is not secondary but primary, for the statement itself may constitute a fact in issue or is circumstantially relevant as to the existence of such a fact. This is known as the doctrine of independently relevant statements.[151]

In *Gulam v. Spouses Santos*, [152] the Court made the following pronouncement as to independently relevant statements —

> True, petitioner's statements may be considered as independently relevant statements and may be admissible not as to the veracity thereof [,] but to the fact that they had been thus uttered. However, the admissibility of his testimony to such effect should not be equated with its weight and sufficiency. Admissibility of evidence depends on its relevance and competence, while the weight of evidence pertains to evidence already admitted and its tendency to convince and persuade. In this case, both the RTC and the CA refused to give credence to petitioner's testimony, and the Court finds no reason to doubt the assessments made by both courts. Even assuming that his wife, indeed, told him that payments were made on these dates, still, it does not follow that it is sufficient proof to establish his claim of overpayment. These should be weighed vis-à-vis the other evidence on record, which, as appraised by the RTC and the CA, do not support petitioner's claim.[153]

Thus, considering the revisions under Rule 130 and the addition of Rule 130, Section 37 on Hearsay, as well as the position of the Subcommittee, the proper ground to be invoked in objecting to the testimony of a witness which is not based on personal knowledge is incompetence. Where the objection is based on a statement other than one made by the declarant while testifying at a trial or hearing, offered to prove the truth of the facts asserted therein, then the ground to be invoked is that the same is hearsay.[154]

> Section 23. *Disqualification by reason of marriage.* — During their marriage, the husband *or* the wife *cannot* testify against the other without the consent of the affected spouse, except in a civil case by one against the other, or in a criminal

151. *Id.* at 542 (citing Republic v. Heirs of Felipe Alejaga, Sr., G. R. No. 146030, 393 SCRA 361, 371 (2002)).

152. Gulam v. Santos, G.R. No. 151458, 500 SCRA 463 (2006).

153. *Id.* at 473-74.

154. *See* 1989 REVISED RULES ON EVIDENCE, rule 130, (C) (5) § 37.

> case for a crime committed by one against the other or the latter's direct descendants or ascendants. (22a)[155]

The more impactful amendment to the above provision is the deletion of the prohibition for a person to testify for their spouse.[156] In explaining this amendment, the Subcommittee stated —

> The marital disqualification rule is supposed to foster marital harmony [—] to prevent a witness spouse from being placed in a cruel 'trilemma,' [i.e.], to choose between contempt, perjury[,] and betrayal of his or her loved one. Hence, there is no compelling rationale for extending the disqualification to testimony 'for' the affected spouse. The disqualification should be limited to 'adverse spousal testimony.'[157]

As explained in *Alvarez v. Ramirez*,[158] the Court allowed the testimony of the spouse of the accused to prove that the accused committed the crime of arson against the respondent.[159] In so ruling, the Court explained as follows —

> It should be stressed that as shown by the records, prior to the commission of the offense, the relationship between petitioner and his wife was already strained. In fact, they were separated *de facto* almost six months before the incident. Indeed, the evidence and facts presented reveal that the preservation of the marriage between petitioner and Esperanza is no longer an interest the State aims to protect.
>
> At this point, it bears emphasis that the State, being interested in laying the truth before the courts so that the guilty may be punished and the innocent exonerated, must have the right to offer the direct testimony of Esperanza, even against the objection of the accused, because (as stated by this Court in *Francisco*), 'it was the latter himself who gave rise to its necessity.'[160]

It is important to note that the objection to the presentation of a person against his or her spouse must be made when he or she is first presented, otherwise, the objection is deemed waived.[161]

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155. *Id.*, rule 130, (C) (1) § 23 (emphasis supplied).

156. *See id. See also* 1989 REVISED RULES ON EVIDENCE, rule 130, § 22 (a).

157. EXPLANATORY NOTES, *supra* note 14, at 13.

158. Alvarez v. Ramirez, G.R. No. 143439, 473 SCRA 72 (2005).

159. *Id.* at 78.

160. *Id.*

161. People v. Pansensoy, G.R. No. 140634, 388 SCRA 669, 683 (2000).

This provision is distinguished from Rule 130, Section 24 (a), that is, spousal privilege for confidential communications made during the marriage, thus —

> The first privilege is the broader of the two in that it prevents all adverse testimony between spouses[,] not merely disclosure of confidential communications[,] and may even cover matters occurring prior to the marriage[,] whereas[,] the privilege for confidential communications is limited to those made during the course of marriage.
>
> Where neither spouse is party, the relevant disqualifying rule is that for marital communications.[162]

> Section 24. *Disqualification by reason of privileged communications*. — The following persons cannot testify as to matters learned in confidence in the following cases:
>
> ...
>
> (b) An attorney *or person reasonably believed by the client to be licensed to engage in the practice of law* cannot, without the consent of his client, be examined as to any communication made by the client to him *or her*, or his *or her* advice given thereon in the course of, or with a view to, professional employment, nor can an attorney's secretary, stenographer, or clerk, *or other persons assisting the attorney* be examined, without the consent of the client and his *or her* employer, concerning any fact the knowledge of which has been acquired in such capacity, *except in the following cases*:
>
> i. *Furtherance of crime or fraud*. If the services or advice of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud;
>
> ii. *Claimants through same deceased client*. As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate or by *inter vivos* transaction;
>
> iii. *Breach of duty by lawyer or client*. As to a communication relevant to an issue of breach of duty by the lawyer to his or her client, or by the client to his or her lawyer;
>
> iv. *Document attested by the lawyer*. As to a communication relevant to an issue concerning an

162. BAUTISTA, *supra* note 11, at 76.

> attested document to which the lawyer is an attesting witness; or
>
> v. *Joint clients*. As to a communication relevant to a matter of common interest between two or more clients if the communication was made by any of them to a lawyer retained or consulted in common, when offered in an action between any of the clients, unless they have expressly agreed otherwise.[163]

Under the amendments to the provision on attorney-client privilege, the privilege now extends to a person reasonably believed by the client to be licensed to engage in the practice of law and to other persons assisting the attorney (aside from persons previously mentioned, i.e., attorney's secretary, stenographer, or clerk).[164]

The amended provision on attorney-client privilege mentions circumstances when the attorney-client privilege cannot be invoked.[165] These exceptions were adopted from the American Bar Association's paper on the proposed Federal Rules of Evidence, which proposed the codification of common law exceptions to the attorney-client privilege.[166] These exceptions are —

(1) *Furtherance of a crime or fraud*.[167] This is a codification of an exception previously recognized. "The privilege covers only statements to an attorney relating to past misconduct, which may be a crime, tort[,] or fraud, so that statements seeking the services of the attorney in respect to on-going or future crimes or frauds are not privileged."[168]

(2) *Claimants through the same deceased client*.[169] In *Mercado v. Vitriolo*,[170] the Court in explaining the importance of the attorney-client privilege, mentioned that the privilege subsists even after the

163. REVISED RULES ON EVIDENCE, rule 130, (C) (1) § 24 (b) (i)-(v).

164. *Id.*

165. *Id.*

166. EXPLANATORY NOTES, *supra* note 14, at 14.

167. REVISED RULES ON EVIDENCE, rule 130, (C) (1) § 24 (b) (i).

168. EXPLANATORY NOTES, *supra* note 14, at 64.

169. REVISED RULES ON EVIDENCE, rule 130, (C) (1) § 24 (b) (ii).

170. Mercado v. Vitriolo, A.C. No. 5108, May 26, 2005, *available at* https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/42879 (last accessed Oct. 31, 2023).

death of the client.[171] The rationale for above amendment on opposing claimants from the same deceased client is that it would be unclear as to who among the opposing claimants would be considered as taking the place of the deceased client.[172] It was also stated that the communication of the deceased client and the counsel may shed some light as to the opposing claims, or to dispose of the deceased client's estates according to his wishes.[173]

(3) *Breach of duty by lawyer to the client.*[174] In common law, this is known as the self-defense exception. The justification being that the client impliedly waives the privilege by making allegations of breach of duty against the lawyer.[175] In *Minas v. Doctor*,[176] the Court held that the attorney-client privilege cannot be invoked by a lawyer to justify his failure to account for the amounts given to him by his client. In that same case, the Court stated —

> The mere relation of attorney and client does not raise a presumption of confidentiality. The client must intend for the communication to be confidential. A confidential communication refers to information transmitted by voluntary act of disclosure between attorney and client in confidence and by means, which, so far as the client is aware, discloses the information to no third person other than one reasonably necessary for the transmission of the information or the accomplishment of the purpose for which it was given. Thus, a compromise agreement prepared by a lawyer pursuant to the instruction of his client and delivered to the opposing party, an offer and counteroffer for settlement, as in this case, or a document given by a client to his counsel not in his professional capacity, are not privileged communications, the element of confidentiality not being present.
>
> ...

171. *Id.*

172. EXPLANATORY NOTES, *supra* note 14, at 15.

173. *Id.*

174. REVISED RULES ON EVIDENCE, rule 130, (C) (1) § 24 (b) (iii).

175. EXPLANATORY NOTES, *supra* note 14, at 15-16.

176. Minas v. Doctor, A.C. No. 12660, Jan. 28, 2020, *available at* https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66125 (last accessed Oct. 31, 2023).

> The burden of proving that the privilege applies is placed upon the party asserting the privilege.[177]

(4) *Document attested by the lawyer.*[178] The most common example is when the lawyer is an attesting witness to a notarial will. If the privilege were to apply, it would lead to an absurd situation where the lawyer was a witness, but cannot testify during the probate of the will, when the whole point of being an attesting witness is to be able to testify at the probate of the will.

(5) *Joint clients.*[179] This exemption contemplates a situation where the clients have dispute between themselves. The rationale for this exception is as follows —

> The traditional rationale for recognizing this exception is that joint clients do not intend their communication to be confidential from each other, and typically their communications to be confidential from each other, and typically their communications are made in each other's presence. At the time the communications are made joint clients generally are not in a position to know whether subsequent disclosure in litigation between themselves would be to their benefit or detriment. Moreover, there is no basis for favoring a joint client who seeks to asset the privilege as against a joint client who seeks to waive it in subsequent litigation between themselves. Therefore, agreeing to joint representation means that each joint client accepts the risk that another joint client may later use what she had said to the lawyer.[180]

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

...

(c) A *physician, psychotherapist*[,] *or person reasonably believed by the patient to be* authorized to practice medicine *or psychotherapy* cannot in a civil case, without the consent of the patient, be examined as to any *confidential communication made for the purpose of diagnosis or treatment of the patient's physical, mental or*

177. *Id.*

178. REVISED RULES ON EVIDENCE, rule 130, (C) (1) § 24 (b) (iv).

179. *Id.* rule 130, (C) (1) § 24 (b) (v).

180. EXPLANATORY NOTES, *supra* note 14, at 16 (citing CHRISTOPHER MUELLER, ET AL., ASPEN TREATIES FOR EVIDENCE (6th ed., 2018)).

emotional condition, including alcohol or drug addiction, between the patient and his or her physician or psychotherapist. This privilege also applies to persons, including members of the patient's family, who have participated in the diagnosis or treatment of the patient under the direction of the physician or psychotherapist.[181]

Below is a comparative table of the changes to the patient-physician privilege:

	1989 *Revised Rules on Evidence*	2019 *Amendments to the 1989 Revised Rules on Evidence*
As to who are covered by the privilege	Person authorized to practice medicine, surgery, or obstetrics	Physician, Psychotherapist, Person believed by patient to be authorized to practice medicine or psychotherapy Persons who have participated in the diagnosis or treatment of the patient under the direction of the physician or psychotherapist (includes members of patient's family)
Matters covered by the privilege	(1) Any advice or treatment given by the physician; or (2) Any information: (a) Which he may have acquired in	Any confidential communication made for the purpose of diagnosis or treatment of the patient's physical, mental, or emotional condition,

181. REVISED RULES ON EVIDENCE, rule 130, (C) (1) § 24 (c).

	1989 *Revised Rules on Evidence*	2019 *Amendments to the 1989 Revised Rules on Evidence*
	attending to such patient in a professional capacity. (b) Was necessary to enable him to act in such capacity; and (c) Would blacken the reputation of the patient	including alcohol or drug addiction

The patient-physician privilege has been explained in this wise —

> The privilege applies only where the patient is seeking treatment and shares with his doctor information pertinent to such treatment. Where[,] therefore[,] the examination was solely for the purpose of litigation, the patient-physician privilege does not apply although the attorney-client privilege may apply where the examination was conducted upon the request of the attorney.[182]

In *Chan v. Chan*,[183] the Court ruled that the patient-physician privilege is not limited to a prohibition from testimonial evidence. It stated —

> Josielene[,] of course[,] claims that the hospital records subject of this case are not privileged since it is the 'testimonial' evidence of the physician that may be regarded as privileged. Section 24[ ](c) of Rule 130 states that the physician 'cannot[,] in a civil case, without the consent of the patient, be examined regarding their professional conversation. The privilege, says Josielene, does not cover the hospital records, but only the examination of the physician at the trial.
>
> To allow, however, the disclosure during discovery procedure of the hospital records — the results of tests that the physician ordered, the diagnosis of the patient's illness, and the advice or treatment he gave him — would be to allow access to evidence that is inadmissible without the patient's consent.

182. BAUTISTA, *supra* note 11, at 72.

183. Chan v. Chan, G.R. No. 179786, 702 SCRA 76 (2013).

> Physician memorializes all these information in the patient's records. Disclosing them would be the equivalent of compelling the physician to testify on privileged matters he gained while dealing with the patient, without the latter's prior consent.[184]

The patient-physician privilege, as amended, also applies to the patient's family who participated in the diagnosis or treatment. The question is whether the amendment affects the doctrine laid down in *Krohn v. Court of Appeals,*[185] where the Court allowed the husband to testify on his wife's psychiatric report in relation to the petition for annulment of his marriage over the objections of the wife,[186] to wit —

> In the instant case, the person against whom the privilege is claimed is not one duly authorized to practice medicine, surgery[,] or obstetrics. He is simply the patient's husband who wishes to testify on a document executed by medical practitioners. Plainly and clearly, this does not fall within the claimed prohibition. Neither can his testimony be considered a circumvention of the prohibition because his testimony cannot have the force and effect of the testimony of the physician who examined the patient and executed the report.[187]

On one hand, strict compliance with Rule 130, Section 24 (c) seems to suggest that persons involved in the diagnosis or treatment of patients forecloses any possibility for such persons to testify on health-related matters.[188] This could mean, for example, that a spouse interviewed by a physician or psychotherapist for purposes of identifying symptoms of the other spouses' physical, mental, or emotional condition would be precluded from testifying on the same or related matters.

On the other hand, the ruling in *Krohn* does not appear to be wholly inconsistent with the prohibition against a family member testifying on matters relating to the diagnosis or treatment of the patient's physical, mental, or emotional condition. If the testimony is not sought from a person who had a participation in the diagnosis or treatment of the patient, the person may testify on a document executed by medical practitioners. In *Krohn*, the husband did not appear to have any hand in the diagnosis or treatment of his wife.[189]

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184. *Id.* at 84.

185. Krohn v. Court of Appeals, G.R. No. 108854, 233 SCRA 146 (1994).

186. *Id.* at 153.

187. *Id.*

188. *See* REVISED RULES ON EVIDENCE, rule 130, (C) (1) § 24 (c).

189. *See Krohn*, 233 SCRA at 153.

Be that as it may, reading the *Krohn* exception with the amendments may not suffice to guide litigants in approaching the situation outlined in the earlier paragraph. If a person not privy to the diagnosis or treatment of the patient is presented to testify on a matter relating to the patient's physical, mental, or emotional condition, would the witness still be a competent witness? Indeed, the Court said in *Krohn* —

> Counsel for petitioner indulged heavily in objecting to the testimony of private respondent on the ground that it was privileged ... [H]e invoked the rule on privileged communications but never questioned the testimony as hearsay. It was a fatal mistake. For, in failing to object to the testimony on the ground that it was hearsay, counsel waived his right to make such objection and, consequently, the evidence offered may be admitted.[190]

A possible solution may be the use of the modes of discovery, specifically Rule 28, Section 4 of the 2019 Amendments to the 1997 Rules of Civil Procedure on the Physical and Mental Examination of Persons,[191] which states —

> By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege he or she may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine him *or her* in respect of the same mental or physical examination.[192]

In addition to the amendments discussed above, the requirement that the information sought to be disclosed must tend to blacken the reputation of the patient before it may be covered by the physician-patient privilege was removed. The Subcommittee deemed the same to be too limiting and was thus deleted.[193] As amended, the provision is consistent with the general proposition that a patient's physical condition is considered sensitive personal information, subject to stringent protections.[194]

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190. *Id.* at 154.

