The Hearsay Rule: A Paradigm Shift

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I. INTRODUCTION

> "*[O]f more value is one eye-witness than ten hearsays. Those who hear, speak of what they've heard; those who see, know beyond mistake.*"
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> — Plautus[1]

In this age of technology where social media has become the preferred platform for communication and "fake news" is a constant plague, hearsay is invoked frequently, even by non-lawyers. Colloquially, hearsay is simply a

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1. Plautus, The Churl, Act II, Scene VI, 489-490, Henry Thomas Riley, II The Comedies of Plautus 231 (1852), *available at* http://data.perseus.org/citations/urn:cts:latinLit:phi0119.phi020.perseus-eng1:2.6 (last accessed Sep. 30, 2020). *See also* BENJAMIN TODD LEE, APULEIUS' FLORIDA: A COMMENTARY 69 (2005).

statement transmitted "by word of mouth," not direct from the source, and is therefore generally branded as unreliable and equated to gossip or rumor. This is not far from the traditional concept of hearsay in the Philippines.

Prior to the revisions introduced by the 2019 Amendments to the Revised Rules on Evidence,[2] the rule on hearsay was encapsulated in Section 36 of Rule 130,[3] which provides that "[a] witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception[.]"[4] Testimony not based on one's own observations or using one's own senses was deemed hearsay. This is the old formulation of the hearsay rule.

Nevertheless, as with other rules, the Old Hearsay Rule also had well established exceptions, both by express provision and those established through precedent. There were 11 exceptions to the Old Hearsay Rule,[5] but the doctrine of independently relevant statements was carved out through jurisprudence. Thus, the Supreme Court has repeatedly exempted from hearsay objections statements characterized as "independently relevant," or statements regarding what a third party-declarant told or related to a witness.[6]

Yet, this doctrine has caused perennial confusion as to whether independently relevant statements are truly an exception to the hearsay rule, considering that the basis for its admissibility is precisely the personal recollection of the witness of what the third party-declarant stated. As such, independently relevant statements are competent testimonial evidence, and not hearsay, because they are not derived from another's observation but from one's own.

Recognizing the problematic equivalence of personal or firsthand knowledge with hearsay, so exemplified, the Sub-Committee on the Revision of the Rules of Court (Sub-Committee) proposed and the Court endorsed the paradigm shift this Article speaks of: that hearsay, as a distinct legal concept, be given its own definition separate and independent from the concept of firsthand knowledge. Thus, as borrowed from the text of the United States

2. 2019 AMENDMENTS TO THE 1989 REVISED RULES ON EVIDENCE.

3. 1989 REVISED RULES ON EVIDENCE, rule 130, § 36.

4. *Id.*

5. *See* 1989 REVISED RULES ON EVIDENCE, rule 130, §§ 36-47.

6. *See, e.g.*, People v. Umapas, 821 SCRA 421, 437 (2017).

Federal Rules on Evidence,[7] effective 1 May 2020, the 2019 Amended Rules on Evidence now provide —

> Sec. 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.
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> 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.[8]

This Article will trace the evolution of the rule on hearsay in this jurisdiction, its text, and its application in jurisprudence, as well as offer an introduction to the New Hearsay Rule.

II. THE OLD HEARSAY RULE

A survey of the history of the local Rules of Court will reveal that the Old Hearsay Rule suffered from serious epistemological problems. This is largely due to the way that the Rule was textually defined: as the obverse or opposite of the basic testimonial qualification, i.e., that "[a] witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception[.]"[9] This principle, more commonly known in other jurisdictions as the "Firsthand Knowledge Rule,"[10] is consistent with what a witness' function in court should be, which is "to speak *de visu suo et auditu*."[11] Thus, "[i]nformation acquired second hand, from the statements or

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7. 2019 Proposed Amendments to the Revised Rules on Evidence, 16 August 2019, Sub-Committee on the Revision of the Rules of Court, n. 38, at 21.

8. 2019 REVISED RULES ON EVIDENCE, rule 130, § 37.

9. 1989 REVISED RULES ON EVIDENCE, rule 130, § 36.

