after as may be required by law, submit a declaration under oath of his assets, liabilities, and net worth. In the case of the President, Vice-President, Members of the Cabinet, the Congress, the Supreme Court, the Constitutional Commissions and other constitutional offices, officers of the Armed Forces with general or flag rank, the declaration shall be disclosed to the public in the manner provided by law". Of course, the law may likewise provide and the Constitution does not prohibit that public disclosure be made of declarations of assets, liabilities and net worth of other inferior public officers.

Section 21 of Article XII of the 1987 Constitution answered the public clamor for a constitutional mandate for public disclosure of facts involving foreign loans and private loans guaranteed by the government the details of which had always been kept from the public eye and knowledge. It is now provided in the second sentence of the aforesaid section that "[i]n formation of foreign loans obtained or guaranteed by the Government shall be available to the public." The words of this provision indicate that there is no need for an implementing stature, this section being self-executory in nature.

In a human society where freedom truly reigns, provisions on public disclosure of actuations and transactions involving public interest supported with reasonable and effective implementing mechanisms, when needed, will certainly make democracy viable, vibrant and participatory.

EDUARDO D. DE LOS ANGELES*

Disputes are often difficult to resolve because protagonists have different versions of events. Even witnesses perceive incidents differently. For what one observes depends upon the keeness of his senses, the duration of his sensory impression and the amount of attention directed to the event. Professor John Maguire aptly notes, "Time is irreversible, events unique, and any reconstruction of the past is at best an approximation." (Maguire, Evidence, 5th Ed. p. 1).

The following example clearly, although extremely, illustrates the point:

Client : I stepped off the curb and
this truck hit me.
Counsel: What color was the traffic light?
Client : I don't remember.
Counsel: Too bad, if it was green in your direction you would have a good case.
Client : Now I remember. It was green.
(id. p. 229).

The rules of evidence were therefore enacted to logically and systematically screen and test documents and recollections of what had transpired, and minimize errors in the adjudication of disputes. These rules basically admit evidence which is relevant and reliable, and exclude that which has no probative value in order to attain, a reasonably close as possible, the truth.

Evidence then is the means sanctioned by the rules, of ascertaining in a judicial proceeding the truth respecting a matter of fact. (Sec. 1, Rule 128, Rules of Court). It may come in three forms: real evidence, documentary evidence, and testimonial evidence.

Real Evidence

Real Evidence usually takes the form of some material object produced for inspection in order that the Court may draw an inference from its own observation as to the existence, condition or value of the object in question (Keane, The Modern Law of Evidence, p. 11). It may consist of articles or persons, who may be physically examined; it may also consist of an ocular inspection of an object, or an experiment. It is evidence of the highest order. It speaks more eloquently than a hundred witnesses (People vs. Demeterio, 124 SCRA, 914) although its admissibility still depends on its propriety and relevancy.

Articles. Subject to the limitations of decency or propriety, all articles which may aid in the elucidation of the facts in issue, and cognizable by the senses of the judge, may be exhibited for inspection by the court. Burglar's tools, weapons, surgical instruments for abortion and other objects connected with a crime may be presented as evidence. The goods purchased may also be offered to prove their quality (5 Moran, Rules of Court 1980 ed. p. 75). However, it must be established that these articles were the very ones involved in the crime or tran-

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saction. Thus, the result of a blood alcohol test to prove intoxication was excluded because the court was not satisfied that the specimen tested by the laboratory was the one taken from the defendant by the police (Wooley v. Hofner 176 NE 2d 757).

Documents. Documents may likewise be produced to show their existence or condition, as, for instance, whether they are genuine or forged. They may be exhibited to the court for comparison with writings admitted or treated as genuine. But when a writing is produced in Court to prove its contents, then it is offered testimonially and not as real evidence, and other requirements demanded by the documentary evidence rule, should be satisfied for the adminissibility of the writing (5 Moran, Rules of Court 1980 ed. p. 75).

Physical Examination. With the prior permission of the judge and subject to decency, the body of a person may be exhibited and viewed in court. Such exhibition will reveal the sex, race, color, personal appearance (Leong v. Collector, 31 Phil. 417) and, to a certain extent, the age. In paternity suits, exhibition of the child for the purpose of showing whether or not he is of that race which would characterize him as the offspring of the mother and the putative father is permissible (White vs. Holderby, 192 F2d 722). However, with respect to the propriety of exhibiting the child in order to prove physical resemblance to the putative father, the courts are divided into three groups. The first group holds that the child may be exhibited whenever paternity is in issue (Hunt v. State, 122 SE2d 817). The second group allows exhibition of the child only under certain conditions, the most common of which is that the child be sufficiently old to possess settled features (Hall v. Centolanza, 101 A2d 44). The third group permits exhibition of the child to show resemblance only of specific features. But in any of these instances, the examination must be accompanied by testimony specifically comparing one or more features, and discussing the points of resemblance (Williams v. State, 85 So. 917; Chua v. Collector, 28 Phil. 591).