191. *See* RULES OF CIVIL PROCEDURE, rule 28.

192. *Id.* at rule 28, § 4 (emphasis supplied).

193. EXPLANATORY NOTES, *supra* note 14, at 17.

194. *Id.* & An Act Protecting Individual Personal Information in Information and Communications Systems in the Government and the Private Sector, Creating for this Purpose a National Privacy Commission, and for Other Purposes [Data Privacy Act of 2012], Republic Act No. 10173, § 3 (l) (2) (2012). Section 3 (l) (2) of the Data Privacy Act of 2012 states —

The Subcommittee also noted that in the application of the provision, a medical doctor need only be licensed to practice medicine, and need not be a psychiatrist, but a psychologist must be licensed by the government.[195] In any case, the privilege applies to relations between the patient and a person reasonably believed by the patient to be authorized to practice medicine or psychotherapy.

> Section 24. *Disqualification by reason of privileged communications*. — The following persons cannot testify as to matters learned in confidence in the following cases:
>
> ...
>
> (a) A minister, priest[,] *or person reasonably believed to be so* cannot, without the consent of the *affected* person, be examined as to any *communication or* confession made to or any advice given by him *or her* in his *or her* professional character in the course of discipline enjoined by the church to which the minister or priest belongs.[196]

The amendment to priest-penitent privilege now includes a "person reasonably believed to be [a] minister or priest."[197]

The subject of the privilege now includes "any communication or confession."[198] This was meant to remove any taint of unconstitutionality from the privilege, as the requirement of confession to a priest appears to apply only to the Roman Catholic Church.[199]

> Section. 3. Definition of Terms. — Whenever used in this Act, the following terms shall have the respective meanings hereafter set forth:
>
> ...
>
> (l) Sensitive personal information refers to personal information:
>
> ...
>
> (2) About an individual's health, education, genetic[,] or sexual life of a person, or to any proceeding for any offense committed or alleged to have been committed by such person, the disposal of such proceedings, or the sentence of any court in such proceedings[.]

Id.

195. EXPLANATORY NOTES, *supra* note 14, at 17.

196. REVISED RULES ON EVIDENCE, rule 130, (C) (1) § 24 (d) (emphasis supplied).

197. *Id*.

198. *Id*.

199. EXPLANATORY NOTES, *supra* note 14, at 18.

> Section 24. *Disqualification by reason of privileged communications*. — The following persons cannot testify as to matters learned in confidence in the following cases:
>
> ...
>
> (e) A public officer cannot be examined during *or after his or her tenure* as to communications made to him *or her* in official confidence, when the court finds that the public interest would suffer by the disclosure.[200]

The amendment of the privilege for public officers was a matter of style. It is opined that the amendment from "term" to "tenure" was made because tenure is broader than term.[201]

The last paragraph of Rule 130, Section 24 which states that "[t]he communication shall remain privileged, even in the hands of a third person who may have obtained the information, provided that the original parties to the communication took reasonable precaution to protect its confidentiality[,]"[202] is a new provision.[203] This provision means that even if a third person not covered by the privilege were to obtain the privileged communication, the privilege remains, so long as the parties covered by the privilege can prove that they took measures designed to protect the confidentiality.[204] By way of example, if someone were to hack into the emails of a law office and get access to emails between the law firm and its clients, the same would still be privileged communication even if presented by a third person, so long as the law firm and/or the clients can prove that they had security measures in place to secure their respective computer systems.

VIII. TESTIMONIAL PRIVILEGE

> Section 25. *Parental and filial privilege*. — No person shall be compelled to testify against his or her parents, other direct ascendants, children[,] or other direct descendants, except when such testimony is indispensable in a crime against that person or by one parent against the other. (25a)[205]

The amendment to Rule 130, Section 25 on parental and filial privilege incorporates the exception stated in Article 215 of the Family Code, which states —

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200. REVISED RULES ON EVIDENCE, rule 130, (C) (1) § 24 (e) (emphasis supplied)

201. *Id*.

202. REVISED RULES ON EVIDENCE, rule 130, (C) (1) § 24, para. 8.

203. *See id*.

204. *Id*.

205. REVISED RULES ON EVIDENCE, rule 130, (C) (2) § 25 (emphasis supplied).

> Art. 215. No descendant shall be compelled, in a criminal case, to testify against his parents and grandparents, except when such testimony is indispensable in a crime against the descendant or by one parent against the other. (315a)[206]

In *People v. Invencion*,[207] the Court clarified that filial privilege is a privilege not to testify and not a disqualification to testify.[208] Thus, the person may waive the privilege by voluntarily testifying.[209] The provision is a prohibition for compelled testimony, "therefore[,] the family member has the option of testifying against the other family member."[210]

In *Lee v. Court of Appeals*,[211] the Court held that parental and filial privilege applies only to "direct" ascendants and descendants, and thus, cannot be invoked by someone who claims to be the stepmother of a party to justify the quashal of a subpoena *ad testificandum*.[212]

> Section 26. *Privilege relating to trade secrets*. — A person cannot be compelled to testify about any trade secret, unless the non-disclosure will conceal fraud or otherwise work injustice. When disclosure is directed, the court shall take such protective measure as the interest of the owner of the trade secret and of the parties and the furtherance of justice may require. (n)[213]

Rule 130, Section 26 on Trade Secrets is a new provision under Testimonial Privilege.[214] This provision is in keeping with the obligation of the Philippines under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement),[215] which is also embodied in Section 4

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206. The Family Code of the Philippines [FAMILY CODE], Executive Order No. 209, art. 215 (1987).

207. People v. Invencion, G.R. No. 131636, 398 SCRA 592 (2003).

208. *Id.* at 600.

209. *Id.*

210. BAUTISTA, *supra* note 11, at 77.

211. Lee v. Court of Appeals, G.R. No. 177861, 625 SCRA 66 (2010).

212. *Id.* at 74.

213. REVISED RULES ON EVIDENCE, rule 130, (C) (2) § 26 (emphasis supplied).

214. *See id.*

215. Agreement on Trade-Related Aspects of Intellectual Property Rights, *signed* Apr. 15, 1994, 1869 U.N.T.S. 299 [hereinafter TRIPS Agreement]. Article 34, Paragraph 3 and Article 39 of the treaty state —

> Article 34: Process Patents: Burden of Proof
>
> ...

of Republic Act No. 8293, also known as the Intellectual Property Code, to wit —

4.1. The term "intellectual property rights" consists of:

a) Copyright and Related Rights;

b) Trademarks and Service Marks;

c) Geographic Indications;

d) Industrial Designs;

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3. In the adduction of proof to the contrary, the legitimate interests of defendants in protecting their manufacturing and business secrets shall be taken into account.

...

Article 39

1. In the course of ensuring effective protection against unfair competition as provided in Article 10bis of the Paris Convention (1967), Members shall protect undisclosed information in accordance with paragraph 2 and data submitted to governments or governmental agencies in accordance with paragraph 3.

2. Natural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices so long as such information:

(a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;

(b) has commercial value because it is secret; and

(c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.

3. Members, when requiring, as a condition of approving the marketing of pharmaceutical or of agricultural chemical products which utilize new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, shall protect such data against unfair commercial use. In addition, Members shall protect such data against disclosure, except where necessary to protect the public, or unless steps are taken to ensure that the data are protected against unfair commercial use.

Id. art. 34 (3) & art. 39.

e) Patents;

f) Layout-Designs (Topographies) of Integrated Circuits; and

g) Protection of Undisclosed Information (n, TRIPS).[216]

The provision does not provide for a definition of "trade secrets." The Court, in *Air Philippines Corporation v. Pennswell, Inc.*,[217] however, defined "trade secret"

> as a plan or process, tool, mechanism[,] or compound known only to its owner and those of his employees to whom it is necessary to confide it. The definition also extends to a secret formula or process not patented, but known only to certain individuals using it in compounding some article of trade having a commercial value. A trade secret may consist of any formula, pattern, device, or compilation of information that: (1) is used in one's business; and (2) gives the employer an opportunity to obtain an advantage over competitors who do not possess the information. Generally, a trade secret is a process or device intended for continuous use in the operation of the business, for example, a machine or formula, but can be a price list[,] catalogue[,] or specialized customer list. It is indubitable that trade secrets constitute proprietary rights. The inventor, discoverer, or possessor of a trade secret or similar innovation has rights therein which may be treated as property, and ordinarily an injunction will be granted to prevent the disclosure of the trade secret by one who obtained the information "in confidence" or through a 'confidential relationship.' American jurisprudence has utilized the following factors to determine if an information is a trade secret, to wit:
>
> (1) the extent to which the information is known outside of the employer's business;
>
> (2) the extent to which the information is known by employees and others involved in the business;
>
> (3) the extent of measures taken by the employer to guard the secrecy of the information;
>
> (4) the value of the information to the employer and to competitors;
>
> (5) the amount of effort or money expended by the company in developing the information; and

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216. An Act Prescribing the Intellectual Property Code and Establishing the Intellectual Property Office, Providing for its Powers and Functions, and for Other Purposes [INTELL. PROP. CODE], Republic Act No. 8293, § 4.1 (1997).

217. Air Philippines Corporation v. Pennswell, Inc., G.R. No. 172835, 540 SCRA 215 (2007).

> (6) the extent to which the information could be easily or readily obtained through an independent source.[218]

Even before the amendment, however, the Supreme Court already recognized the privileged nature of trade secrets.[219] In so ruling, the Supreme Court cited the Interim Rules of Procedure on Government Rehabilitation[220], the Securities Regulation Code,[221] Article 291 and 292 of the Revised Penal Code,[222] the National Internal Revenue Code of 1997,[223] Republic Act No. 6969, the Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990,[224] and the Constitution,[225] thus —

> Clearly, in accordance with our statutory laws, this Court has declared that intellectual and industrial property rights cases are not simple property cases. Without limiting such industrial property rights to trademarks and trade names, this Court has ruled that all agreements concerning intellectual property are intimately connected with economic development. The protection of industrial property encourages investments in new ideas and inventions and stimulates creative efforts for the satisfaction of human needs. It speeds up transfer of technology and industrialization, and thereby bring about social and economic progress. Verily, *the protection of industrial secrets is inextricably linked to the advancement of our economy and fosters healthy competition in trade*.[226]

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218. *Id.* at 228-30.

219. *Id.*

220. *See generally* Interim Rules of Procedure on Corporate Rehabilitation, Administrative, A.M. No. 00-8-10-SC, (Nov. 21, 2000).

221. *See generally* The Securities Regulation Code [SEC. REG. CODE], Republic Act No. 8799, (2000).

222. An Act Revising the Penal Code and Other Penal Laws [REV. PENAL CODE], Act No. 3815, §§ 291 & 292 (1930) (repealed in 2011).

223. *See generally* An Act Amending the National Internal Revenue Code, as Amended, and for Other Purposes [NAT'L INTERNAL REVENUE CODE], Republic Act No. 8424 (1997).

224. *See generally* An Act to Control Toxic Substances and Hazardous and Nuclear Wastes, Providing Penalties for Violations Thereof, and for Other Purposes [Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990], Republic Act No. 6969, (1990).

225. *See generally* PHIL. CONST.

226. *Id.* at 237-38. (emphasis supplied).

In the same case, the Court ruled that since trade secrets are privileged matters, they may not be made subject of discovery procedures.[227]

> Section 28. *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. *Neither is evidence of conduct nor statements made in compromise negotiations admissible, except evidence otherwise discoverable or offered for another purpose, such as proving bias or prejudice of a witness, negativing a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution*.
>
> In criminal cases, except those involving quasi-offenses (criminal negligence) or those allowed by law to be compromised, an offer of compromise 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. *Neither is any statement made in the course of plea bargaining with the prosecution, which does not result in a plea of guilty or which results in a plea of guilty later withdrawn, admissible*.
>
> 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. (27a)[228]

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227. *Id*. 244-45 (citing RULES OF CIVIL PROCEDURE, rule 23, § 16). Rule 23, Section 16 provides —

> Section 16. *Orders for the protection of parties and deponents*. — After notice is served for taking a deposition by oral examination, upon motion seasonably made by any party or by the person to be examined and for good cause shown, the court in which the action is pending may make an order that the deposition shall not be taken, or that it may be taken only at some designated place other than that stated in the notice, or that it may be take only on written interrogatories, or that certain matters shall not be inquired into, or that the scope of the examination shall be held with no one present except the parties to the action and their officers or counsel, or that after being sealed the deposition shall be opened only by order of the court, or that secret processes, developments, or research need not be disclosed, or that the parties shall simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court; or the court may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, or oppression.

Id.

228. RULES ON EVIDENCE, rule 130, (C) (3) § 28.

The addition of the second sentence in the first paragraph of Rule 130, Section 28, provides that statements made in compromise negotiations are generally not admissible.[229] This was derived from Rule 408 of the Federal Rules of Evidence.[230] It was meant to enable lawyers and parties to negotiate freely without concern that their conduct or statements will later be received into evidence as admissions. It was pointed out that the amendment does not exclude admissibility of an offer of compromise for all purposes. The exclusionary rule is designed to exclude the offer of compromise only when it is tendered as an admission of the weakness of the offering party's claim or defense, not when the purpose is otherwise.[231] The amendment does not depart from the established jurisprudential exception that an offer of compromise in civil cases may be considered admission of liability if the defendant expressed a willingness to pay the plaintiff during the course of negotiations.[232]

The amendment in the third paragraph that excludes statements made during plea bargaining when the plea bargaining does not result in a plea of guilty, or results in a plea of guilty that is later withdrawn, was derived from

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229. *Id.*

230. FED. R. EVID., rule 408. Rule 408 states,

> Rule 408. Compromise Offers and Negotiations
>
> (a) Prohibited Uses. Evidence of the following is not admissible — on behalf of any party — either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction:
>
> (1) furnishing, promising, or offering — or accepting, promising to accept, or offering to accept — a valuable consideration in compromising or attempting to compromise the claim; and
>
> (2) conduct or a statement made during compromise negotiations about the claim — except when offered in a criminal case and when the negotiations related to a claim by a public office in the exercise of its regulatory, investigative, or enforcement authority.
>
> (b) Exceptions. The court may admit this evidence for another purpose, such as proving a witness's bias or prejudice, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

Id.

231. EXPLANATORY NOTES, *supra* note 14, at 22.

232. Philippine Airlines, Inc. v. PAL Employees Savings & Loan Association, Inc., 780 Phil. 795, 814 (2016).

Rule 410 of the Federal Rules of Evidence.[233] It was also meant to encourage and protect plea discussions or bargaining, which is considered a vital aspect of the criminal justice system.[234] This amendment should be distinguished from the second paragraph of Rule 130, Section 28.[235] Clearly, while statements made during plea bargaining are inadmissible (subject to the conditions stated therein), offers of compromise in criminal cases are generally admissible. Thus, the Court's ruling in *People v. Magdadaro y Gerona*[236] that "[a]n offer of compromise by the accused may be received in evidence as an implied admission of guilt"[237] is still good law.

It is important to note that if the offer of compromise is not made "in the context of a criminal proceeding[,]" it is not an implied admission.[238] It is not required that a criminal complaint first be filed before an offer of compromise be considered an implied admission of guilt. "What is required is that after committing the crime, the accused or his representative makes an offer to

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233. FED. R. EVID., rule 410. The provision states,

> Rule 410. Pleas, Plea Discussions, and Related Statements
>
> (a) Prohibited Uses. In a civil or criminal case, evidence of the following is not admissible against the defendant who made the plea or participated in the plea discussions:
>
> (1) a guilty plea that was later withdrawn;
>
> (2) a *nolo contendere* plea;
>
> (3) a statement made during a proceeding on either of those pleas under Federal Rule of Criminal Procedure 11 or a comparable state procedure; or
>
> (4) a statement made during plea discussions with an attorney for the prosecuting authority if the discussions did not result in a guilty plea or they resulted in a later-withdrawn guilty plea.
>
> (b) Exceptions. The court may admit a statement described in Rule 410[ ](a) (3) or (4):
>
> (1) in any proceeding in which another statement made during the same plea or plea discussions has been introduced, if in fairness the statements ought to be considered together; or
>
> (2) in a criminal proceeding for perjury or false statement, if the defendant made the statement under oath, on the record, and with counsel present.

Id.