10. RONALD JAY ALLEN, ET AL., AN ANALYTICAL APPROACH TO EVIDENCE: TEXT, PROBLEMS AND CASES 452-53 (2016 ed.).

11. John H. Wigmore, *The History of the Hearsay Rule*, 17 HARV. L. REV. 437, 438 (1904) (citing 2 JAMES BRADLEY THAYER, A PRELIMINARY TREATISE ON EVIDENCE AT THE COMMON LAW 18 & 499 (1898)).

reports of others, is not personal knowledge[,]"[12] and was hearsay under Rule 130, Section 36.

By reason of the formulation of our prior Rules on Evidence, the section on "Testimonial Knowledge" begins with the basic testimonial qualification quoted above succeeded by "Exceptions to the Hearsay Rule."[13] The basic testimonial qualification therefore evolved as the anti-thesis of hearsay, and from this was born the Old Hearsay Rule, that is, simply, matters not within the personal knowledge of the witness.

The Court has explained the rationale for this rule —

> [T]he rule excluding hearsay as evidence is based upon serious concerns about *the trustworthiness and reliability of hearsay evidence* due to its not being given under oath or solemn affirmation and due to its not being subjected to cross-examination by the opposing counsel to test the perception, memory, veracity and articulateness of the out-of-court declarant or actor upon whose reliability the worth of the out of-court statement depends.[14]

Because the Old Hearsay Rule was a mere obverse equivalent of Rule 130, Section 36, that is, hearsay as any and all statements not within the personal knowledge of the witness, the meaning of hearsay was disjoined from the very purpose of evidence — *to ascertain the truth respecting a matter of fact*, as mandated under Rule 128, Section 1.[15]

Nevertheless, our courts have managed to supply a definition of hearsay. In *Mancol, Jr. v. Development Bank of the Philippines*,[16] the Court declared —

> It is a basic rule in evidence that a witness can testify only on the facts that he knows of his own personal knowledge, i.e., those which are derived from his own perception. A witness may not testify on what he merely learned, read or heard from others because such testimony is considered hearsay and may not be received as proof of the truth of what he has learned, read or heard. *Hearsay evidence is evidence, not of what the witness knows himself but, of*

12. ALLEN, ET AL., *supra* note 10, at 193.

13. 1989 REVISED RULES ON EVIDENCE, rule 130, § 36 & pt. 5.

14. People v. Estibal, 743 SCRA 215, 250 (2014) (citing Patula v. People, 669 SCRA 135, 155 (2012)) (emphasis supplied).

15. 1989 REVISED RULES ON EVIDENCE, rule 128, § 1. The rule provides: "*Evidence defined*. Evidence is the means, sanctioned by these rules, of ascertaining in a judicial proceeding the truth respecting a matter of fact." *Id.*

16. Mancol, Jr. v. Development Bank of the Philippines, 846 SCRA 131 (2017).

> *what he has heard from others*; it is not only limited to oral testimony or statements but likewise applies to written statements.[17]

The application, however, was another matter.

Hence, if a witness testifies to prove that an utterance was made to him by an out-of-court declarant, an objection on the ground of hearsay will inevitably be raised.[18] When juxtaposed with the basic definition of what constitutes evidence,[19] that is, as it relates to the truth or falsity of the out-of-court declaration testified to by an at-trial witness, the overwhelming, if not instinctive, direction is to object to such evidence on the basis of it being hearsay, there being no opportunity to test the out-of-court declarant. Indeed, *Estibal* provides that

> [t]he weight of such testimony depends not upon the veracity of the witness but upon the veracity of the other person giving the information to the witness without oath. The information cannot be tested because the declarant is not standing in court as a witness and cannot, therefore, be cross-examined.[20]

A solution came in the form of the "Independently Relevant Statements" Rule which, as mentioned above, has been recognized by the Court as an exception to the Old Hearsay Rule, though it failed to address the issue of absence of cross-examination of the out-of-court declarant.

Espineli v. People[21] explained the doctrine of independently relevant statements —

> 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*

17. *Id.* at 144 (emphasis supplied) (citing 1989 REVISED RULES ON EVIDENCE, rule 130, § 36; Gulam v. Santos, 500 SCRA 463, 473 (2006); & Miro v. Mendoza Vda. de Erederos, 710 SCRA 371, 390 (2013)).