In criminal cases, the accused may also be required to submit himself to an inspection of his body for the purpose of ascertaining identity or for other relevant purposes. While it is true that the accused has the constitutional right to be exempt from testifying against himself, such constitutional guaranty is limited to a prohibition against himself, such constitutional guaranty is limited to a prohibition against compulsory *testimonial* self-incrimination (5 Moran, Comments on the Rules of Court 1980 ed., p. 77). An ocular inspection of the body of the accused is therefore permissible (Villaflor vs. Summers, 41 Phil. 62). Forcing the accused to expel morphine from his mouth (US vs. Ong, 36 Phil. 735), putting his foot over a bloody footprint on the floor where a dead body was found (US vs. Zara, 43 Phil. 308), compelling a woman accused of adultery to submit herself to medical examination to determine pregnancy (Villaflor vs. Summers, *supra)* or to determine venereal infection (US vs. Tan, 23 Phil. 145), are all allowable and not violative of the constitutional prohibition against self-incrimination.

Ocular Inspection. Where the objective in question cannot be produced in court because it is immovable or inconvenient to remove, the court may conduct an on the spot ocular inspection. Of course, such viewing is purely discretionary on the part of the Court (People vs. Tavera, 47 Phil. 645; People vs. Moreno, 83 Phil. 286).

Photographs. Where objects and places cannot conveniently be shown in court, photographs may be taken and introduced in Court, provided that their accuracy is shown (City of Manila vs. Cabangis, 10 Phil. 151). The correctness of the photographs may be established by the photographer or by any witness familiar with the scene, object or person portrayed (State vs. Gardner, 46 SE 2nd 824). The witness must show that the photographs represent the subject matter at the time when its appearance is relevant and material. Thus, when photographs portray a reenactment based on spurious confession, such photographs are not admissible (People vs. Alcaraz, 131 SCRA 74).

Tape Recording. A sound recording is also admissible evidence if the following facts are established: First, that the recording device is capable of taking conversation being offered in evidence. Second, that the operator of the device is competent to operate the defice. Third, that the recording is authentic and correct. Fourth, that changes, additions or deletions have not been made in the recording. Fifth, that the recording has been preserved in a manner that is shown to the court. Sixth, that the speakers are identified. Seventh, that the conversation elicited was made voluntarily and in good faith, without any kind of inducement (Maguire, Evidence, 5th ed., p. 146). Eighth, that the recording is not in violation of the Wire Tapping Act.

Experiments. With the prior permission of the court, experiments may be conducted, but it is necessary to first establish similarity of circumstances before the evidence is ruled competent (Langdom vs. Rouse, 72 SW 1113; Navajo v. Mahaffey, 174 F2d 305). Thus, tests made of a truck *immediately* after an accident to show that the brakes are in good working order are admissible (Broderick v. Coppinger, 14 P 2d 714).

Models may also be used. A life-size dummy can be used to illustrate the entry and position of bullet wounds.

Likewise, blackboards or drawings may be used in court for the purpose of illustration (Haley v. Hockey, 103 NY Sup 2d 717). Their use may be evidential and demonstrative. In the former, the models, blackboards or drawings possess within themselves evidential characteristics tending to establish a particular fact. In the latter, the testimony of the witness is the evidence and the models, blackboards or drawings are merely dramatic aids to its understanding.

Documentary Evidence

Documentary evidence, as defined in the proposed 1987 Rules on Evidence, consist of "writings or any material containing letters, words, numbers, figures, symbols or other modes of written expressions *offered as proof of their contents."* (Section 2, Rule 130, 1987 Rules on Evidence). Under this definition, sound recordings, photographs and motion pictures (except of writings) and drawings are not considered documents (Minutes of Rules of Court Revision Committee, hereinafter "minutes," Oct. 29, 1986 pp. 1-2). Even documents, if presented not to prove their contents but to prove that an act or transaction occured, are considered object (not documentary) evidence. The distinction is important because documentary evidence is subject to the best evidence rule, but object evidence is not (Minutes, Oct. 29, 1986, p. 2, 5 Moran, Rules of Court ed., p. 83). Thus, in *Air France vs. Carrascoso* (18 SCRA 155), testimonial evidence was allowed to prove a conversation although a written transcript of the conversation existed, because the issue was the occurrence of the conversation, not its contents.

Likewise, in *People vs. Tanjuatco* (23 SCRA 361), where an accused was

charged with qualified theft because he only deposited in the bank part of the money entrusted to him by his employer, the Court admitted the ledgers and bank statements as the primary evidence of the actual deposits made, over the object of the accused who claimed that the available deposit slips (which were doctored) were the best evidence, the issue being the amount deposited and not the content of the deposit slips.

Where, however, the contents of a document are at issue, the Best Evidence Rules applies.

The Best Evidence Rule. Under the Best Evidence Rule, when the subject of the inquiry is the *contents* of a document, no evidence shall be admissible other than the original document itself. When a document is in two or more copies made at or about the same time, containing the same data, all such copies are equally regarded as originals (Sec. 4b, Rule 130, 1987 Rules on Evidence).