234. EXPLANATORY NOTES, *supra* note 14, at 22.

235. *See* RULES ON EVIDENCE, rule 130, (C) (3) § 28.

236. People v. Magdadaro, G.R. No. 89370-72, 197 SCRA 151 (1991).

237. *Id.* at 157.

238. San Miguel Corporation v. Kalalo, G.R. No. 185522, 672 SCRA 401, 408 (2012).

compromise[,] and such offer is proved."[239] But an offer of compromise by an unauthorized person cannot be considered an implied admission of guilt.[240]

> Section 30. *Admission by co-partner or agent*. — The act or declaration of a partner or agent *authorized by* the party *to make a statement concerning the subject, or* within the scope of his *or her* 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. (29a)[241]

The erstwhile Rule 130, Section 28, now renumbered as Rule 130, Section 29, is the general rule on *res inter alios acta*. The rule provides that "[t]he rights of a party cannot be prejudiced by an act, declaration, or omission of another,"[242] except as provided under Rule 130, Sections 30 to 32, which lists admissions by third parties that are binding on others, otherwise known as vicarious admissions.[243]

Rule 130, Section 30, deals with admission by co-partner or agent.[244] As amended, the agent must now be authorized by the party to make a statement concerning the subject or made a statement within the scope of his authority.[245] If the statement was made within the scope of the agent's authority, the agent need not be authorized to make such a statement.[246]

Statements made within the scope of authority is limited to statements made when the agent was still within the control of the principal to safeguard against "grudge statements" or those whose only motive is to deflect liability.[247]

In addition, admission by a co-partner may be applicable to corporations, as ruled by the Court in *Narra Nickel Mining & Development Corporation v. Redmont Consolidated Mines Corporation*.[248]

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239. People v. Yparraguirre, G.R. No. 117702, 268 SCRA 35, 41 (1997).

240. People v. Erguiza, G.R. No.171348, 571 SCRA 634, 650 (2008).

241. REVISED RULES ON EVIDENCE, rule 130, (C) (3) § 30 (emphasis supplied).

242. *Id*. rule 130, (C) (3) § 29 (emphasis supplied).

243. *See id*. rule 130, (C) (3) §§ 30-32 (emphasis supplied).

244. *Id*. rule 130, (C) (3) § 30 (emphasis supplied).

245. *Id*.

246. EXPLANATORY NOTES, *supra* note 14, at 23.

247. *Id*.

248. Narra Nickel Mining & Development Corporation v. Redmont Consolidated Mines Corporation, 733 Phil. 365, 412 (2014).

> Section 31. *Admission by conspirator.* — The act or declaration of a conspirator *in furtherance of* 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. (30a)[249]

As amended, the admission by conspirator now requires that the act or declaration be in furtherance of the conspiracy. Previously, the requirement was that the act or declaration be "in relation to the conspiracy."[250] The current wording was lifted from Rule 801 (d) (2) (E) of the Federal Rules of Evidence.[251]The amendment codifies the rulings of the Supreme Court on the matter. The present wording is more precise and "requires that the act or declaration should advance the ends of the conspiracy rather than simply 'relate' to the conspiracy."[252]

In *People v. Comiling*,[253] the Court held that the rule on *res inter alios acta* and its exceptions only applies to extrajudicial statements, and not to statements given in open court.[254] Hence, statements in open court by a

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249. REVISED RULES ON EVIDENCE, rule 130, (C) (3) § 31 (emphasis supplied).

250. *Id.*

251. FED. R. EVID., rule 801 (d) (2) (E). The rule provides,

> Rule 801. Definitions That Apply to This Article; Exclusions from Hearsay. The following definitions apply under this article:
>
> ...
>
> (d) Statements That Are Not Hearsay. A statement that meets the following conditions is not hearsay:
>
> ...
>
> (2) An Opposing Party's Statement. The statement is offered against an opposing party and:
>
> ...
>
> (E) was made by the party's co[-]conspirator during and in furtherance of the conspiracy.
>
> The statement must be considered but does not by itself establish the declarant's authority under (C); the existence or scope of the relationship under (D); or the existence of the conspiracy or participation in it under (E).

Id.

252. EXPLANATORY NOTES, *supra* note 14, at 23-24.

253. People v. Comiling, G.R. No. 140405, 424 SCRA 698 (2004).

254. *Id.* at 717.

witness implicating an accused in the crime subject of trial is admissible against the accused.[255]

IX. HEARSAY

> Section 37. *Hearsay*. — Hearsay is a statement other than one made by the declarant while testifying at a trial or hearing offered to prove the truth of the facts asserted therein. A statement is (1) an oral or written assertion or (2) a non-verbal conduct of a person, if it is intended by him or her as an assertion. Hearsay evidence is inadmissible except as otherwise provided in these Rules.
>
> A statement is not hearsay if the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is[:] (a) inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition; (b) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive; or (c) one of identification of a person made after perceiving him or her. (n)[256]

Rule 130, Section 37 is a new provision providing a definition of what hearsay is, and reminds litigants that the same is still inadmissible; subject to the succeeding provisions on exceptions to the hearsay rule, which are already in existence.[257] Hearsay is an "out-of-court statement offered for the truth of the matter asserted."[258] The definition of "hearsay" was derived from Rule 801 (a) and (c) of the Federal Rules of Evidence.[259] Meanwhile,

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255. *Id.* & People v. Baharan, G.R. No. 188314, 639 SCRA 157, 160 (2011).

256. REVISED RULES ON EVIDENCE, rule 130, (C) (5) § 37.

257. *See id.*

258. BAUTISTA, *supra* note 11, at 203 (citing Carl C. Wheaton, *What Is Hearsay?*, 46 IOWA L. REV. 207, 210-11 (1961)).

259. FED. R. EVID. Rule 801 (a) & (c). Rule 801 provides,

> Rule 801. Definitions That Apply to This Article; Exclusions from Hearsay. The following definitions apply under this article:
>
> (a) Statement. "Statement" means a person's oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.
>
> ...
>
> (c) Hearsay. "Hearsay" means a statement that:
>
> (1) the declarant does not make while testifying at the current trial or hearing; and

the second paragraph is derived from Rule 801 (d) of the Federal Rules of Evidence.[260]

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(2) a party offers in evidence to prove the truth of the matter asserted in the statement.

Id.

260. FED. R. EVID. Rule 801 (d). Rule 801 provides,

> Rule 801. Definitions That Apply to This Article; Exclusions from Hearsay. The following definitions apply under this article:
>
> ...
>
> (d) Statements That Are Not Hearsay. A statement that meets the following conditions is not hearsay:
>
> (1) A Declarant-Witness's Prior Statement. The declarant testifies and is subject to cross-examination about a prior statement, and the statement:
>
> (A) is inconsistent with the declarant's testimony and was given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition;
>
> (B) is consistent with the declarant's testimony and is offered:
>
> (i) to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying; or
>
> (ii) to rehabilitate the declarant's credibility as a witness when attacked on another ground; or
>
> (C) identifies a person as someone the declarant perceived earlier.
>
> (2) An Opposing Party's Statement. The statement is offered against an opposing party and:
>
> (A) was made by the party in an individual or representative capacity;
>
> (B) is one the party manifested that it adopted or believed to be true;
>
> (C) was made by a person whom the party authorized to make a statement on the subject;
>
> (D) was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or
>
> (E) was made by the party's co[-]conspirator during and in furtherance of the conspiracy.
>
> The statement must be considered but does not by itself establish the declarant's authority under (C); the existence or

As defined in the first paragraph, a hearsay statement is an assertion that may be:

(1) oral or written; or

(2) non-verbal conduct of a person intended as an assertion.[261]

Prior to the amendment, out-of-court statements by an at-trial witness are treated as non-hearsay and are usually admitted without objection. This amendment "makes out-of-court statements by an at-trial witness hearsay and inadmissible as substantive evidence for the truth of the matter asserted therein," subject to exceptions.[262] Where, however, "the significance of an offered statement lies solely in the fact that it was made, no issue is raised as to the truth of anything asserted, and the statement is not hearsay."[263]

The second paragraph is consistent with the Supreme Court's recognition of the fact that

> [n]ot all hearsay evidence, however, is inadmissible as evidence. Over the years, a huge body of hearsay evidence has been admitted by courts due to their relevance, trustworthiness[,] and necessity ... [and that] some commentators believe that the hearsay rule should be abolished altogether instead of being loosened.[264]

Consistent with the thrust of liberalizing the rule on hearsay, the amendments, though retaining the same, adds circumstances when statements are not considered hearsay. The second paragraph provides for instances when statements are not considered hearsay:

(a) declarant testifies at the trial or hearing;

(b) the declarant is subjected to cross-examination concerning the statement; and

(c) the statement is either:

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scope of the relationship under (D); or the existence of the conspiracy or participation in it under (E).

Id.

261. REVISED RULES ON EVIDENCE, rule 130, (C) (5) § 37, para. 1.

262. EXPLANATORY NOTES, *supra* note 14, at 27.

263. Emich Motors Corp. v. General Motors Corp., 181 F. 2d 70, 71 (7th Cir. 1950) (U.S.).

264. Estrada v. Desierto, G.R. No. 146710-15, 356 SCRA 108, 128 (2001).

(i) given under oath subject to the penalty of perjury at a trial, hearing or other proceeding[,] or deposition and inconsistent with the declarant's testimony;

(ii) consistent with the declarant's testimony offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive; or

(iii) one of identification of a person made after perceiving him or her.[265]

The second situation mentioned in the provision when an out-of-court statement is not considered hearsay is known as "the prior consistent statement exception." A prior consistent statement is hearsay, *unless* it is offered to rebut a charge of recent fabrication.[266] If a statement consistent with the witness' testimony is offered without a charge of recent fabrication, then that is considered "cumulative superfluous proof." The amendment was meant to stop "the widespread practice of many lawyers of introducing earlier affidavits of witnesses on the stand after making them reaffirm the truth and contents thereof, this self-serving practice for the simple purpose of bolstering a witness' testimony has been much abused."[267]

> Section 39. *Statement of decedent or person of unsound mind*. — In an action 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, *where a party or assignor of a party or a person in whose behalf a case is prosecuted testifies on a* matter of fact occurring before the death of the deceased person or before such person became of unsound mind, *any statement of the deceased or the person of unsound mind, may be received in evidence if the statement was made upon the personal knowledge of the deceased or the person of unsound mind at a time when the matter had been recently perceived by him or her and while his or her recollection was clear. Such statement, however, is inadmissible if made under circumstances indicating its lack of trustworthiness*. (23a)[268]

The old Rule 130, Section 23 was known as the "Deadman's Statute," which prohibited testimony on any matter occurring before the death of a

265. 2019 AMENDMENTS TO THE 1989 REVISED RULES ON EVIDENCE, rule 130, (C) (5) § 37, para. 2.

266. United States v. Coleman, 72 M.J. 184, 187 (2013) (U.S.).

267. EXPLANATORY NOTES, *supra* note 14, at 27.

268. REVISED RULES ON EVIDENCE, rule 130, (C) (6) § 39 (emphases supplied).

person in a claim or demand against his estate.[269] As amended and renumbered, Rule 130, Section 39 now allows a party prosecuting a case against a representative of a deceased or incapacitated person to testify on a matter of fact occurring before death or incapacity, provided any statement of the deceased or incapacitated person may be received in evidence, if the statement was made: "(1) upon the personal knowledge of the deceased or the person of unsound mind; (2) at a time when the matter had been recently perceived by him or her; and (3) while his or her recollection was clear."[270]

As a measure of security, the statement is inadmissible if the statement was made under the circumstances indicating its lack of trustworthiness.

According to the Explanatory Notes, this amendment was meant to correct an injustice which occurs "by sealing the lips of someone who might actually [ ] have a claim against a deceased person."[271]

> Section 40. *Declaration against interest*. — The declaration made by a person deceased, or unable to testify, against the interest of the declarant, if the fact is asserted in the declaration was at the time it was made so far contrary to the declarant's own interest, that a reasonable *person* in his *or her* position would not have made the declaration unless he *or she* believed it to be true, may be received in evidence against himself *or herself* or his *or her* successors in interest and against third persons. *A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.* (38a)[272]

Rule 130, Section 40 (Declaration against interest) was amended to add the second sentence on admission against penal interest.[273] This amendment

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269. 1989 REVISED RULES ON EVIDENCE, rule 130, § 23. The provision states —

> Section 23. Disqualification by reason of death or insanity of adverse party. — Parties or assignors of parties to a case, or persons in whose behalf a case is prosecuted, against an executor or administrator or other representative of a deceased person, or against a person of unsound mind, upon a claim or demand against the estate of such deceased person or against such person of unsound mind, cannot testify as to any matter of fact occurring before the death of such deceased person or before such person became of unsound mind. (20a)

Id.

270. REVISED RULES ON EVIDENCE, rule 130, (C) (6) § 39 (emphasis supplied).

271. EXPLANATORY NOTES, *supra* note 14, at 28.

272. REVISED RULES ON EVIDENCE, rule 130, (C) (6) § 40 (emphases supplied).

273. *See id*. *See also* 1989 REVISED RULES ON EVIDENCE, rule 128 § 4.

was adopted from Rule 804 (b) (3) of the Federal Rules of Evidence,[274] and codified long-standing jurisprudence on the matter.

The amendment makes it clear that in this jurisdiction, declaration against interest includes declaration against penal interest. There is not much debate about this since as early as 1928, in *People v. Toledo*,[275] the Court held that the declaration against interest may be a declaration against penal interest,[276] thus —

> Hearsay evidence, with a few well recognized exceptions, it has been said on high authority, is excluded by courts in the United States that adhere to the principles of the common law. One universally recognized exception concerns the admission of dying declarations. Another exception permits the reception, under certain circumstances, of declarations of third parties made contrary to their own pecuniary or proprietary interest. But[,] the general rule is stated to be that the declarations of a person other than accused confessing or tending to show that he committed the crime are not competent for accused on account of the hearsay doctrine.[277]
>
> ...

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274. FED. R. EVID., rule 804 (b) (3). The provision states,

> Rule 804. Exceptions to the Rule Against Hearsay — When the Declarant Is Unavailable as a Witness
>
> ...
>
> (b) The Exceptions. The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness:
>
> ...
>
> (3) Statement Against Interest. A statement that:
>
> (A) a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and
>
> (B) is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability.

Id.

275. People v. Toledo and Holgado, 51 Phil. 825 (1928).

276. *Id.* at 831.

277. *Id.*

> In the Philippine jurisdiction, we have never felt bound to follow blindly the principles of the common law. A re[-]examination of some of those principles discloses anomalies.[278]
>
> ...
>
> Any man outside of a court and unhampered by the pressure of technical procedure, unreasoned rules of evidence, and cumulative authority, would say that if a man deliberately acknowledged himself to be the perpetrator of a crime and exonerated the person charged with the crime, and there was other evidence indicative of the truthfulness of the statement, the accused man should not be permitted to go to prison or to the electric chair to expiate a crime he never committed. Shall Judges trained and experienced in the law display less discerning common sense that the layman and allow precedent to overcome truth?[279]

As it is now worded, declarations against interest includes penal interest, subject to the requirement of corroborating circumstances that would indicate the trustworthiness of the declaration. Corroborating circumstances means "there must be independent evidence that directly or circumstantially tends to prove the purpose for which the statement is offered."[280]

> Section 41. *Act or declaration about pedigree.* — The act or declaration of a person deceased, or unable to testify, in respect to the pedigree of another person related to him *or her* by birth*, adoption*, or marriage *or, in the absence thereof, with whose family he or she was so intimately associated as to be likely to have accurate information concerning his or her pedigree*, may be received in evidence where it occurred before the controversy, and the relationship between the two persons is shown by evidence other than such act or declaration. The word "pedigree" includes relationship, family genealogy, birth, marriage, death, the dates when and the places where these facts occurred, and the names of the relatives. It embraces also facts of family history intimately connected with pedigree. (39a)[281]
>
> Section 42. *Family reputation or tradition regarding pedigree.* — The reputation or tradition existing in a family previous to the controversy, in respect to the pedigree of any one of its members, may be received in evidence if the witness testifying thereon be also a member of the family, either by consanguinity, affinity, *or adoption*. Entries in family bibles or other family

278. *Id.* at 833.

279. *Id.* at 839.

280. EXPLANATORY NOTES, *supra* note 14, at 29.

281. REVISED RULES ON EVIDENCE, rule 130, (C) (6) § 41 (emphases supplied).

> books or charts, engravings on rings, family portraits and the like, may be received as evidence of pedigree. (40a)[282]

The amendment to Rule 130, Section 41 added that the relationship between the declarant and the person whose pedigree is in issue may be by adoption.[283] In the absence of a relative, the amendments also allow the declarant to be someone who "is so intimately associated as to be likely to have accurate information concerning his or her pedigree."[284]

The relationship by adoption was also added to Rule 130, Section 42 for a witness who will testify on family reputation or tradition regarding pedigree.[285]

The rationale for these amendments is that a declarant who was "related to the person by adoption or so intimately associated with his [or her] family ... likely had accurate information [and is] trustworthy enough."[286]

As amended, the requirements for the admission of declaration as to pedigree or family history are as follows:

(1) the declarant is deceased or unable to testify;

(2) the declarant is related by blood, marriage, adoption, or so intimately associated to the person about whom the declaration is made;

(3) the relationship is proved by evidence independent of the declaration; and

(4) the declaration was made prior to the controversy that is subject of the litigation (*ante litem motam*).[287]

In *Tison v. Court of Appeals*,[288] the Court appears to have relaxed the third requirement for a declaration about pedigree —

> The general rule, therefore, is that where the party claiming seeks recovery against a relative common to both claimant and declarant, but not from the declarant himself or the declarant's estate, the relationship of the declarant to

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282. *Id.* rule 130, (C) (6) § 42 (emphasis supplied).

283. *See id.* rule 130, (C) (6) § 41 (emphasis supplied).

284. *Id.*

285. *See id.* rule 130, (C) (6) § 42.

286. EXPLANATORY NOTES, *supra* note 14, at 30.

287. BAUTISTA, *supra* note 11, at 230-31.

288. Tison v. Court of Appeals, G.R. No. 121027, 276 SCRA 582 (1997).

> the common relative may not be proved by the declaration itself. There must be some independent proof of this fact. As an exception, the requirement that there be other proof than the declarations of the declarant as to the relationship, does not apply where it is sought to reach the estate of the declarant himself[,] and not merely to establish a right through his declarations to the property of some other member of the family.
>
> We are sufficiently convinced, and so hold, that the present case is one instance where the general requirement on evidence *aliunde* may be relaxed. Petitioners are claiming a right to part of the estate of the declarant herself. Conformably, the declaration made by Teodora Dezoller Guerrero that petitioner Corazon is her niece, is admissible and constitutes sufficient proof of such relationship, notwithstanding the fact that there was no other preliminary evidence thereof, the reason being such declaration is rendered competent by virtue of the necessity of receiving such evidence to avoid a failure of justice. More importantly, there is[,] in the present case[,] an absolute failure by all and sundry to refute that declaration made by the decedent.
>
> From the foregoing disquisitions, it may thus be safely concluded, on the sole basis of the decedent's declaration and without need for further proof thereof, that petitioners are the niece and nephew of Teodora Dezoller Guerrero. As held in one case, where the subject of the declaration is the declarant's own relationship to another person, it seems absurd to require, as a foundation for the admission of the declaration, proof of the very fact which the declaration is offered to establish. The preliminary proof would render the main evidence unnecessary.[289]

It was opined that "[t]he rule does not require that the witness who testifies in court must be related to the person whose pedigree is under consideration, but that the declarant whose statements are given in evidence by the witness was so related."[290]

> Section 43. *Common reputation*. — Common reputation existing previous to the controversy, *as to boundaries of or customs affecting lands in the community and reputation as to events of general history important to the community*, or respecting marriage[,] or moral character, may be given in evidence. Monuments and inscriptions in public places may be received as evidence of common reputation. (41a)[291]

289. *Id.* at 595-96.

290. BAUTISTA, *supra* note 11, at 231.

291. REVISED RULES ON EVIDENCE, rule 130, (C) (6) § 43 (emphasis supplied).

The current phraseology is derived from Section 803 (20) of the Federal Rules of Evidence.[292] Rule 130, Section 43 on common reputation is now limited to reputation regarding the following:

(1) boundaries of lands in the community;

(2) customs affecting lands in the community;

(3) events of general history important to the community; and

(4) respecting marriage or moral character.[293]

The provision with regard to reputation respecting facts of public or general interest more than 30 years old was deleted as it was observed that there was a dearth of jurisprudence on the old Rule 130, Section 41 on common reputation.[294] It was also observed that the phrase "facts of public or general interest" was too vague, and the limitation that it be more than 30 years old narrows the application even further.[295] The amendment was meant to address difficulties of proving claims in rural communities.[296]

It must be noted that the reputation must be the condition prior to the controversy. In *Civil Service Commission v. Belagan*,[297] the Court ruled that the reputation must not be so far away from the controversy,[298] to wit —

> First, most of the [22] cases filed with the MTC of Baguio City relate to acts committed in the 80[s], particularly, 1985 and 1986. With respect to the

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292. FED. R. EVID., rule 803 (20). The provision states,

> Rule 803. Exceptions to the Rule Against Hearsay. The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:
>
> ...
>
> (20) Reputation Concerning Boundaries or General History. A reputation in a community — arising before the controversy — concerning boundaries of land in the community or customs that affect the land, or concerning general historical events important to that community, state, or nation.

Id.

293. REVISED RULES ON EVIDENCE, rule 130, (C) (6) § 43 (emphasis supplied).

294. *Compare id. with* 1989 REVISED RULES ON EVIDENCE, rule 130 § 41 (a) (superseded in 2019).

295. EXPLANATORY NOTES, *supra* note 14, at 31.

296. *Id.*

297. Civil Service Commission v. Belagan, G.R. No. 132164, 440 SCRA 578 (2004).

298. *Id.* at 593-94.

> complaints filed with the Chairmen of Barangay Gabriela Silang and Barangay Hillside, the acts complained of took place in 1978 to 1979. In the instant administrative case, the offense was committed in 1994. Surely, those cases and complaints are no longer reliable proofs of Magdalena's character or reputation. The Court of Appeals, therefore, erred in according much weight to such evidence. Settled is the principle that *evidence of one's character or reputation must be confined to a time not too remote from the time in question. In other words, what is to be determined is the character or reputation of the person at the time of the trial and prior thereto, but not at a period remote from the commencement of the suit*. Hence, to say that Magdalena's credibility is diminished by proofs of tarnished reputation existing almost a decade ago is unreasonable. It is unfair to presume that a person who has wandered from the path of moral righteousness can never retrace his steps again. Certainly, every person is capable to change or reform.[299]

> Section 44. *Part of res gestae*. — Statements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto, *under the stress of excitement caused by the occurrence* with respect to the circumstances thereof, may be given in evidence as part of *the res gestae*. So, also, statements accompanying an equivocal act material to the issue, and giving it a legal significance, may be received as part of the *res gestae*. (42a)[300]

The phrase "under the stress of excitement caused by the occurrence" was added to Rule 130, Section 44.[301] This amendment was meant "to underscore the rationale for the hearsay exception — the elimination of the declarant's reflective capacity because the statement was made under the stress of the excitement ... Courts should be conscious that the time interval between the startling occurrence and the statement should not be long enough to permit reflective thought."[302] Thus, in *DBP Pool of Accredited Insurance Co. v. Radio Mindanao Network, Inc.*, [303] the Court held that the testimony of the investigating officers as to what the bystanders said could not be considered as part of the *res gestae*,[304] to wit —

> The Court is not convinced to accept the declarations as part of *res gestae*. While it may concede that these statements were made by the bystanders during a startling occurrence, it cannot be said however, that these utterances

299. *Id.* (emphasis supplied).

300. REVISED RULES ON EVIDENCE, rule 130, (C) (6) § 44 (emphasis supplied).

301. *See id.*

302. EXPLANATORY NOTES, *supra* note 14, at 32.

303. DBP Pool of Accredited Insurance Co. v. Radio Mindanao Network, Inc., G.R. No. 147039, 480 SCRA 314 (2006).

304. *Id.* at 325.

> were made spontaneously by the bystanders and before they had the time to contrive or devise a falsehood. Both SFO III Rochar and Lt. Col. Torres received the bystanders' statements while they were making their investigations during and after the fire. It is reasonable to assume that when these statements were noted down, the bystanders already had enough time and opportunity to mill around, talk to one another[,] and exchange information, not to mention theories and speculations, as is the usual experience in disquieting situations where hysteria is likely to take place. It cannot therefore be ascertained whether these utterances were the products of truth. That the utterances may be mere idle talk is not remote.[305]

However, in *Capila y Yruma v. People*,[306] the Court accepted the statements made to the police investigator as part of the *res gestae*,[307] thus —

> We are in accord with the Court of Appeals in its conclusion that all the requisites of the rule on [*r*]*es gestae* are present. The principal act, which by any measure is undoubtedly a startling occurrence, is the robbery of which petitioner is being charged. Immediately after the robbery, Dimas dela Cruz, the security guard then on duty, informed Ariel that one of the perpetrators is herein petitioner. Dimas likewise reported at once the incident to the police and to the security agency. When questioned by SPO4 Maximo, Dimas, who was still shocked, named petitioner herein as one of the robbers. His statements to Ariel and SPO4 Maximo were made before he had the time and opportunity to concoct and contrive a false story. We note that Dimas personally knows petitioner considering that both worked in the same security agency and assigned in the same office.[308]

There are several kinds of statements that may be considered as part of the *res gestae*:[309]

(1) Verbal Acts or statements that accompany an equivocal act material to the issue, giving it a legal significance. In *Talidano v. Falcon Maritime & Allied Services, Inc.*,[310] the Court discussed this type of *res gestae* in this wise —

> Neither will the second kind of *res gestae* apply. The requisites for its admissibility are: (1) the principal act to be characterized must be equivocal;

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305. *Id.*

306. Capila v. People, G.R. No. 146161, 495 SCRA 276 (2006).

307. *Id.* at 282.

308. *Id.*

309. BAUTISTA, *supra* note 11, at 233-35.

310. Talidano v. Falcon Maritime & Allied Services, Inc., G.R. No. 172031, 558 SCRA 279 (2008).

> (2) the equivocal act must be material to the issue; (3) the statement must accompany the equivocal act; and (4) the statements give a legal significance to the equivocal act.
>
> Petitioner's alleged absence from watch duty is simply an innocuous act or at least proved to be one. Assuming arguendo that such absence was the equivocal act, it is nevertheless not accompanied by any statement more so by the fax statements adverted to as parts of the res gestae. No date or time has been mentioned to determine whether the fax messages were made simultaneously with the purported equivocal act.
>
> Furthermore, the material contents of the fax messages are unclear. The matter of route encroachment or invasion is questionable. The ship master, who is the author of the fax messages, did not witness the incident. He obtained such information only from the Japanese port authorities. Verily, the messages can be characterized as double hearsay.[311]
>
> (2) Excited Utterances. This type of *res gestae* was also discussed by the Supreme Court in *Talidano*, to wit —
>
> To be admissible under the first class of *res gestae*, it is required that: (1) the principal act be a startling occurrence; (2) the statements were made before the declarant had the time to contrive or devise a falsehood; and (3) that the statements must concern the occurrence in question and its immediate attending circumstances.
>
> Assuming that petitioner's negligence — which allegedly caused the ship to deviate from its course — is the startling occurrence, there is no showing that the statements contained in the fax messages were made immediately after the alleged incident. In addition, no dates have been mentioned to determine if these utterances were made spontaneously or with careful deliberation. Absent the critical element of spontaneity, the fax messages cannot be admitted as part of the res gestae of the first kind.[312]

This type of *res gestae* utterance does not require that the declarant be dead or unavailable to testify. "The declarant's spontaneous exclamation is better than is likely to be obtained from him upon the stand, and this by itself alone is sufficient to justify the exception."[313] Hence, in *People v. Ner*,[314] the fact that the declarant was not put on the witness stand did not make her

311. *Id.* at 295-96.

312. *Id.* at 294-95.

313. BAUTISTA, *supra* note 11, at 236.

314. People v. Ner, G.R. No. L-25504, July 31, 1969, *available at* https://elibrary.judiciary.gov.ph/search (last accessed Oct. 31, 2023).

declaration inadmissible, although testified to by the first policeman at the scene, the statement being considered as part of the *res gestae*.[315]

A statement that does not meet the requirements of a dying declaration because it was not made under the consciousness of impending death may yet qualify as an excited utterance.[316] In *People v. Lobigas*,[317] the Court held that the statement made by the victim to one of the witnesses for the prosecution identifying the persons who mauled him was part of the *res gestae*, and not a dying declaration, to wit —

> The trial court held that although the foregoing declarations cannot be deemed a dying declaration since they do not appear to have been made by the declarant under the expectation of a sure and impending death, the same are nonetheless part of the *res gestae*. However, only the declaration made to Castor Guden are admissible in evidence as such.[318]

(3) Present Sense Impressions or a statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.[319] This is not expressly recognized as an exception in the Philippines.[320]

(4) Declarations of Present State of Mind. An illustrative example is the case of *Estrada v. Desierto*,[321] where the Court accepted the entry of Senator Edgardo Angara in his diary as to what President Estrada said during EDSA DOS, to prove his intention to resign.[322] The Supreme Court considered these as statements of a person showing his state of mind as excepted from the hearsay ban because they are independently relevant statements, not because the statements are true, but because the statements are circumstantial evidence of the facts in issue.[323]

(5) Declarations of Present Physical Condition or an out-of-court statement may be testified to by any witness who overheard it,

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315. *Id.*

316. BAUTISTA, *supra* note 11, at 239.

317. People v. Lobigas, G.R. No. 147649, 394 SCRA 170 (2002).

318. *Id.* at 178.

319. BAUTISTA, *supra* note 11, at 241.

320. *Id.* at 240.

321. Estrada v. Desierto, G.R. No. 146710-15, 353 SCRA 452, 564 (2001).

322. *Id.*

323. BAUTISTA, *supra* note 11, at 244.

> and there is no requirement that the person overhearing it be a physician.[324]

> Section 45. *Records of regularly conducted business activity*. — A memorandum, report, record or data compilation of acts, events, conditions, opinions, or diagnoses, made by writing, typing, 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, 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. (43a)[325]

Rule 130, Section 45 is an amendment of the former Rule 130, Section 43.[326] Nothing remains of the business entry rule, as it was previously known. It was observed that the old provision "had little practical value because of the unreasonable requirements that the entrant must be dead or unable to testify and that he must have personal knowledge of the matter recorded. These stringent requirements work undue hardship on the litigants and render the exception useless."[327] Thus, in *Security Bank & Trust Co. v. Gan*,[328] the Court disallowed the admission of ledger cards of the bank to prove the overdraft of private respondent, to wit —

> The plaintiff submits that the ledger cards constituted the best evidence of the transactions made by the defendant with the bank relative to his account, pursuant to Section 43 of Rule 130 of the Revised Rules on Evidence. There is no question that the entries in the ledgers were made by one whose duty

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324. *Id*. at 246.

325. REVISED RULES ON EVIDENCE, rule 130, (C) (6) § 45 (emphasis supplied).

326. *Compare* 2019 AMENDMENT TO THE 1989 REVISED RULES ON EVIDENCE, rule 130, (C) (6) § 45 *with* 1989 REVISED RULES ON EVIDENCE, rule 130, § 43. The former Rule 130, Section 43 states,

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

1989 REVISED RULES ON EVIDENCE, rule 130, § 43.

327. EXPLANATORY NOTES, *supra* note 14, at 33.

328. Security Bank & Trust Company v. Gan, G.R. No. 150464, 493 SCRA 239 (2006).

> it was to record transactions in the ordinary or regular course of the business. But for the entries to be *prima facie* evidence of the facts recorded, the Rule interpose[s] a very important condition, one which we think is truly indispensable to the probative worth of the entries as an exception to the hearsay rule, and that is that the entrant must be '*in a position to know the facts therein stated*.' Undeniably, Mr. Mercado was in a position to know the facts of the check deposits and withdrawals. But the transfers of funds through the debit memos in question?
>
> Let us be clear, at the outset, what the transactions covered by the debit memos are. They are, at bottom, credit accommodations said to have been granted by the bank's branch manager Mr. [Q]ui to the defendant, and they are, therefore loans, to prove which competent testimonial or documentary evidence must be presented. In the fac[e] of the denial by the defendant of the existence of any such agreement, and the absence of any document reflecting it, the testimony of a party to the transaction, i.e., Mr. [Q]ui, or of any witness to the same, would be necessary. The plaintiff failed to explain why it did not or could not present any party or witness to the transactions, but even if it had a reason why it could not, it is clear that the existence of the agreements cannot be established through the testimony of Mr. Mercado, for he was [not in] a position to [know] those facts. As a subordinate, he could not have done more than record what was reported to him by his superior[,] the branch manager, and unless he was allowed to be privy to the latter's dealings with the defendant, the information that he received and entered in the ledgers was incapable of being confirmed by him.[329]

Rule 130, Section 45 hues more closely to Rule 8, Section 1 (inapplicability of the hearsay rule) of the Rules on Electronic Evidence,[330] thus:

Rule 130, Section 45	Rule 8, Section 1, Rule on Electronic Evidence
Records of regularly conducted business activity. — A memorandum, report, record or data compilation of acts, events, conditions, opinions,	*Inapplicability of the hearsay rule*. — A memorandum, report, record or data compilation of acts, events, conditions, opinions, or

329. *Id.* at 245-46.