Secondary evidence (copies or testimonies) are generally inadmissible to prove the contents of a document, subject of inquiry, except in the following cases:

a) The original is lost or destroyed or cannot be produced in Court (Under the proposed 1987 Rules on Evidence, it must be shown that the loss or destruction is not due to the fault or bad faith of the offeror, otherwise he can take advantage of his fault or bad faith). (Sec. 3a, Rule 130, 1987 Rules on Evidence; Minutes, Oct. 29, 1986, p. 4).

b) The original is in the custody or under the control of the adverse party and the latter fails to produce it after reasonable notice.

c) The original consists of numerous acounts.

d) The original is a public record in the custody of a public officer or recorded in a public office.

Under the foregoing exceptions, a copy of the document may be introduced. And, except where the original is a public record, the copy need not be a certified one. A simple copy will be sufficient if shown to be an exact copy (Timbol vs. Manalo, 6 Phil. 254). Photostatic copies which are faithful reproductions of the contents of the originals, as well as typewritten reproductions of the original document which is handwritten, may also be admitted as secondary evidence (People vs. Lava, 28 SCRA 72; Tan vs. Sun Insurance, 51 Phil. 212).

Only recently, the Supreme Court has admitted a xerox copy of a lost holographic will after it has been compared with the standard writings of the testator (Rodelas v. Aranza, 119 SCRA 16). Oral evidence may also be given to prove the contents of a lost document (except a will) through the testimony of any person who signed the document, or who read it, or who heard it read knowing, or it being proved from other sources, that the document so read was the one in question (5 Moran, Rules of Court, 1980 ed., p. 97-98 citing Michael vs. Enriquez, 33 Phil. 87).

Parol Evidence Rule. Another rule which governs the introduction of documentary evidence is the Parol Evidence Rule. This rule provides that when the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement (Section 7, Rule 130, Rules of Court). The purpose of this rule is to give stability to written agreements and to remove the temptation and possibility of perjury which would be afforded if parol evidence is admissible

(Conde vs. Court of Appeals, 119 SCRA 245).

To illustrate, plaintiff agrees with the defendant bank to transfer his deposit to another's current account under certain conditions specified in the contract. Later, plaintiff contends that there were *other* conditions agreed upon orally which were not mentioned in the contract, and offered to prove this by means of a letter which he wrote to the bank two days *previous* to the execution of the written contract. It was held that, where a written contract expressly declares that the conditions therein set out are the sole conditions upon which it is based, no evidence of the terms of the contract other than the contents of the writing will be admitted.

By way of exceptions, however, a party may present parol (oral) evidence to modify, explain or add to the terms of a written agreement if he puts in issue in his pleading:

a) An intrinsic ambiquity, mistake or imperfection in the written agreement.

b) The failure of the written agreement to express the true intent and agreement of the parties thereto (Premier v. IAC, 141 SCRA 423;San Mauricio v. Ancheta, 108 SCRA 695).

c) The validity of the written agreement, or

d) The existence of other terms agreed to between parties on their successors in interest after the execution of the written agreement.

Under the first exception, there are three kinds of ambiguities. There is latent ambiguity where the language of the document is certain but some collateral matters outside the document breedeth ambiguity. Thus, if a sale is made in favor of Pedro Ramos and it is shown by evidence that there are two or more persons bearing that name, a latent ambiguity exists, and parol evidence is admissible to identify the real buyer (5 Moran, Rules of Court, 1980 ed., p. 120). There is patent ambiguity where the uncertainty appears on the document itself. If the language of the document is defective and ambiguous, no evidence can be given to show what the author intended, otherwise through the admission of parol evidence one creates and not merely construes the document (Id. p. 121). There is intermediate ambiguity (partaking of the nature of both patent and latent ambiguities) where the language of the document is sensible but admits two interpretations. Accordingly, where the language of the deed provides that the contractor agrees to saw lumber at a price "per thousand feet," parol evidence is admissible to explain that the parties meant "per thousand feet of sawed lumber" (Id., p. 122).

Parol evidence is also admissible to show that a sale is not absolute, but one subject of redemption, or that the transaction transpired merely to secure a loan (Serrano vs. Court of Appeals, 139 SCRA 179).

Under the last exception, a collateral agreement (where the consideration for a questioned deed is shown, (Laureano vs. Kilayco, 34 Phil. 148); a condition precedent (where the operation of a contract is dependent upon the occurrence of an event); and a subsequent agreement (which is executed *after* the questioned Deed) are provable by parol evidence (Canuto vs. Mariano, 37 Phil. 840). But parol evidence is not allowed to prove prior agreements to alter the terms of a disputed contract because all the prior and contemporaneous terms and conditions are deemed incorporated in the Contract.

Of course, the parol evidence rule does not apply to strangers to a contract,

because the rule applies only to "parties and their successors in interest" (Sec. 9, Rule 130, Rules of Court). Neither does the rule apply if the purpose of parol evidence is merely to prove the execution of a contract (Arnaiz vs. Mcgrath, 48 O.G. 2686).