330. *See* RULES ON ELECTRONIC EVIDENCE, rule 8, § 1. *See also* Electronic Commerce Act & 2019 AMENDMENTS TO THE 1989 REVISED RULES ON EVIDENCE, rule 130, (C) (6) § 45.

Rule 130, Section 45	Rule 8, Section 1, Rule on Electronic Evidence
or diagnoses, made by writing, typing, 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.[331]	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.[332]

Thus, electronic documents and paper-based documents are treated similarly for purposes of the application of the rule stated above.

It should be noted that for electronic documents, Rule 8, Section 2 of the Rules on Electronic Evidence should be considered, to wit —

> *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.[333]

In relation to the business entry rule, "business" is defined as "any regular, systematic activity, and this would include business concerns and related

331. REVISED RULES ON EVIDENCE, rule 130, (C) (6) § 45.

332. RULES ON ELECTRONIC EVIDENCE, rule 8, § 1. *See also* Electronic Commerce Act.

333. RULES ON ELECTRONIC EVIDENCE, rule 8, § 2.

enterprises[,] such as hospitals and educational institutions."[334] Meanwhile, records made in the regular course of business are those "made for the systematic conduct of the business as a business."[335]

> Section 49. *Testimony or deposition at a former proceeding.* — The testimony or deposition of a witness deceased or *out of the Philippines or who cannot, with due diligence, be found therein, or is unavailable or otherwise* unable to testify, given in a former case or proceeding, judicial or administrative, involving the same parties and subject matter, may be given in evidence against the adverse party who had the opportunity to cross-examine him *or her.* (47a)[336]

As amended, the following are the requirements when one may use the previous testimony or deposition of a witness from a former proceeding:

(a) the testimony or deposition was taken at a former proceeding involving the same parties and subject matter[;]

(b) the testimony or deposition was against a party who had opportunity to cross-examine the witness[;]

(c) the witness is either:

(i) deceased;

(ii) out of the Philippines;

(iii) one who cannot, with due diligence, be found in the Philippines;

(iv) unavailable; or

(v) otherwise unable to testify.[337]

In *Ambray, et al. v. Tsourous, et al.*,[338] the Court explained the reason for this exception to the hearsay rule in this wise —

> The reasons for the admissibility of testimony taken at a former trial or proceeding are the necessity for the testimony and its trustworthiness. However, before the former testimony can be introduced in evidence, the proponent must first lay the proper predicate therefor, i.e., the party must establish the basis for the admission of testimony in the realm of admissible evidence.[339]

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334. BAUTISTA, *supra* note 11, at 251.

335. *Id.* (citing Palmer v. Hoffman, 318 U.S. 109, 113 (1943)).

336. REVISED RULES ON EVIDENCE, rule 130, (C) (6) § 49 (emphases supplied).

337. *Id.*

338. Ambray v. Tsourous, G.R. No. 209264, 789 Phil. 226 (2016).

339. *Id.* at 241.

The requirement that the former proceeding involve the "same parties" has been construed to mean there is an identity of parties, or a situation where the party in the former case is in "privity" with, or is substantially the same as, a party in the present case.[340] In *Bartlett v. Kansas City Public Service Co.*,[341] the Court ruled as follows —

> This rule does not apply, however, if the issues litigated in the former proceeding are wholly dissimilar from those litigated on the subsequent trial. For cross-examination to be effective it must be directed to the precise issue subsequently involved ... Hence, no real opportunity for cross-examination is had and the testimony offered in the subsequent trial is but little different than a mere *ex parte* affidavit.[342]

It has been observed that in this jurisdiction, the courts are hesitant to find identity of parties, despite common issue, where one case is criminal and the other civil.[343]

In determining if a witness is unavailable to testify, the Supreme Court has ruled that refusal to testify at the second case, if not shown to be procured by the other party, is not the same as unavailability of witnesses, hence, the testimony at a previous proceeding cannot be presented. [344] Illustrative examples of these are the following cases:

In *People v. Villaluz*, [345] the Court allowed the presentation of the transcripts of the testimony of two prosecution witnesses during preliminary investigation at the trial of the accused for murder.[346] The Court held that the transcripts of the two witnesses during the preliminary investigation were admissible at the trial because the attendance of the witnesses could not be secured despite the efforts of local and national law enforcement officers.[347] In

340. BAUTISTA, *supra* note 11, at 263.

341. Bartlett v. Kansas City Public Service Co., 160 S.W.2d 740, 743 (1942) (U.S.).

342. *Id.*

343. BAUTISTA, *supra* note 11, at 270 (citing Ed. A. Keller & Co. v. Ellerman & Bucknall Steamship Co., 38 Phil. 514 (1918) & Aldecoa v. Jugo, 61 Phil. 374 (1935)).

344. Tan v. Court of Appeals, G.R. No. L-22793, 20 SCRA 53, 57-58 (1967).

345. People v. Villaluz, G.R. No. L-33459, 125 SCRA 116 (1983).

346. *Id.* at 119-20.

347. *Id* at 119.

addition, the records showed that the witnesses were cross-examined by accused's lawyer during the preliminary investigation.[348]

A contrary ruling is found in *Toledo v. People*,[349] where the Court held that the transcript of the testimony of the witness during preliminary investigation could not be presented at trial because the witness who did not appear at the trial merely ignored subpoena issued to him.[350] The Court pointed out that, same as in *Tan*, there was no proof that the party procuring the testimony of a witness exerted efforts to secure the attendance of the witness.[351] In both *Toledo* and *Tan*, the Court appears to be saying that "refusal to testify" is not the same as "unavailable to testify."

> Section 50. *Residual exception*. — A statement not specifically covered by any of the foregoing exceptions, having equivalent circumstantial guarantees of trustworthiness, is admissible if the court determines that[:] (a) the statement is offered as evidence of a material fact; (b) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (c) the general purposes of these rules and the interests of justice will be best served by admission of the statement into evidence. However, a statement may not be admitted under this exception, unless the proponent makes known to the adverse party, sufficiently in advance of the hearing, or by the pre-trial stage in the case of a trial of the main case, to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant. (n)[352]

The new provision was intended to loosen the traditional restrictions on hearsay. This catchall exception was derived from Rule 807 of the Federal Rules of Evidence,[353] which codified the ruling in *Dallas Country v.*

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348. *Id.* at 117.

349. Toledo, Jr. v. People, G.R. No. L-36603, 85 SCRA 355 (1978).

350. *Id.* at 370

351. *Tan*, G.R. No. L-22793.

352. REVISED RULES ON EVIDENCE, rule 130, (C) (6) § 50.

353. FED. R. EVID., rules 803 (24) & 807. The Rules provide,

> Rule 807. Residual Exception
>
> (a) In General. Under the following conditions, a hearsay statement is not excluded by the rule against hearsay even if the statement is not admissible under a hearsay exception in Rule 803 or 804:
>
> (1) the statement is supported by sufficient guarantees of trustworthiness — after considering the totality of

Commercial Union Co.[354] It must be emphasized, that the loosening of restrictions may only be done if the conditions stated in the provision are complied with.[355]

To summarize, the requirements for a statement to be considered as admissible under the residual exception are:

(a) statement is offered as evidence of a material fact;

(b) statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts;

(c) the general purposes of these rules and the interests of justice will be best served by the admission of the statement into evidence; and

(d) made known to the adverse party:

  (i) the intention to offer the statement;

  (ii) name and address of the declarant; and

  (iii) sufficiently in advance of the hearing, or by the pre-trial stage in the case of a trial of the main case, to provide the adverse part with a fair opportunity to prepare to meet it.[356]

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circumstances under which it was made and evidence, if any, corroborating the statement; and

(2) it is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts.

(b) Notice. The statement is admissible only if the proponent gives an adverse party reasonable notice of the intent to offer the statement — including its substance and the declarant's name — so that the party has a fair opportunity to meet it. The notice must be provided in writing before the trial or hearing — or in any form during the trial or hearing if the court, for good cause, excuses a lack of earlier notice.

Id.

354. Dallas Country v. Commercial Union Co., Ltd., 286 F. 2d. 388, 391-98 (5th Cir. 1961) (U.S.).

355. EXPLANATORY NOTES, *supra* note 14, at 34.

356 REVISED RULES ON EVIDENCE, rule 130, (C) (6) § 50.

For the residual exception to apply, the statement must have the "equivalent circumstantial guarantees of trustworthiness" for the statement to be admissible.[357]

Section 52, regarding opinions of expert witnesses, states that "[t]he opinion of a witness on a matter requiring special knowledge, skill, experience [ ], training[,] *or education*, which he *or she* is shown to possess, may be received in evidence."[358]

The knowledge possessed by the expert witness may now also be acquired through "education."[359] The addition of the qualification that the knowledge may be acquired through "education" was made to make the "coverage more expansive."[360]

The provision in Rule 133, Section 5 on weight and sufficiency of evidence should be considered when presenting an expert witness. Rule 133, Section 5 deals with the weight to be given to the opinion of an expert witness that is received in evidence.[361] In *Lavarez v. Guevarra*,[362] the Court stated that

> the testimony of expert witnesses must be construed to have been presented not to sway the court in favor of any of the parties, but to assist the court in the determination of the issue before it. Although courts are not ordinarily bound by expert testimonies, they may place whatever weight they may choose upon such testimonies in accordance with the facts of the case. The relative weight and sufficiency of expert testimony is peculiarly within the province of the trial court to decide, considering the ability and character of the witness, his actions upon the witness stand, the weight and process of the reasoning by which he has supported his opinion, his possible bias in favor of the side for whom he testifies, the fact that he might be a paid witness, the relative opportunities for study and observation of the matters about which he testifies, and any other matters which deserve to illuminate his statements. The opinion of the expert may not be arbitrarily rejected; it is to be considered by the court in view of all the facts and circumstances in the case and when common knowledge utterly fails, the expert opinion may be given controlling effect. The problem of the credibility of the expert witness and

357. BAUTISTA, *supra* note 11, at 273.

358. REVISED RULES ON EVIDENCE, rule 130, (C) (7) § 52 (emphases supplied).

359. *Id.*

360. EXPLANATORY NOTES, *supra* note 14, at 36.

361. *Id.*

362. Lavarez v. Guevarra, 808 Phil. 247 (2017).

the evaluation of his testimony is left to the discretion of the trial court whose ruling on such is not reviewable in the absence of abuse of discretion.[363]

X. CHARACTER EVIDENCE

Section 54. *Character evidence not generally admissible*; *exceptions*: — Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

(a) In Criminal Cases:

(1) The character of the offended party may be proved if it tends to establish in any reasonable degree the probability or improbability of the offense charged.

(2) The accused may prove his or her good moral character which is pertinent to the moral trait involved in the offense charged. However, the prosecution may not prove his or her bad moral character unless on rebuttal.

(b) In Civil Cases:

Evidence of the moral character of a party in civil case is admissible only when pertinent to the issue of character involved in the case.

(c) *In Criminal and Civil Cases:*

Evidence of the good character of a witness is not admissible until such character has been impeached. (Section 14, Rule 132)

In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.

In cases in which character or a trait of character of a person is an essential element of a charge, claim or defense, proof may also be made of specific instances of that person's conduct. (51a; 14, Rule 132)[364]

As a general rule, character evidence is not admissible.[365] While it is not a new rule, it is only now that it was explicitly stated in this section. This general rule was adopted from Rule 404 of the Federal Rules of Evidence.[366] In *People v.*

363. *Id*. at 255-56.

364. REVISED RULES ON EVIDENCE, rule 130, (C) (8) § 54 (emphasis supplied).

365. *Id*.

366. EXPLANATORY NOTES, *supra* note 14, at 37 (citing FED. R. EVID., rule 404). Rule 404 of the Federal Rules of Evidence states,

Rule 404. Character Evidence; Other Crimes, Wrongs, or Acts

(a) Character Evidence.

(1) Prohibited Uses. Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.

(2) Exceptions for a Defendant or Victim in a Criminal Case. The following exceptions apply in a criminal case:

(A) a defendant may offer evidence of the defendant's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it;

(B) subject to the limitations in Rule 412, a defendant may offer evidence of an alleged victim's pertinent trait, and if the evidence is admitted, the prosecutor may:

(i) offer evidence to rebut it; and

(ii) offer evidence of the defendant's same trait; and

(C) in a homicide case, the prosecutor may offer evidence of the alleged victim's trait of peacefulness to rebut evidence that the victim was the first aggressor.

(3) Exceptions for a Witness. Evidence of a witness's character may be admitted under Rules 607, 608, and 609.

(b) Other Crimes, Wrongs, or Acts.

(1) Prohibited Uses. Evidence of any other crime, wrong, or act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

(2) Permitted Uses. This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

(3) Notice in a Criminal Case. In a criminal case, the prosecutor must:

(A) provide reasonable notice of any such evidence that the prosecutor intends to offer at trial, so that the defendant has a fair opportunity to meet it;

(B) articulate in the notice the permitted purpose for which the prosecutor intends to offer the evidence and the reasoning that supports the purpose; and

(C) do so in writing before trial — or in any form during trial if the court, for good cause, excuses lack of pretrial notice.

FED. R. EVID., rule 404.

Lee,[367] the Court defined "character" as "the possession by a person of certain qualities of mind and morals, distinguishing him from others. It is the opinion generally entertained of a person derived from the common report of the people who are acquainted with him; his reputation."[368] The Supreme Court also stated the justification for the inadmissibility of character evidence, to wit —

> The rule is that the character or reputation of a party is regarded as legally irrelevant in determining a controversy, so that evidence relating thereto is not admissible. Ordinarily, if the issues in the case were allowed to be influenced by evidence of the character or reputation of the parties, the trial would be apt to have the aspects of a popularity contest rather than a factual inquiry into the merits of the case. After all, the business of the court is to try the case, and not the man; and a very bad man may have a righteous cause.[369]

Some of the exceptions stated in this provision are also not new, such as the exception regarding the character of a witness, which was originally found in Rule 132, Section 14.

The last two paragraphs are new and provide how character evidence may be proved and/or rebutted. Character evidence may be proven by testimony as to the reputation or an opinion as to the character of the person whose character is in issue.[370] As explained, the amendment was a "recognition of the fact that reputation evidence is often nothing more than 'opinion in disguise.'"[371]

Inquiry into relevant specific instances of conduct is allowed in two situations: (1) on cross-examination of testimony as to the character of a person; and (2) when the character of a person is an essential element of the charge, claim, or defense.[372]

XI. RULE 131: BURDEN OF PROOF AND PRESUMPTIONS

> Section 1. *Burden of proof and burden of evidence.* — Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his *or her* claim or defense by the amount of evidence required by law. *Burden of proof never shifts*.

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367. People v. Lee, G.R. No. 139070, 382 SCRA 596 (2002).

368. *Id.* at 614.

369. *Id.* at 614-15.

370. *See* REVISED RULES ON EVIDENCE, rule 130, (C) (8) § 54.

371. EXPLANATORY NOTES, *supra* note 14, at 39.

372. *See* RULES ON EVIDENCE, rule 130, (C) (8) § 54.

> *Burden of evidence is the duty of a party to present evidence sufficient to establish or rebut a fact in issue to establish a prima facie case. Burden of evidence may shift from one party to the other in the course of the proceedings, depending on the exigencies of the case.* (1a)[373]

Rule 131, Section 1, Paragraph 2 explicitly defines burden of evidence. The concept is not new. In fact, the amendment appears to be a codification of settled jurisprudence, i.e., *DBP Pool of Accredited Insurance Co.*,[374] where the Court explained the burden of evidence in insurance cases in this wise —

> The 'burden of proof' contemplated by the aforesaid [contractual] provision actually refers to the 'burden of evidence' (burden of going forward). As applied in this case, it refers to the duty of the insured to show that the loss or damage is covered by the policy. The foregoing clause notwithstanding, the burden of proof still rests upon petitioner to prove that the damage or loss was caused by an excepted risk in order to escape any liability under the contract.
>
> Burden of proof is the duty of any party to present evidence to establish his claim or defense by the amount of evidence required by law, which is preponderance of evidence in civil cases. The party, whether plaintiff or defendant, who asserts the affirmative of the issue has the burden of proof to obtain a favorable judgment. For the plaintiff, the burden of proof never parts. For the defendant, an affirmative defense is one which is not a denial of an essential ingredient in the plaintiff's cause of action, but one which, if established, will be a good defense — i.e. an 'avoidance' of the claim.
>
> ...
>
> Consequently, it is sufficient for private respondent to prove the fact of damage or loss. Once respondent makes out a *prima facie* case in its favor, the duty or the burden of evidence shifts to petitioner to controvert respondent's *prima facie* case. In this case, since petitioner alleged an excepted risk, then the burden of evidence shifted to petitioner to prove such exception. It is only when petitioner has sufficiently proven that the damage or loss was caused by an excepted risk does the burden of evidence shift back to respondent who is then under a duty of producing evidence to show why such excepted risk does not release petitioner from any liability. Unfortunately for petitioner, it failed to discharge its primordial burden of proving that the damage or loss was caused by an excepted risk.[375]

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373. *Id.*, rule 131, § 1 (emphasis supplied).

374. DBP Pool of Accredited Insurance Companies v. Radio Mindanao Network, Inc., G.R. No. 147039, 480 SCRA 314 (2006).

375. *Id.* at 322-23.

Not much has changed since *Delaware Coach Co. v. Savage*,[376] which is the case oft-cited to explain burden of evidence, to wit —

> Upon the establishment of a *prima facie* case the burden of evidence or the burden of going forward with the evidence shifts to the defensive party. It then becomes incumbent upon such defensive party to meet the *prima facie* case which has been established. For this purpose[,] the defensive party need not produce evidence which preponderates or outweighs or surpasses the evidence of his adversary, but it is sufficient if such evidence is co-equal, leaving the proof in equilibrium. If the defensive party, either by a preponderance of evidence or evidence sufficient to establish equilibrium, has met and answered the *prima facie* case, then the burden of going forward with the evidence returns to the original proponent charged with the burden of proof who must in turn, by a preponderance or greater weight of evidence, overcome the equilibrium thus established, or otherwise support his burden of proof by a preponderance of the evidence. This is true whether the original *prima facie* case is founded upon affirmative evidence or established by the doctrine of *res ipsa loquitur* or other presumption or inference of law. Sweeney v. Erving, 228 U.S. 233, 33 S. Ct. 416, 57 L. Ed. 815, Ann.Cas.1914D, 905. As said in Commercial Molasses Corporation v. New York Tank Barge Corporation, 314 U.S. 104, 111, 62 S. Ct. 156, 161, 86 L. Ed. 89, an inference or presumption 'does no more than require the [defensive party,] if he would avoid the inference, to go forward with evidence sufficient to persuade that the nonexistence of the fact, which would otherwise be inferred, is as probable as its existence. It does not cause the burden of proof to shift, and if the [defensive party] does go forward with evidence enough to raise doubts as to the validity of the inference, which the trier of facts is unable to resolve, the [proponent] does not sustain the burden of persuasion which upon the whole evidence remains upon him, where it rested at the start.' The court cited, *inter alia*, the opinion of Judge Woolley in Tomkins Cove Stone Co. v. Bleakley Transp. Co., 3 Cir., 40 F.2d 249.[377]

> Section 5. *Presumptions in civil actions and proceedings*. — In all civil actions and proceedings not otherwise provided for by the law or these Rules, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption.
>
> If presumptions are inconsistent, the presumption that is founded upon weightier considerations of policy shall apply. If considerations of policy are of equal weight, neither presumption applies. (n)[378]

376. Delaware Coach Co. v. Savage, 81 F.Supp. 293 (D. Del 1948) (U.S.).

377. *Id*. at 296.

378. REVISED RULES ON EVIDENCE, rule 131, § 5 (emphasis supplied).

> Section 6. *Presumption against an accused in criminal cases*. — If a presumed fact that establishes guilt, is an element of the offense charged, or negates a defense, the existence of the basic fact must be proved beyond reasonable doubt and the presumed fact follows from the basic fact beyond reasonable doubt. (n)[379]

A presumption is "an inference *required* by a rule of law to be drawn as to the existence of one fact from the existence of some other established basic fact or combination of facts."[380]

Presumptions may aid parties in the discharging of their burden of proof, as explained by the Court —

> During the trial of an action, the party who has the burden of proof upon an issue may be aided in establishing his claim or defense by the operation of a presumption, or, expressed differently, by the probative value which the law attaches to a specific state of facts. A presumption may operate against his adversary who has not introduced proof to rebut the presumption. The effect of a legal presumption upon a burden of proof is to create the necessity of presenting evidence to meet the legal presumption or the *prima facie* case created thereby, and which if no proof to the contrary is presented and offered, will prevail. The burden of proof remains where it is, but by the presumption the one who has that burden is relieved for the time being from introducing evidence in support of his averment, because the presumption stands in the place of evidence unless rebutted.[381]

Rule 131, Sections 5 and 6 are new provisions that expressly state what happens in civil (Section 5) and criminal (Section 6) cases when a presumption arises. *Perez v. People*[382] is an illustrative example of how Rule 131, Section 6 operates, to wit —

> Verily, an accountable public officer may be found guilty of malversation even if there is no direct evidence of malversation because the law establishes a presumption that mere failure of an accountable officer to produce public funds which have come into his hands on demand by an officer duly authorized to examine his accounts *is prima facie* case of conversion.
>
> Because of the *prima facie* presumption in Article 217, the burden of evidence is shifted to the accused to adequately explain the location of the funds or property under his custody or control in order to rebut the presumption that

379. *Id*., rule 131, § 6 (emphasis supplied).

380. BAUTISTA, *supra* note 11, at 282.

381. Lee v. Court of Appeals, G.R. No. 117913, 375 SCRA 579, 590-91 (2002).

382. Perez v. People, G.R. No. 164763, 544 SCRA 532 (2008).

> he has appropriated or misappropriated for himself the missing funds. Failing to do so, the accused may be convicted under the said provision.
>
> However, the presumption is merely *prima facie* and a rebuttable one. The accountable officer may overcome the presumption by proof to the contrary. If he adduces evidence showing that, in fact, he has not put said funds or property to personal use, then that presumption is at end and the *prima facie* case is destroyed.[383]

The second paragraph of Rule 131, Section 5 deals with situations when there are inconsistent presumptions. The Subcommittee provided as an example the superiority of the presumption of innocence over the presumption that "a young Filipina will not charge a person with rape if it is not true" because the former "is founded upon the first principles of justice [ ] and is not a mere form but a substantial part of the law."[384]

XII. RULE 132: PRESENTATION OF EVIDENCE

> Section 1. *Examination to be done in open court.* — The examination of witnesses presented in a trial or hearing shall be done in open court, and under oath or affirmation. Unless the witness is incapacitated to speak, or the questions calls for a different mode of answer, the answers of the witness shall be given orally. (1)[385]

This provision was not amended. In *People v. Go*,[386] the Court explained the necessity of examination of witnesses in open court in this wise —

> Thus, Section 1 of Rule 133 of the Rules requires that in determining the superior weight of evidence on the issues involved, the court, aside from the other factors therein enumerated, may consider the "witness' manner of testifying" which can only be done if the witness gives his testimony "orally in open court." If a trial judge prepares his opinion immediately after the conclusion of the trial, with the evidence and his impressions of the witnesses fresh in his mind, it is obvious that *he is much more likely to reach a correct result than if he simply reviews the evidence from a typewritten transcript, without having had the opportunity to see, hear*[,] *and observe the actions and utterances of the witness*.
>
> There is an additional advantage to be obtained in requiring that the direct testimony of the witness be given orally in court. Rules governing the examination of witness are intended to protect the rights of litigants and to secure orderly dispatch of the business of the courts. Under the rules, only

383. *Id*. at 548.

384. EXPLANATORY NOTES, *supra* note 14, at 45 (citing People v. Godoy, 250 SCRA 676, 726 (1995)).

385. REVISED RULES ON EVIDENCE, rule 132, (A) § 1 (emphasis supplied).

386. People v. Go, 422 Phil. 589 (2002).

> questions directed to the eliciting of testimony which, under the general rules of evidence, is relevant to, and competent to prove, the issue of the case, may be propounded to the witness. A witness may testify only to those facts which he knows of his own knowledge. Thus, on direct examination, leading questions are not allowed, except on preliminary matters, or when there is difficulty in getting direct and intelligible answer from the witness who is ignorant, a child of tender years, or feebleminded, or a deaf-mute. It is obvious that such purpose may be subverted, and the orderly dispatch of the business of the courts thwarted, if trial judges are allowed, as in the case at bar, to adopt any procedure in the presentation of evidence other than what is specifically authorized by the Rules of Court.[387]

Be that as it may, the prevailing rules on the direct examination of witnesses are those found in A.M. No. 12-8-8-SC or the Judicial Affidavit Rule,[388] the Rules on Summary Procedure,[389] A.M. No. 15-06-10-SC (Revised Guidelines for Continuous Trial of Criminal Cases),[390] and Rules 9 and 10 of the Rules on Electronic Evidence.[391] The requirement for the direct examination to be done in open court, as previously contemplated, is no longer a necessity. These aforementioned rules provide that affidavits, judicial or otherwise, as the case may be, take the place of the direct testimony of a witness. Thus, the examination of a witness is not wholly done in open court.

With regard to the requirement that the testimony of a witness must be done under oath or affirmation, the rules do not provide a prescribed form of the oath or affirmation. "All that the common law requires is a form or statement which impresses upon the mind and conscience of a witness the necessity for telling the truth."[392]

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387. *Id*. *See also* People v. Estenzo, G.R. No. L-41166, 72 SCRA 428 (1976) & Sacay v. Sandiganbayan, G.R. No. L-66497-98, July 10, 1986, *available at* https://elibrary.judiciary.gov.ph/assets/dtSearch/dtSearch_system_files/dtisapi6.dll?cmd=getdoc&DocId=32493&Index=%2a4aeb4dbdcceeda9b59b85ae3fb22cec0&HitCount=14&hits=69+6a+ff+100+2f3+2f4+438+439+457+458+6d5+6d6+7a6+7a7+&SearchForm=C%3a%5celibrev2%5csearch%5csearch%5fform (last accessed Oct. 31, 2023).

388. *See generally* JUDICIAL AFFIDAVIT RULE.

389. *See generally* RULES ON EXPEDITED PROCEDURES IN FIRST LEVEL COURTS, A.M. No. 08-8-7-SC.

390. *See generally* REVISED GUIDELINES FOR CONTINUOUS TRIAL OF CRIMINAL CASES.

391. *See* RULES ON ELECTRONIC EVIDENCE, rules 9 & 10.

392. U.S. v. Lopez, 419 F.2d 1405, 1407 (4th Cir., 1969) (U.S.).

In *People v. Zheng Bai Hui*,[393] the Court held that "[t]he failure of a witness to take an oath prior to his testimony is a defect that may be waived by the parties."[394]

> Section 4. *Order in the examination of an individual witness*. — The order in which the individual witness may be examined is as follows;
>
> (a) Direct examination by the proponent;
>
> (b) Cross-examination by the opponent;
>
> (c) Re-direct examination by the proponent; [and]
>
> (d) Re-cross-examination by the opponent. (4)[395]

This provision was not amended. It is important to note, however, Section 7 of the Judicial Affidavit Rule, which states —

> Section 7. *Examination of the witness on his judicial affidavit*. — The adverse party shall have the right to cross-examine the witness on his judicial affidavit and on the exhibits attached to the same. The party who presents the witness may also examine him as on re-direct. In every case, the court shall take active part in examining the witness to determine his credibility as well as the truth of his testimony and to elicit the answers that it needs for resolving the issues.[396]

> Section 6. *Cross-examination; its purpose and extent*. — Upon the termination of the direct examination, the witness may be cross-examined by the adverse party *on any relevant matter*, with sufficient fullness and freedom to test his *or her* accuracy and truthfulness and freedom from interest or bias, or the reverse, and to elicit all important facts bearing upon the issue. (6a)[397]

Cross-examination is an important part of the judicial process. It is the embodiment of one of the constitutional rights of the accused (or of any defendant) to confront the witnesses against him.[398] In *Kim Liong v. People*,[399] the Court held —

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393. People v. Zheng Bai Hui, G.R. No. 127580, 338 SCRA 420 (2000).

394. *Id.* at 444.

395. REVISED RULES ON EVIDENCE, rule 132, (A) § 4.

396. JUDICIAL AFFIDAVIT RULE, § 7.

397. REVISED RULES ON EVIDENCE, rule 132, (A) § 6 (emphases supplied).

398. PHIL. CONST. art. III, § 14 (2).

399. Kim Liong v. People, G.R. No. 200630, June 4, 2018, *available at* https://elibrary.judiciary.gov.ph/thebookshelf/showdocsfriendly/1/64209 (last accessed Oct. 31, 2023).

> The fundamental rights of the accused are provided in Article III, Section 14 of the Constitution:
>
> Section 14. (1) No person shall be held to answer for a criminal offense without due process of law.
>
> (2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to *meet the witnesses face to face*, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.
>
> 'To meet the witnesses face to face' is the right of confrontation. Subsumed in this right to confront is the right of an accused to cross-examine the witnesses against him or her, i.e., to propound questions on matters stated during direct examination, or connected with it. The cross-examination may be done 'with sufficient fullness and freedom to test [the witness'] accuracy and truthfulness and freedom from interest or bias, or the reverse, and to elicit all important facts bearing upon the issue.'[400]

As stated in the rule, cross examination is meant to test the accuracy, truthfulness, and freedom from interest or bias of the witness. In *People v. Ortillas y Gamlanga*, [401] the Court discussed the importance of cross-examination —

> The cross-examination of a witness is essential to test his or her credibility, expose falsehoods or half-truths, uncover the truth which rehearsed direct examination testimonies may successfully suppress, and demonstrate inconsistencies in substantial matters which create reasonable doubt as to the guilt of the accused and thus give substance to the constitutional right of the accused to confront the witnesses against him.[402]

The amendment to the section on cross-examination changed the matters that a witness may be questioned on during cross-examination. Previously, the cross-examination was allowed on any matter covered by direct examination. As it is now worded, a witness may be cross-examined on any relevant matter. As early as *Capitol Subdivision v. Negros Occidental*,[403] the Court has recognized

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400. *Id.* (emphasis supplied).

401. People v. Ortillas, G.R. No. 137666, 428 SCRA 659 (2004).

402. *Id.* at 668-69 (citing People v. Rivera, G.R. No. 139180, 362 SCRA 153, 170 (2001)).

403. Capitol Subdivision v. Prov. Of Neg. Occ., 99 Phil. 633 (1956).

that a witness may be cross-examined on matters not covered by direct examination, to wit —

> In this jurisdiction, section 87 above quoted provides that the adverse party may cross-examine a witness for the purpose among others, of eliciting all important facts bearing upon the issue. From this provision it may clearly be inferred that a party may cross-examine a witness on matters not embraced in his direct examination. But this does not mean that a party by doing so is making the witness his own accordance with section 83.[404]

There are, however, instances in the Rules of Court when cross-examination is limited to matters covered by direct examination:

(1) Rule 115, Section 1 (d) of the Rules of Court states that an accused has the right "[t]o testify as a witness in his own behalf but *subject to cross-examination on matters covered by direct examination*. His silence shall not in any manner prejudice him."[405]

(2) Rule 132, Section 13, Paragraph 3 of the Rules of Court provides that an unwilling or hostile witness or an adverse party witness "may also be impeached and cross-examined by the adverse party, but such cross-examination must only be on the subject matter of his examination-in-chief."[406]

> Section 12. *Impeachment by evidence of conviction of crime*. — For the purpose of impeaching a witness, evidence that he or she has been convicted by final judgment of a crime shall be admitted if (a) the crime was punishable by a penalty in excess of one year; or (b) the crime involved moral turpitude, regardless of the penalty.
>
> However, evidence of a conviction is not admissible if the conviction has been the subject of an amnesty or annulment of the conviction. (n)[407]

Impeachment of a witness is

> an attack on the credibility of a witness. It may be done either on cross-examination or by independent evidence. It encompasses all evidence intended to cast doubt upon a witness's testimony, including evidence that

404. *Id*. at 637.