Authentication. Before any private document is received in evidence, the offeror must also establish its due execution and authenticity by one who saw the document executed or by evidence of the genuineness of the signature or handwriting of the maker. However, where a private document qualifies as an ancient document or one more than thirty years old, produced from a custody in which it would naturally be found if genuine, and unblemished by any alteration or suspicious circumstance, no other evidence of its authenticity need be given. (Sec. 22, Rule 132, Rules of Court).

Testimonial Evidence

Testimony is the oral statement of a witness made under oath in open Court and offered as evidence of the truth of that which is asserted. It is admissible if competent, based on personal knowledge and not privileged.

As a general rule, all persons who can perceive and perceiving can make their perception known to others, may be witnesses. However, the following cannot be witnesses:

a) Those who are of unsound mind at the time of their production for examination, to such a degree as to be incapable of perceiving and making known their perception to others;

b) Children who appear to the court to be as such tender age and inferior capacity as to be incapable of receiving correct impressions of the facts respecting which they are examined, or of relating them truly (Sec. 19, Rule 130, Rules of Court).

c) 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. (Sec. 20a, Rule 130, id).

This disqualification applies only to surviving parties but not to other witnesses who have no interest in the transaction (Reyes v. Wells, 54 Phil. 102). The survivor's disqualification is designed to close the lips of the plaintiff when death has closed the lips of the defendant to prevent the survivor from stating falsehoods (Amante v. Manzanero, 71 Phil. 553; Icard v. Masigan, 71 Phil. 419). However, the disqualification only covers matters (a) occurring before the death of the decedent and those occurring in the presence or within his hearing; otherwise, the decedent is given undue advantages (5 Moran, Rules of Court, 1980 ed. pp. 166-167) and (b) not involving fraud (Ong v. Carr, 53 Phil 980).

The disqualification does not apply where the defendant waives the Dead Man's Statute because he cross-examines the plaintiff or he files a counterclaim against the plaintiff (Goni v. Court of Appeals, 144 SCRA 222).

d) A husband cannot be examined for or against his wife without her consent; nor a wife for or against her husband without his consent, except in a civil case by one against the other, or in a criminal case for a crime committed by one against the other.

Under the proposed 1987 Rules on Evidence, this disqualification does not also apply to a criminal case for a crime committted by a spouse against the other spouses' "direct descendants or ascendants." (Sec. 22, Rule 130, 1987 Rules on Evidence). This is to allow the wife to testify against the husband who rapes the former's daughter born from an earlier marriage. (Minutes, Oct. 29, 1986, p. 9).

e) No descendant can be compelled, in a criminal case, to testify against his parents and ascendants (Sec. 20c, Rule 130, Rules of Court).

This is actually not a disqualification. Rather, this rule grants the descendant an option to testify or not to testify against his ascendants. It is in conformity with Article 315 of the Civil Code. In the proposed 1987 Rules on Evidence, the option is also extended to ascendants with respect to their descendants. (Sec. 25, Rule 130, 1987 Rules on Evidence).

f) The husband or the wife during the marriage or afterwards, cannot be examined without the consent of the other as to any communication received in confidence by one from the other during the marriage. (Sec. 21a, Rule 130, Rules of Court).

In the proposed 1987 Rules on Evidence, this disqualification is not made applicable where there is a civil case by one (spouse) against the other, or in a criminal case for a crime committed by one against the other or the latter's direct descendants or ascendants. (Sec. 24a, Rule 130, 1987 Rules on Evidence).

g) An attorney cannot, without the consent of his client be examined as to any communication made by the client to him or his advice given thereon in the course of professional employment; nor can an attorney's secretary, stenographer, or clerk be examined without the consent of the client and his employer, concerning any fact the knowledge of which has been acquired in such capacity.

In the proposed 1987 Rules on Evidence, even the consultation preparatory to the professional engagement is intended to be covered by the privilege. (Sec. 24b, Rule 130, 1987 Rules of Evidence).

However, if the client consults the lawyer regarding the perpetration of fraud or a crime, and they cooperate in effecting it, there is no privilege, because it is not part of an attorney's duty to assist in the commission of fraud or a crime. If the lawyer refuses to be a party to the act, still there is no privilege, because he cannot properly be consulted professionally for advice to aid in the preparation of fraud or a crime. (5 Moran, Rules of Court 1980 ed. p. 192). Of course, this rule applies only to a future wrongdoing, not to a past one. Communications to an attorney in a professional consultation, made by a person regarding a crime already commited by him, are protected by the privilege (Alexander v. US, 138 US 353).

But the privilege can be waived by the client either expressly or impliedly, and once waived can no longer be claimed. There is implied waiver when (1) the client fails to object to his attorney's testimony; (2) the client or his attorney introduces evidence on the privileged communication; (3) the attorney is called by the adverse party to disclose confidential information, and his client knowingly fails to object to such disclosure; and (4) the client calls or cross-examines his attorney regarding such communication (Brooks v. Holden, 55 NE 802; Grant v. Harris, 82 SE 718; Hoyt v. Hoyt, 20 NE 402).

h) A person authorized to practice medicine, surgery or obstetrics

cannot in a civil case, without the consent of the patient, be examined as to any information which he may have acquired in attending such patient in a professional capacity, which information was necessary to enable him to act in that capacity, and which would blacken the character of the patient.