405. 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 115, § 1 (d) (emphasis supplied).

406. REVISED RULES ON EVIDENCE, rule 132, § 13, para. 3.

407. *Id*. rule 132, (A) § 12.

> calls into question the accuracy of his observation, his recollection, or the truthfulness of his testimony.[408]

Rule 132, Section 11 provides that, as a general rule, a witness's testimony may not be impeached by evidence of particular wrongful acts.[409] However, if on examination of a witness or by a record of the judgment, it is shown that the witness was convicted of an offense, then the witness may be impeached.[410] Rule 132, Section 12, to the Rules on Evidence specifies the requirements in order to impeach a witness by reason of a previous conviction by final judgment:

> (a) conviction of a crime by final judgment; and
>
> (b) the conviction is for a crime:
>
> (i) punishable by a penalty more than one year; or
>
> (ii) that involves moral turpitude, regardless of penalty[.][411]

Rule 132, Section 12 was meant to clarify what crimes would make one an uncredible witness. It was observed that, as previously worded, any conviction of a crime may be used to impeach the credibility of a witness. The Subcommittee felt that the crime must be a serious one before it may have a bearing on credibility.[412] The requirement that the crime involve moral turpitude was added because "moral turpitude" has a settled meaning in our law and that conviction of such a crime has an unquestionable bearing of honesty, veracity, and integrity.[413] A crime involving moral turpitude is one "which is done contrary to justice, modesty, or good morals; an act of baseness, vileness[,] or depravity in the private and social duties which a man owes his fellowmen, or to society in general."[414]

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408. BAUTISTA, *supra* note 11, at 99.

409. REVISED RULES ON EVIDENCE, rule 132, (A) § 12 (emphasis supplied).

410. *Id.*

411. *Id.*

412. EXPLANATORY NOTES, *supra* note 14, at 49.

413. *Id.* at 50.

414. Teves v. Commission on Elections, G.R. No. 180363, 587 SCRA 1, 10 (2009) (citing Soriano v. Dizon, A.C. No. 6792, Jan. 25, 2006, *available at* https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/41125 (last accessed Oct. 31, 2023)).

> Section 15. *Exclusion and separation of witnesses*. — The court, *motu proprio* or upon motion, shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of (a) a party who is a natural person, (b) a duly designated representative of a juridical entity which is a party to the case, (c) a person whose presence is essential to the presentation of the party's cause, or (d) a person authorized by a statute to be present.
>
> The court may also cause witnesses to be kept separate and to be prevented from conversing with one another, directly or through intermediaries, until all shall have been examined. (15a)[415]

Section 15 of Rule 132 deals with the physical exclusion of witnesses from the courtroom while another witness is testifying. In *Design Sources International, Inc. v. Eristingcol*,[416] the Court explained the reason for the rule on excluding witness, to wit —

> Excluding future witnesses from the courtroom at the time another witness is testifying, or ordering that these witnesses be kept separate from one another, is primarily to prevent them from conversing with one another. The purpose is to ensure that the witnesses testify to the truth by preventing them from being influenced by the testimonies of the others. In other words, this measure is meant to prevent connivance or collusion among witnesses. The efficacy of excluding or separating witnesses has long been recognized as a means of discouraging fabrication, inaccuracy, and collusion. However, without any motion from the opposing party or order from the court, there is nothing in the rules that prohibits a witness from hearing the testimonies of other witnesses.[417]

As amended, the following persons *cannot* be excluded from the courtroom:

(a) a natural person who is a party to the case;

(b) duly designated representative of a juridical entity which is a party to the case;

(c) a person whose presence is essential to the presentation of the party's cause; and

(d) person authorized by statute to be present.[418]

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415. REVISED RULES ON EVIDENCE, rule 132, (A) § 15.

416. Design Sources International, Inc. v. Eristingcol, 722 Phil. 579 (2014).

417. *Id*. at 585.

418. REVISED RULES ON EVIDENCE, rule 132, (A) § 15.

Examples of "a person whose presence is essential to the presentation of the party's cause" are: (1) an agent of a party who handled the transaction; (2) one who committed the act causing injury for which recovery is sought; (3) experts, because they testify on opinions or inferences based on facts or data made known at the hearing.

The second paragraph allows courts to keep witnesses separate and prevent them from conversing. The explanation for this amendment preventing conversations through intermediaries is meant to emphasize that what is prohibited to be done directly cannot be done indirectly.[419] However, considering advances in technology, courts might find it difficult to prevent witnesses from conversing while trial is on-going.

It is interesting to note that the rules do not provide for the effect on evidence-related matters in situations where a witness, despite an order by the court, refuses to leave the courtroom. In *People v. Sandal*,[420] however, the Court sanctioned the trial court's exclusion of the testimony of one a defense witness who was present in the courtroom despite an order for witnesses to leave the courtroom.[421] The Court considered this as within the discretion of the court, which they would not reverse on appeal, although the Court was of the opinion that the testimony should have been admitted.[422]

In *Design Sources International, Inc.*, the Court reminded litigants that

> without any prior order or at least a motion for exclusion from any of the parties, a court cannot simply allow or disallow the presentation of a witness solely on the ground that the latter heard the testimony of another witness. It is the responsibility of respondent's counsel to protect the interest of his client during the presentation of other witnesses. If respondent actually believed that the testimony of Kenneth would greatly affect that of Stephen's, then respondent's counsel was clearly remiss in his duty to protect the interest of his client when he did not raise the issue of the exclusion of the witness in a timely manner.[423]

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419. EXPLANATORY NOTES, *supra* note 14, at 52.

420. People v. Sandal, G.R. 54 Phil. 883 (1930).

421. *Id.* at 886.

422. *Id.*

423. *Design Sources International, Inc*, 722 Phil. at 586.

XIII. AUTHENTICATION AND PROOF OF DOCUMENTS

Section 19. *Classes of Documents*. — For the purpose of their presentation evidence, documents are either public or private.

Public documents are:

(a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;

(b) Documents acknowledge before a notary public except last wills and testaments;

(c) *Documents that are considered public documents under treaties and conventions which are in force between the Philippines and the country of source*; and

(d) Public records, kept in the Philippines, of private documents required by law to the entered therein.

All other writings are private. (19a)[424]

The Rules on Evidence classify documents either as public or private documents. The reason for such a distinction was laid out in *Patula v. People*[425] —

> The nature of documents as either public or private determines how the documents may be presented as evidence in court. A public document, by virtue of its official or sovereign character, or because it has been acknowledged before a notary public (except a notarial will)[,] or a competent public official with the formalities required by law, or because it is a public record of a private writing authorized by law, is self-authenticating and requires no further authentication in order to be presented as evidence in court. In contrast, a private document is any other writing, deed, or instrument executed by a private person without the intervention of a notary or other person legally authorized by which some disposition or agreement is proved or set forth. Lacking the official or sovereign character of a public document, or the solemnities prescribed by law, a private document requires authentication in the manner allowed by law or the Rules of Court before its acceptance as evidence in court. The requirement of authentication of a private document is excused only in four instances, specifically: (a) when the document is an ancient one within the context of Section 21, Rule 132 of the Rules of Court; (b) when the genuineness and authenticity of an actionable document have not been specifically denied under oath by the adverse party; (c) when the genuineness and authenticity of the document

424. REVISED RULES ON EVIDENCE, rule 132, (A) § 19 (emphasis supplied).

425. Patula v. People, G.R. No. 164457, 669 SCRA 135 (2012).

> have been admitted; or (d) when the document is not being offered as genuine.[426]

The amendment to Rule 132, Section 19 added documents considered public documents under treaties and conventions in force between the Philippines and the country of source among the list of public documents. Among the documents now considered public documents are those authenticated under the provisions of the Apostille Convention, which entered into force in the Philippines on 14 May 2019.[427] According to the Department of Foreign Affairs (DFA), "[a]uthentication is still required for all Philippine documents to be used abroad, but this time with an Apostille instead of an Authentication Certificate ('red ribbon') as proof of authentication."[428] An Apostille is a "certificate that authenticates the origin of a public document. It is issued by a country that is party to the Apostille Convention to be used in another country which is also a party to the Convention."[429]

> Section 20. *Proof of private document*. — Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved *by any of the following means*:
>
> (a) By anyone who saw the document executed or written;
>
> (b) By evidence of the genuineness of the signature or handwriting of the maker; or
>
> (c) *By other evidence showing its due execution and authenticity*.
>
> Any other private document need only be identified as that which it is claimed to be. (20a)[430]

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426. *Id*. at 156–57.

427. Convention Abolishing the Requirement of Legalisation for Foreign Public Documents art. 12, *signed* Oct. 5, 1961, 527 U.N.T.S. 189 [hereinafter Apostille Convention] & Elizabeth Aguiling-Pangalanan, Apostille Convention in a Nutshell, at 167, *available at* https://law.upd.edu.ph/wp-content/uploads/2021/11/Apostille-Convention.pdf (last accessed Oct. 31, 2023) [https://perma.cc/RCS3-B6F6].

428. Department of Foreign Affairs — Office of Consular Affairs, Authentication FAQs, *available at* https://consular.dfa.gov.ph/services/authentication/authentication-faqs (last accessed Oct. 31, 2023).

429. *Id*. *See also* HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW — PERMANENT BUREAU, APOSTILLE HANDBOOK: A HANDBOOK ON THE PRACTICAL OPERATION OF THE APOSTILLE CONVENTION XV (2013).

430. REVISED RULES ON EVIDENCE, rule 132, (B) § 20 (emphases supplied).

As previously stated, private documents are not self-authenticating, and its due execution and authenticity must be proved by the party presenting the document. In *Malayan Insurance Co., Inc. v. Philippine Nails and Wires Corporation*,[431] the Court laid down the consequences of the failure to authenticate a private document, to wit —

> Under the rules on evidence, documents are either public or private. Private documents are those that do not fall under any of the enumerations in Section 19, Rule 132 of the Rules of Court. Section 20 of the same law, in turn, provides that before any private document is received in evidence, its due execution and authenticity must be proved either by anyone who saw the document executed or written, or by evidence of the genuineness of the signature or handwriting of the maker. Here, respondent's documentary exhibits are private documents. They are not among those enumerated in Section 19, thus, their due execution and authenticity need to be proved before they can be admitted in evidence. With the exception concerning the summary of the weight of the steel billets imported, respondent presented no supporting evidence concerning their authenticity. Consequently, they cannot be utilized to prove less of the insured cargo and/or the short delivery of the imported steel billets. In sum, we find no sufficient competent evidence to prove petitioner's liability.[432]

Rule 132, Section 20 (on Proof of Private Documents) added a catchall provision. This amendment is similar to the provisions of Rule 5, Section 2 of the Rules on Electronic Evidence,[433] which states —

> 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

431. Malayan Insurance Co., Inc. v. Philippine Nails and Wires Corporation, G.R. No. 138084, 380 SCRA 374 (2002).

432. *Id*. at 380. *See also Patula*, 669 SCRA at 169.

433. EXPLANATORY NOTES, *supra* note 14, at 54.

(c) by other evidence showing its integrity and reliability to the satisfaction of the judge.[434]

Rule 132, Sections 20 to 33 (Authentication and Proof of Documents) provide the procedure for authentication of various classes of documents. Considering that one of the purposes for the new rules on evidence is "to incorporate the technological advances and developments in law, jurisprudence and international conventions in the past decade"[435] it is worth mentioning the provisions of the Rules on Electronic Evidence on authentication of electronic evidence:

Rule 5: Authentication of Electronic 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.[436]

...

434. RULES ON ELECTRONIC EVIDENCE, rule 5, § 2 (emphasis supplied). *See also* Electronic Commerce Act.

435. Primer on the 2019 AMENDMENTS TO THE 1989 REVISED RULES ON EVIDENCE, *supra* note 1, at 4.

436. RULES ON ELECTRONIC EVIDENCE , rule 5, §§ 1-2. *See also* Electronic Commerce Act.

Rule 11: Audio, Photographic, Video[,] and Ephemeral Evidence

Section 1. Audio, video[,] and similar evidence. — Audio, photographic[,] and video evidence of events, acts or transactions shall be admissible provided it shall be shown, presented or displayed to the court and shall be identified, explained[,] or authenticated by the person who made the recording or by some other person competent to testify on the accuracy thereof.

Section 2. Ephemeral electronic communication. — Ephemeral electronic communications shall be proven by the testimony of a person who was a party to the same or has personal knowledge thereof. In the absence or unavailability of such witnesses, other competent evidence may be admitted.

A recording of the telephone conversation or ephemeral electronic communication shall be covered by the immediately preceding section.

If the foregoing communications are recorded or embodied in an electronic document, the provisions of Rule 5 shall apply.[437]

Section 24. *Proof of official record*. — The record of public documents referred to in paragraph (a) of Section 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 *or her* 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 is in foreign country, *which is a contracting party to a treaty or convention to which the Philippines is also a party, or considered a public document under such treaty or convention pursuant to paragraph (c) of Section 19 hereof, the certificate or its equivalent shall be in the form prescribed by such treaty or convention*[,] *subject to reciprocity granted to public documents originating from the Philippines*.

For documents originating from a foreign country which is not a contracting party to a treaty or convention referred to in the next preceding sentence, 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*.

A document that is accompanied by a certificate or its equivalent may be presented in evidence without further proof, the certificate or its equivalent being prima facie evidence of the due execution and genuineness of the document involved. The certificate shall

437. RULES ON ELECTRONIC EVIDENCE, rule 11, §§ 1-2. *See also* Electronic Commerce Act.

not be required when a treaty or convention, or has exempted the document itself from this formality. (24a)[438]

The amendment in this section aligns with the entry into force of the Apostille Convention. In *Heirs of Spouses Arcilla v. Teodoro*,[439] the Court held —

> It cannot be overemphasized that the required certification of an officer in the foreign service under Section 24 refers only to the documents enumerated in Section 19 (a), to wit: written official acts or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers of the Philippines or of a foreign country. The Court agrees with the CA that had the Court intended to include notarial documents as one of the public documents contemplated by the provisions of Section 24, it should not have specified only the documents referred to under paragraph (a) of Section 19.[440]

The rationale for this section "is to ensure authenticity of a foreign law and its existence so as to justify its import and legal consequence on the event or transaction in issue."[441]

This section was applied in *Nedlloyd Lijnen B.V. Rotterdam v. Glo Laks Enterprises, Ltd.*[442] One of the issues in the said case was the proof of Panamanian Law, which the petitioner was invoking to deny liability.[443] The Court listed the requirements for proving foreign documents as follows —

> For a copy of a foreign public document to be admissible, the following requisites are mandatory: (1) it must be attested by the officer having legal custody of the records or by his deputy; and (2) it must be accompanied by a certificate by a secretary of the embassy or legation, consul general, consul, vice-consular or consular agent[,] or foreign service officer, and with the seal of his office. Such official publication or copy must be accompanied, if the record is not kept in the Philippines, with a certificate that the attesting officer has the legal custody thereof. The certificate may be issued by any of the authorized Philippine embassy or consular officials stationed in the foreign country in which the record is kept, and authenticated by the seal of

438. REVISED RULES ON EVIDENCE, rule 132, (B) § 24 (emphasis supplied).

439. Heirs of the Deceased Spouses Vicente S. Arcilla and Josefa Asuncion Arcilla v. Teodoro, G.R. No. 162886, 561 SCRA 545 (2008).

440. *Id.* at 562.

441. *Id.*

442. Nedlloyd Lijnen B.V. Rotterdam v. Glow Laks Enterprises, Ltd., 747 Phil. 170 (2014).

443. *Id.* at 178.

> his office. 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, and must be under the official seal of the attesting officer.[444]

The last paragraph of Rule 132, Section 24 emphasizes the public nature of the "foreign" document, since it is a public document (as opposed to a private document), it is *prima facie* evidence of the due execution and genuineness of the document.

XIV. OFFER AND OBJECTION

> Section 34. *Offer of evidence.* — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified. (34)[445]
>
> Section 35. *When to make offer. — All evidence must be offered orally.*
>
> *The offer of the testimony of a witness in evidence* must be made at the time the witness is called to testify.
>
> *The offer of* documentary and object evidence shall be *made* after the presentation of a party's testimonial evidence. (35a)[446]
>
> Section 36. *Objection.* — Objection to *offer of* evidence must be made *orally* immediately after the offer is made.
>
> *Objection to the testimony of a witness for lack of formal offer must be made as soon as the witness begins to testify.* Objection to a question propounded in the course of the oral examination of a witness *must* be made as soon as the grounds therefor become reasonably apparent.
>
> The grounds for the objections must be specified. (36a)[447]

Rule 132, Section 34 states that the court cannot consider any evidence that is not formally offered.[448] Other rules also provide for instances when courts cannot consider evidence, to wit —

(1) Under the Judicial Affidavit Rule, affidavits and exhibits not compliant with the rules cannot be considered by the court, thus:

> Section 10. *Effect of non-compliance with the judicial Affidavit Rule.* — (a) *A party who fails to submit the required judicial affidavits and exhibits on time shall*

444. *Id.* at 179-80.

445. REVISED RULES ON EVIDENCE, rule 132, (C) § 34 (emphasis supplied).

446. *Id.* rule 132, (C) § 35 (emphases supplied).

447. *Id.* rule 132, (C) § 36 (emphases supplied).

448. *Id.* rule 132, (C) § 34.

> *be deemed to have waived their submission*. The court may, however, allow only once the late submission of the same provided, the delay is for a valid reason, would not unduly prejudice the opposing party, and the defaulting party pays a fine of not less than ₱1,000.00 nor more than ₱ 5,000.00 at the discretion of the court.
>
> (b) The court shall *not consider the affidavit of any witness who fails to appear at the scheduled hearing* of the case as required. Counsel who fails to appear without valid cause despite notice shall be deemed to have waived his client's right to confront by cross-examination the witnesses there present.
>
> (c) The court shall *not admit as evidence judicial affidavits that do not conform to the content requirements of Section 3 and the attestation requirement of Section 4 above*. The court may, however, allow only once the subsequent submission of the compliant replacement affidavits before the hearing or trial provided the delay is for a valid reason and would not unduly prejudice the opposing party and[,] provided further, that public or private counsel responsible for their preparation and submission pays a fine of not less than ₱ 1,000.00 nor more than ₱ 5,000.00, at the discretion of the court.[449]

(2) Rule 18, Section 2 of the 2019 Amendments to the 1997 Rules of Civil Procedure provides —

> The failure without just cause of a party and/or counsel to bring the evidence required [at pre-trial] shall be deemed a waiver of the presentation of such evidence.[450]

(3) Paragraph I. A. 2. D of A.M. No. 03-1-09-SC, or the Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition-Discovery Measures, provides —

> No evidence shall be allowed to be presented and offered during the trial in support of a party's evidence-in-chief other than those that had been earlier identified and pre-marked during the pre-trial, except if allowed by the court for good cause shown.[451]

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449. JUDICIAL AFFIDAVIT RULE, § 10 (emphases supplied).

450. RULES OF CIVIL PROCEDURE, rule 18, § 2 (emphasis supplied).

451. Supreme Court of the Philippines, Proposed Rule on Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition-Discovery Measures, A.M. No. 03-1-09-SC, para. I (A) (2) (D) (2004).

In *Parel v. Prudencio*,[452] the Court explained the consequences of failing to formally offer evidence in support of a claim in this wise —

> In this case, the records show that although petitioner's counsel asked that he be allowed to offer his documentary evidence in writing, he, however, did not file the same. Thus, the CA did not consider the documentary evidence presented by petitioner. Section 34 of Rule 132 of the Rules of Court provides:
>
> > Section 34. *Offer of evidence*. — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.
> >
> > A formal offer is necessary because it is the duty of a judge to rest his findings of facts and his judgment only and strictly upon the evidence offered by the parties to the suit. It is a settled rule that the mere fact that a particular document is identified and marked as an exhibit does not mean that it has thereby already been offered as part of the evidence of a party.[453]

There are instances, however, when evidence not formally offered may be considered, as explained in *Vda. De Oñate v. Court of Appeals*.[454] The Court held —

> From the foregoing provision, it is clear that for evidence to be considered, the same must be formally offered. Corollarily, the mere fact that a particular document is identified and marked as an exhibit does not mean that it has already been offered as part of the evidence of a party. In *Interpacific Transit, Inc. v. Aviles*, we had the occasion to make a distinction between identification of documentary evidence and its formal offer as an exhibit. We said that the first is done in the course of the trial and is accompanied by the marking of the evidence as an exhibit while the second is done only when the party rests its case and not before. A party, therefore, may opt to formally offer his evidence if he believes that it will advance his cause or not to do so at all. In the event he chooses to do the latter, the trial court is not authorized by the Rules to consider the same.
>
> However, in *People v. Napat-a*, citing *People v. Mate*, we relaxed the foregoing rule and allowed evidence not formally offered to be admitted and considered by the trial court[,] provided the following requirements are present, viz.: first, the same must have been duly identified by testimony duly recorded,

452. Parel v. Prudencio, G.R. No. 146556, 487 SCRA 405 (2006).

453. *Id.* at 419.

454. Vda. De Oñate v. Court of Appeals, G.R. No. 116149, 250 SCRA 283 (1995).

> and second, the same must have been incorporated in the records of the case.[455]

The amendment to Rule 132, Sections 35 and 36 on when and how offer of evidence and objections to the offer are made make the same more consistent with other rules requiring that offer and objections be made orally. It was made to avoid delay in the disposition of cases. These rules are:

(1) The Judicial Affidavit Rule, which provides —

> Section 6. *Offer of and objections to testimony in judicial affidavit.* — The party presenting the judicial affidavit of his witness in place of direct testimony shall *state the purpose of such testimony at the start of the presentation of the witness*. The adverse party may move to disqualify the witness or to strike out his affidavit or any of the answers found in it on ground of inadmissibility. The court shall promptly rule on the motion and, if granted, shall cause the marking of any excluded answer by placing it in brackets under the initials of an authorized court personnel, without prejudice to a tender of excluded evidence under Section 40 of Rule 132 of the Rules of Court.[456]
>
> Section 8. *Oral offer of and objections to exhibits.* — (a) Upon the termination of the testimony of his last witness, a party shall immediately make an oral offer of evidence of his documentary or object exhibits, piece by piece, in their chronological order, stating the purpose or purposes for which he offers the particular exhibit.
>
> (b) After each piece of exhibit is offered, the adverse party shall state the legal ground for his objection, if any, to its admission, and the court shall immediately make its ruling respecting that exhibit.
>
> (c) Since the documentary or object exhibits form part of the judicial affidavits that describe and authenticate them, it is sufficient that such exhibits are simply cited by their markings during the offers, the objections, and the rulings, dispensing with the description of each exhibit.[457]

(2) A.M. No. 15-06-19-SC or the Revised Guidelines for Continuous Trial in Criminal Cases, which has the following provisions —

> 13. Trial
>
> ...

455. *Id.* at 286-87.

456. JUDICIAL AFFIDAVIT RULE, § 6 (emphasis supplied).

457. *Id.* § 8 (a)-(c).

> *Offer of evidence.* — The offer of evidence, the comment/objection thereto, and the court ruling shall be made orally. A party is required to make his/her oral offer of evidence on the same day after the presentation of his/her last witness, and the opposing party is required to immediately interpose his/her oral comment/objection thereto. Thereafter, the court shall make a ruling on the offer of evidence in open court.
>
> In making the offer, the counsel shall cite the specific page numbers of the court record where the exhibits being offered are found, if attached thereto. The court shall ensure that all exhibits offered are submitted to it on the same day of the offer.
>
> If exhibits are not attached to the record, the party making the offer must submit the same during the offer of evidence in open court.[458]

It was pointed out that the amendment to Rule 132, Section 36 as to when the objection to the lack of offer of the testimony of a witness was meant to incorporate the ruling in *Catuira v. Court of Appeals*,[459] where the prosecution failed to offer in evidence the testimony of the complainant, the offer having been made after she testified and the accused had moved that the testimony be stricken off the record.[460] The Supreme Court held that the objection should have been made before the complainant testified.[461]

In *Westmont Investment Corporation v. Francia, Jr.*,[462] the Court explained the consequences of the failure to timely object to an offer of evidence, thus —

> The Court cannot, likewise, disturb the findings of the RTC and the CA as to the evidence presented by the Francias. It is elementary that objection to evidence must be made after evidence is formally offered. It appears that Wincorp was given ample opportunity to file its Comment/Objection to the formal offer of evidence of the Francias[,] but it chose not to file any.[463]

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458. REVISED GUIDELINES FOR CONTINUOUS TRIAL IN CRIMINAL CASES, A.M. No. 15-06-19-SC, ¶ 13 (c) (Apr. 25, 2017).

459. Catuira v. Court of Appeals, G.R. No. 105813, 236 SCRA 398 (1994).

460. EXPLANATORY NOTES, *supra* note 14, at 58 (citing *Catuira*, 236 SCRA at 401).

461. *Id.*

462. Westmont Investment Corporation v. Francia, Jr., G.R. No. 194128, 661 SCRA 787 (2011).

463. *Id.* at 800.

A party that fails to timely raise an objection cannot raise the objection at a later stage of the proceedings or on appeal.[464] Neither can a party raise an objection to evidence during appeal if the same was not raised before the trial court.[465] The rationale for the rule was explained in this wise —

> The reasons for requiring prompt objection on pain of loss of the opportunity to raise the issue are multiple: It promotes finality and economy in litigation. It makes possible clarification of the facts relating to an issue at the time it is raised. It speeds up the tempo of the trial by permitting it to forge ahead without backtracking. It avoids the often-futile direction to the jury to ignore what it has already heard. It permits correction by the party and a ruling by the trial court.[466]

> Section 39. *Striking out answer.* — Should a witness answer the question before the adverse party had the opportunity to voice fully its objection to the same, *or where a question is not objectionable, but the answer is not responsive, or where a witness testifies without a question being posed or testifies beyond the limits set by the court, or when the witness does a narration instead of answering the question*, and such objection is found to be meritorious, the court shall sustain the objection and order *such* answer, *testimony*[,] *or narration* given to be stricken off the record.
>
> On proper motion, the court may also order the striking out of answers which are incompetent, irrelevant, or otherwise improper. (39a)[467]

The amended Rule 132, Section 39 provides for the following grounds when an answer may be stricken off the record:

(1) When the witness answers the question before the adverse party had the opportunity to voice fully its objection. This is an old rule.

(2) When the question is not objectionable, but the answer is not responsive. This is a new addition.

(3) When the witness testifies without a question being posed. This is a new addition.

(4) When the witness testifies beyond the limits set by the court. This is a new addition.

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464. BAUTISTA, *supra* note 11, at 155.

465. *Id.*

466. *Id.* at 155-56 (citing JACK B. WEINSTEIN, ET AL., EVIDENCE: CASES AND MATERIALS 1198 (9th ed., 1997)).

467. REVISED RULES ON EVIDENCE, rule 132, (C) § 39 (emphases supplied).

(5) When the witness does a narration instead of answering the question. This is a new addition.

(6) When the answers are either incompetent, irrelevant, or otherwise improper. These are old grounds.[468]

These are restatements of grounds already recognized.[469]

XV. RULE 133: WEIGHT AND SUFFICIENCY OF EVIDENCE

Section 4. *Circumstantial evidence, when sufficient*. — Circumstantial evidence is sufficient for conviction if:

(a) There is more than one circumstances;

(b) The facts from which the inferences are derived are proven; and

(c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

Inferences cannot be based on other inferences. (4a)[470]

In *People v. Abdullah*,[471] the Court reminds that

> a judgment of conviction based on circumstantial evidence can be upheld only if the circumstances proven constitute an unbroken chain leading to one fair and reasonable conclusion that the defendants are guilty, to the exclusion of any other conclusion. The circumstances proved must be concordant with each other, consistent with the hypothesis that the accused is guilty and, at the same time, inconsistent with any hypothesis other than that of guilt. As a corollary to the constitutional precept that the accused is presumed innocent until the contrary is proved, a conviction based on circumstantial evidence must exclude each and every hypothesis consistent with his innocence.[472]

An additional paragraph was added to Rule 133, Section 4, which provides that "[i]nferences cannot be based on other inferences."[473] It is worth mentioning that prior to this amendment, it was opined that "[t]here is no rule against pyramiding inferences. While an inference cannot be drawn from another inference that is too remote or conjectural, an inference may be based on a fact which itself is based on an inference justifiably drawn from

468. *Id*. rule 132, (C) § 39.

469. BAUTISTA, *supra* note 11, at 156.

470. REVISED RULES ON EVIDENCE, rule 133, § 4 (emphasis supplied).

471. People v. Abdullah, G.R. No. 182518, 576 SCRA 797 (2009).

472. *Id*. at 803.

473. REVISED RULES ON EVIDENCE, rule 133, § 4.

circumstantial evidence." [474] Considering the amendment, however, inferences must be based on proven facts.

> Section 5. *Weight to be given opinion of expert witness, how determined.* — In any case where the opinion of an expert witness is received in evidence, the court has a wide latitude of discretion in determining the weight to be given to such opinion, and for that purpose may consider the following:
>
> (a) Whether the opinion is based upon sufficient facts or data;
>
> (b) Whether it is the product of reliable principles and methods;
>
> (c) Whether the witness has applied the principles and methods reliably to the facts of the case; and
>
> (d) Such other factors as the court may deem helpful to make such determination. (n)[475]

In *Tabao v. People*,[476] the Court held —

> Section 49, Rule 130 of the Revised Rules of Court states that the opinion of a witness on a matter requiring special knowledge, skill, experience[,] or training, which he is shown to possess, may be received in evidence. The use of the word 'may' signifies that the use of opinion of an expert witness is permissive and not mandatory on the part of the courts. *Allowing the testimony does not mean, too, that courts are bound by the testimony of the expert witness*. The testimony of an expert witness must be construed to have been presented not to sway the court in favor of any of the parties, but to assist the court in the determination of the issue before it, and is for the court to adopt or not to adopt depending on its appreciation of the attendant facts and the applicable law.[477]

Rule 133, Section 5 is a new provision on the weight to be given to the opinion of an expert witness. This is derived from Rule 702 of the Federal Rules of Evidence. [478] It was added to give the judge wide latitude in

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474. BAUTISTA, *supra* note 11, at 296.

475. REVISED RULES ON EVIDENCE, rule 133, § 5.

476. Tabao v. People, G.R. No. 187246, 654 SCRA 216 (2011).

477. *Id.* at 218 (emphasis supplied).

478. FED. R. EVID., rule 702. Rule 702 provides,

> Rule 702. Testimony by Expert Witnesses. A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

determining the weight to be given to such an opinion.[479] In *Ilao-Quianay v. Mapile*,[480] the Court held —

> Experts are presented to enlighten — not confuse — the courts and for this reason, [w]e do not fault the lower court for disregarding, in its exasperation, their testimony on record, no doubt, relying on the leeway extended to all courts that they '*are not bound to submit their findings necessarily to such testimony; they are FREE to weigh them and they can give or REFUSE to give them any value as proof ...*'
>
> Indeed, courts are not bound by expert testimonies. They may place whatever weight they choose upon such testimonies in accordance with the facts of the case. The relative weight and sufficiency of expert testimony is peculiarly within the province of the trial court to decide, considering the ability and character of the witness, his actions upon the witness stand, the weight and process of the reasoning by which he has supported his opinion, his possible bias in favor of the side for whom he testifies, and any other matters which serve to illuminate his statements. The opinion of an expert should be considered by the court in view of all the facts and circumstances of the case. The problem of the evaluation of expert testimony is left to the discretion of the trial court whose ruling thereupon is not reviewable in the absence of an abuse of that discretion.[481]

As can be observed in the above disquisition, the 2019 Amendments are revolutionary in some aspects — as in the reclassification of certain materials as documentary evidence — and familiar in others — as in the codification of settled jurisprudence. It is overwhelmingly clear that the Subcommittee and, in turn, the Supreme Court, has, for the most part, taken the practical experience of litigants in consideration in formulating the rules. Time will tell whether these rules will remain as they are for

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(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
(b) the testimony is based on sufficient facts or data;
(c) the testimony is the product of reliable principles and methods; and
(d) the expert has reliably applied the principles and methods to the facts of the case.

Id.

479. EXPLANATORY NOTES, *supra* note 14, at 60.

480. Ilao-Quianay v. Mapile, G.R. No. 154087, 474 SCRA 246 (2005).

481. *Id.* at 254-55 (citing JOVITO R. SALONGA, PHILIPPINE LAW ON EVIDENCE 507 (3d ed., 1964) (emphasis supplied)).

decades to come, similar to the 1989 Revised Rules of Evidence, or be revisited often, like the Federal Rules of Evidence.