The privilege is intended only to protect the disclosures which have been made to the physician, surgeon or obtetrician to enable him to treat his patient. Accordingly, if the physician acted for purposes other than to prescribe for or treat the patient, the privilege does not apply. Where a physician made an examination of the patient for trial purposes i.e., to solely determine the extent of plaintiff's injury or to comply with an order of the court, the physician is free to testify as to any information he acquires during the examination (5 Moran, Rules of Court, 1980 ed. pp. 200-201).

i) A minister or priest cannot, without the consent of the person making the confession, be examined as to any confession made to him in his professional character.

j) A public officer cannot be examined during his term of office or afterwards, as to communications made to him in official confidence, when the court finds that the public interest would suffer by the disclosure (Sec. 21, Rule 130, Rules of Court).

But income tax returns, which are otherwise confidential, may be produced in court in criminal cases or in actions where the government is interested (Cuunjieng v. Posadas, 58 Phil. 360).

k) Information cannot be disclosed if so mandated by special laws, such as the law on secrecy of bank deposits.

Testimonial Knowledge. A witness can testify only to those facts which he knows of his personal knowledge that is, which are derived from his own perception. Hearsay testimony, as a general rule, is not allowed. Thus, the testimony of a witness that the accused had confessed to the Mayor must be discarded as hearsay when it was shown that he did not witness the alleged confession (People vs. Utrela, 105 SCRA 497).

However, the hearsay rule does not apply to statements which are relevant independently of their truth or falsity, such as, those which refer to the very facts at issue viz. whether libelous remarks were uttered or not irregardlesss of the truth of the remarks; and those which are the circumstantial evidence of the facts in issue viz. recollection of statements made by a person which indicate the latter's emotional, mental, or behavioral state.

If the affiants are not presented in court and the adverse party is thereby denied the opportunity to cross-examine the affiants (People vs. Peruelo, 105 SCRA 226). The affidavit of a person pointing to the accused as the seller of marijuana is therefore not admissible for being hearsay as the affiant was not presented in court (People vs. Ramos, 122 SCRA 312; People vs. Villeza, 127 SCRA 349; People vs. Gueron, 121 SCRA 115).

Permissible Hearsay Testimony. However, even if the declarant is not presented in the following cases for cross-examination, because of death or unavailability, his declaration is admissible, as an exception to the hearsay rule because of necessity and trustworthiness.

a) Dying declaration. When a person is at the point of death, the mind is induced to speak the truth. The declaration of a dying person regarding the circumstances of his death is admissible if; 1) It is made under the consciousness of an impending death; 2) The declaration refers to the cause and surrounding circumstances of the declarant's death; 3) The declarant is a competent witness; and 4) The declaration is offered in a criminal case wherein the subject of inquiry is the declarant's death (People vs. Balbas, 122 SCRA 859; People vs. Almeda, 124 SCRA 486). It follows that a dying declaration cannot be admitted to establish the fact of robbery (People vs. Sabio, 102 SCRA 219). It is limited to criminal prosecution for homicide or murder as evidence of the cause or surrounding circumstances of the declarant's death (id). It is noteworthy however that in the proposed 1987 Rules on Evidence, dying declaration is made admissible even in civil cases where the declarant's death is the subject of inquiry, as evidence of the cause and surrounding circumstances of such death (Sec. 37, Rule 130, 1987 Rules on Evidence).

In dying declaration, the declarant need not expressly state that the he expects to die (People vs. Calixto, 123 SCRA 369; People vs. Elefano, 125 SCRA 702). An ante-mortem declaration is admissible even if the victim when asked whether he was going to die said: "I do not know sir because my wounds are too painful." (People vs. Sarabia, 127 SCRA 100). The fact that the deceased died fourteen (14) days after the statement does not affect its credibility (People vs. Jacinto, 133 SCRA 498). But where the declarant is in doubt whether he will die or not, his dying declaration is not admissible (People v. Laquinom, 135 SCRA 91). Where the declarant witness is not credible, the ante-mortem statement is also not admissible (People vs. Resimiento, 128 SCRA 95).

b) Declaration against interest. The declaration made by a person deceased or unable to testify, against the interest of the declarant, if the fact asserted in the declaration was at the time it was made so far contrary to declarant's own interest, that a reasonable man in his position would not have made the declaration unless he believed it to be true, may be received in evidence against himself or his successors in interest (Sec. 32, Rule 130, 1987 Rules of Court).

c) Declaration about pedigree. The act or declaration of a person deceased or unable to testify, in respect to the pedigree of another person related to him by birth or marriage, may be received in evidence where it occurred before the controversy, and the relationship between the two persons is shown by evidence other than such act or declaration. The word "pedigree" includes relationship, family genealogy, birth, marriage, death, the dates when and the places where these facts occurred, and the names of the relatives. It embraces also facts of family history intimately connected with pedigree. (Sec. 33, id; Ducusin vs. Court of Appeals, 122 SCRA 280).

Student records or other writing unsigned by the father do not constitute evidence of filiation (id). Even the complementary ending in a letter "Su Padre" is not an indubitable acknowledgment of paternity, but a mere indication of paternal solicitude (Banas v. Banas, 134 SCRA 260).

d) Family reputation or tradition regarding pedigree. The reputation or tradition existing in a family previous to the controvercy, in respect to the pedigree of any one of its members, may be received in evidence if the witness testifying thereon be also a member of the family, either by consanguinity or affinity. Entries in family bibles or other family books or charts, engravings on rings, family portraits and the like, may be received as evidence of pedigree (Sec. 34 id). However, family pictures which do not indicate that marriage took

place, and which, if at all, merely show the presence of a family with or without the sanction of marriage, do not constitute proof of filiation (Bersibes vs. GSIS, 128 SCRA 53). Certificate of Baptism is not proof of recognition (Reyes vs. Court of Appeals, 135, SCRA 439).

e) Common reputation. Common reputation (or prevailing and undivided belief in a community) existing previous to the controvery, respecting facts of public or general interest more than thirty years old, or respecting marriage or moral character, may be given in evidence (Sec. 35, Rule 130, Rules of Court).

f) Res gestae. Statements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as part of the res gestae. So, also statements accompanying an equivocal act material to the issue, and giving it a legal significance, may be received as a part of the res gestae. (Sec. 36, id).

Three requisites must be present before res gestae may be admitted: (1) That the principal act, the res gestae, be a startling occurrence; (2) That the statements were made before the declarant had to time to contrive or devise; (3) That the statement must concern the occurrence in question and its immediately attending circumstances (People vs. Balbas, 122 SCRA 959; People vs. Siscar, 140 SCRA 316).

Information gathered by a traffic investigator from persons who saw an accident is admissible as part of the rest gestae (Phoenix vs. Carbonel, 148 SCRA 353).

The victim's statement, if not admissible as a dying declaration may be admissible as part of the res gestae when made immediately and spontaneously after the shooting incident and before he could contrive a plan to incriminate the accused (People vs. Araja, 105 SCRA 133).

g) Entries in the Court of Business. Entries made at, or near the time of the transactions to which they refer, by a person deceased, outside of the Philippines or unable to testify, who was in a position to know the facts therein stated, may be received as prima facie evidence, if such person made the entries in his professional capacity or in the performance of duty and in the ordinary or regular course of business or duty (Sec. 38, Rule 130, Rules of Court).

Pursuant to this rule, entries made in the course of business or duty are admissible as evidence of their contents where the entrant is not available to testify. This is because it is presumed that a man who makes regular entries for purposes of business or duty does so accurately. The entries are considered trustworthy and admissible as an exception to the hearsay rule. However, it is necessary to prove that (1) the entry was made because it was the duty of the entrant to do so; (2) the entry was made regularly or in the ordinary course of business or occupation (a single entry or several entries in loose leaves not being admissible) (US v. Dayutal, 4 Phil. 93); (3) the entry was made at or near the time of the transaction to which it relates; (4) the entrant was in a position to know the facts stated in the entry. Thus, entry in hospital records by a doctor as to how an infant was injured, the information not coming from the infant, is not admissible because it is hearsay (Dougherty v. City of New York, 66 NF2d 299); but even if the entrant had no personal knowledge of the entry, if such entry was made from reports given to him by employees whose duty it was to give such reports for entry, and such employees have personal knowledge of the facts so reported, although due to the number of entries they cannot be identified, the entry is admissible (5 Moran, Rules of Court 1980 ed. p. 37, citing New York v. Second Ave. 7 NE 905); and (5) the entrant is dead or unable to testify. If the entrant is alive and available, the entry cannot be received as independent evidence. It may be used as a memorandum to refresh his memory on the stand (Tan v. Trinidad, 3 Phil. 684) and it may be admitted in evidence to corroborate his testimony (Figueras v. Serrano, 52 Phil. 28).

The original entries should be produced and properly authenticated (Nolan v. Salas, 7 Phil. 1; Yaptico v. Vito, 9 Phil. 61).

h) Entries in Official Record. Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are prima facie evidence of the facts therein (Sec. 38, Rule 130, Rules of Court).

The person making the statement need not always be a public officer. It is enough if he is a person who makes a statement in the performance of a duty especially enjoined by law. Thus, in a recent case, the Supreme Court held that the log book of a vessel is an official record and entries made by a person in the performance of a duty required by law is prima facie evidence of the facts stated therein (Haverton vs. NLRC, 135 SCRA 685).

i) Commercial lists. Evidence of statements of matters of interest to persons engaged in an occupation contained in a list, register, periodical, or other published compilation is admissible as tending to prove the truth of any relevant matter so stated if that compilation is published for use by persons engaged in that occupation and is generally used and relied upon by them therein (Sec. 39, Rule 130, Rules of Court).

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

k) Testimony at a Former Trial. The testimony of a witness deceased or out of the Philippines, or unable to testify, given in a former case between the same parties, relating to the same matter, the adverse party having had an opportunity to cross-examine him, may be given in evidence (Sec. 41 id; People vs. Villaruz, 135 SCRA 116).

In the proposed 1987 Rules on Evidence, depositions of a witness deceased or unable to testify in a judicial or administrative proceeding involving the same parties and subject matter may also be given in evidence against the adverse party who had the opportunity to cross-examine him.

Opinion Rule. Witnesses are allowed to only state facts. They are not, as a general rule, permitted to make opinions, conjectures and conclusions. However, the opinion of a witness is admissible after proper basis is given regarding (a) the identity of a person about whom he has adequate knowledge; (b) a hardwriting with which he has sufficient knowledge; c) the mental sanity of a person with whom he is sufficiently acquainted; d) impressions of the emotion, behaviour, condition, appearance of a person (Sec. 50c, Rule 130, 1987 Rules on Evidence); e) a matter requiring special (expert) knowledge, skill and experience or training which he is shown to possess.

Thus, in the identification of thumbmarks, the testimony of an expert and/

or the comparison of thumbmarks of the donor must be presented in evidence. The mere testimony of an ordinary witness that the thumbmark in question does not belong to the donor is insufficient to assail the genuineness of a notarial deed of donation (Carandang v. Capuno, 123 SCRA 652).

In a case, the Supreme Court also ruled that reports of NBI handwriting experts are sometimes rendered of doubtful integrity in the light of their admission that forgers have better skills than the genuine writers themselves. (Director v. Court of Appeals, 102 SCRA 370).

Expert medical testimony on the mental condition of a person is also not reliable to invalidate a deed executed three days before the neurologist attended to the patient (Velasco v. Paulino, 141 SCRA 1).

The testimony of doctors regarding the probable time of death (People vs. Cervantes, 125 SCRA 187) and how the wounds were inflicted (People vs. Dumlao, 125 SCRA 821) cannot prevail under that of an eye witness. Further, between two doctors, the testimony of the doctor who examined the victim is more acceptable (People vs. Malate, 116 SCRA 487).

Admissions. The act, declaration or omission of a party as to a relevant fact may be given in evidence against him. Such declaration may be made judicilly or extrajudicially, express or implied. However, statements made by a party in his own favor are inadmissible as self-serving evidence.

Corallary to this principle, a person's acts or declarations bind only such person and are evidence against himself. His acts or declaration cannot bind other parties. This is the rule of *res inter alios acta.* By way of exceptions, acts or declarations of one party may bind another where there is between them a relation of partnership, agency, conspiracy or privity. Thus:

a) The act or declaration of a co-partner or agent of a party within the scope of his authority and during its existence may be given in evidence against such party after the partnership or agency is shown by evidence *aliunde.*

b) The act or declaration of a conspirator relating to the conspiracy and during its existence may be given in evidence against the co-conspirator after the conspiracy is shown by evidence *aliunde.*

c) Where one derives title to property from another, the act, declaration or omission of the latter, while holding the title, in relation to the property is evidence against the former.

Confession. In a criminal case, the express acknowledgement by the accused of his guilt amounts to a confession, and it is admissible in evidence against him provided that it is made voluntarily after he has been apprised that it is made voluntarily after he has been apprised of his constitutional rights to remain silent and to counsel. (Sec. 20, Art. IV, 1973 Constitution). Thus, an admission of guilt during custodial or preliminary investigation is inadmissible if made without the assistance of counsel (People v. Abano, 145 SCRA 555); People v. Lasac, 148 SCRA 624). If the declarant cannot secure an attorney, the government must provide one to make the confession given during custodial interrogation admissible (People v. Quizon, 142 SCRA 362). The prosecution has the burden of proving compliance with these constitutional requirements before the confession can be admitted in court. The presumption of regularity in the performance of official duty does not apply to in-custody confessions (People v. Tolentino, 145 SCRA 597).

The 1987 Rules on Evidence reiterates that a confession is admissible

"only" against the person who made it (Sec. 33, Rule 130, 1987 Rules on Evidence' Minutes Oct. 29, 1986 p. 13) because it is hearsay evidence to third parties who have no opportunity to cross-examine the confessor (People v. Buan, 64 Phil. 296). It is opined, however, that if the accused repeats his confession implicating others during the trial, the confession is admissible even against the co-accused who shall have the opportunity to cross-examine the declarant (People v. Encipido, 146 SCRA 478; People v. Valerio, 112 SCRA 208).

The proposed 1987 Rules on Evidence also adopt Rules 409 and 410 of the Federal Rules on Evidence which provide that "a plea of guilty later withdrawn, or an unaccepted offer of a plea of guilty to a lesser offense, is not admissible in evidence against the accused who made the plea or offer." (Sec. 27, Rule 130 1987 Rules on Evidence). And "an offer to pay or the payment of medical, hospital or similar expenses occassioned by an injury is also not admissible in evidence as proof of civil or criminal liability for the injury." (Minutes Oct. 29, 1986 p. 11). But an offer of compromise in criminal cases, except those involving quasi-offenses (criminal negligence) or those allowed by law to be compromised, may be received in evidence be received in evidence as an implied admission of guilt (id).

Evidence that one did or did not do a certain thing at one time is not admissible to prove that he did or did not do the same or a similar thing at another time except to prove a specific intent or knowledge, identity, plan, system, scheme, habit, custom, or usage and the like (People vs. Munoz, 107 SCRA 313).

Circumstantial Evidence. When direct evidence is not available, circumstantial evidence may be introduced. But to be sufficient for conviction, it must be shown that: (1) there is more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination of all the circumstances is such as to produce a conviction beyond a reasonable doubt. (People vs. Cruz, 134 SCRA 512). Circumstantial evidence must always be closely examined, because evidence of this kind may be fabricated to implicate another. As an example, one only has to remember how in the Bible Joseph commanded the steward of his house, "put my cup, the silver cup in the sack's mouth of the youngest," and when the cup was found there, Benjamin's brethren too hastily assumed that he must have stolen it (Genesis, XLIV, 2).

Offer of Evidence

Finally, evidence must be formally offered. While in one case, the Supreme Court ruled that the failure to formally offer testimonial evidence is not a ground to exclude it (Guerrero v. Sta. Clara, 124 SCRA 553). Documentary and real evidence must be offered after the presentation of party's testimonial evidence. Otherwise, the Court shall not consider it. The offeror must specify the purpose for which the evidence is offerred. As regards testimonial evidence, the offer must be made at the time the witness is called to testify.

The adverse party must immediately object, if these are grounds therefor, to evidence orally offered. Objections to a question propounded in the course of the oral examination of a witness should be made as soon as the ground shall become reasonably apparent. Objections to offer of documentary exhibits must be made at the time of the offer (People vs. Banares, 145 SCRA 680). However, failure to object to the presentation of incompetent evidence, like hearsay

evidence, does not give such evidence any probative value (People vs. Valero, 112 SCRA 661).

Conclusion

In the proposed 1987 Rules on Evidence, there has been a conscious effort to clarify ambiguous provisions and to incorporate decisional principles in the Rules. Some sections, particularly with regard to parental, filial and spousal privilege, have been expanded to cover other direct ascendants or descendants and conform with Filipino traditions. To make the proposed Rules humane and to encourage compassion to victims, an offer to pay or the payment of medical or hospital bills is not made admissible as proof of civil or criminal liability for the victim's injury. However, conspicuously absent in the proposed rules and recent Supreme Court decisions is an express policy to render flexible the rigid rules of evidence when circumstances warrant, to shorten proceedings and to permit (unless abused) recordation of what otherwise would be objectionable testimony or evidence for review by the appellate courts. Such a policy is necessary to meet the current problems of slow-paced adjudication of disputes and the presence of some unqualified judges in the trial courts.

THE 1987 CONSTITUTION: FOSSILIZING MARTIAL LAW JURISPRUDENCE

ALAN A. TAN*

> . . . although little overt reference to it was made at that time, the future verdict of history was very much a factor in the thinking of the members, no other case of such transcendental significance to the life of the nation having confronted the Court before.
>
> — Chief Justice Makalintal, in AQUINO vs ENRILE, 59 SCRA 183

> When the judgment of history is written, as leaders of our people, we shall be asked to account not only for what we did, not only for what we did not do, but also for what visions we have today of our tomorrow.
>
> — Justice Concepcion, Jr., in MORALES vs ENRILE, 121 SCRA 538

A reader of the law encounters this doctrine spelled out in its Latin fullness in many a preface to the Supreme Court Reports Anotated: *stare decisis et non quieta movere*. Idiomatically, it simply means, "let sleeping dogs lie." The doctrine finds legislative sanction in Article 8 of the Civil Code starting that "[j]udicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines."[1] This has been held to mean that the Court's interpretation of a statute, while not deemed a source of law, nonetheless forms part of the statute as originally passed because the construction establishes the contemporaneous legislative intent which such statute carries into effect.[2] Consequently, once a question of law has been examined and finally decided by the high court it should be deemed settled and closed to furhter argument,[3] presumably on the theory that there is no other forum to which the question may be brought for further determination.

Of all the laws in a given State there is perhaps none more susceptible to judicial interpretation and construction than its constitution. This paper will focus on a subsection on the Presidency tucked into the 1935 Constitution, here quoted in full as follows[4] –

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[1] Ours being of the civil law system, this provision refers only to Supreme Court divisions. Cf. MIRANDA vs IMPERIAL, 77 Phil 1066.

[2] SENARILLOS vs HERMOSISIMA, 100 Phil. 501.

[3] PRAIL vs. BURCKHART, 299 Ill. 19, 132 NE 280, cited in Tolentino, I Civil Code of the Philippines 1983 ed.), p. 39.

[4] Section 10(2), Article VII, 1935 Constitution.