18. *See Estibal*, 743 SCRA at 246. The case provides that: "For example, in a slander case, if a prosecution witness testifies that he heard the accused say that the complainant was a thief, this testimony is admissible not to prove that the complainant was really a thief, but merely to show that the accused uttered those words." *Estibal*, 743 SCRA at 248 (citing *Patula*, 669 SCRA at 153).

19. *See* 1989 REVISED RULES ON EVIDENCE, rule 128, § 1.

20. *Estibal*, 743 SCRA at 247 (citing *Patula*, 669 SCRA at 152).

21. Espineli v. People, 725 SCRA 365 (2014).

> *of placing the statement on the record is merely to establish the fact that the statement, or the tenor of such 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*.[22]

Under contention in *Espineli* was the admissibility of the testimony of a law enforcement agent who conducted the interview of a witness who allegedly had vital information about the murder of a certain Berbon, Senior Desk Coordinator of a radio station.[23] Shortly after the supposed witness was released on bail upon another charge, he was never heard of again.[24] During the trial, the law enforcement agent testified that while he was investigating the supposed witness, the latter confided in him that he overheard the accused tell his companion, "[*A*]*yaw ko nang abutin pa ng bukas yang si Berbon*"[25] and that he saw the accused and his companion armed with a .45-caliber pistol and an armalite before boarding a red car.[26] The Supreme Court held that the testimony of the law enforcement agent is admissible, ratiocinating that the said testimony was not offered to prove the truth of such statement, but only for the purpose of establishing that the supposed witness executed a sworn statement containing such narration of facts.[27] Considering that "what the prosecution sought to be admitted was the fact that [the supposed witness] made such narration of facts[,] ... and not necessarily to prove the truth of [such narration,]"[28] the hearsay rule did not bar its admission.[29]

In *People v. Estibal*,[30] the earlier example given, "in a slander case, if a prosecution witness testifies that he heard the accused say that the complainant

22. *Id.* at 378 (citing Republic v. Heirs of Felipe Alejaga, Sr., 393 SCRA 361, 371 (2002)) (emphases supplied).

23. *Espineli*, 725 SCRA at 370 & 374.

24. *Id.* at 370–71.

25. *Id.* at 378.

26. *Id.* at 378.

27. *Id.* at 378–79.

28. *Id.* at 379.

29. *Espineli*, 725 SCRA at 378.

30. People v. Estibal, 743 SCRA 215 (2014).

was a thief, this testimony is admissible not to prove that the complainant was really a thief, but merely to show that the accused uttered those words."[31]

The need to distinguish independently relevant statements thus became symptomatic of the problematic equivalence created by our prior Rules on Evidence between firsthand knowledge and hearsay.

The same problem beset a witness' impressions of the emotion, behavior, condition or appearance of another individual, which are inaptly labelled admissible under the Opinion Rule.[32] Surely, when a witness testifies on "his or her impressions" he or she must necessarily rely on his or her own perceptions, whether it be as to the emotions, behavior, condition or appearance of another person. Far from being merely an "opinion," or a view or belief, these impressions are perceptual and, using the basic witness qualification under Rule 130, Section 36, are matters based on personal knowledge.

With the transition to the more appropriately designated "Firsthand Knowledge Rule," these concerns are alleviated to a measurable degree. What has become apparent, therefore, is that an in-text intervention was called for despite the court-supplied definition of hearsay.

Now, we ask: where did the text originate?

A. A Short Textual History of the Old Hearsay Rule and its Exceptions

As with many of our oldest statutes, our rules of procedure, particularly, the rule on hearsay, trace their origins to, and were heavily influenced by, our colonial past. Under the first iteration of our country's contemporary rules of

31. *Id.* at 248 (citing *Patula*, 669 SCRA at 153).

32. 1989 REVISED RULES ON EVIDENCE, rule 130, § 50. The rule provides —

> Section 50. *Opinion of ordinary witnesses.* The opinion of a witness for which proper basis is given, may be received in evidence regarding:
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> ...
>
> (c) The mental sanity of a person with whom he is sufficiently acquainted.
>
> The witness may also testify on his impressions of the emotion, behavior, condition or appearance of a person.

Id.

procedure,[33] the 1901 Code of Civil Procedure,[34] undeniably Anglo-American in origin,[35] the problematic equivalence between the concepts of Firsthand Knowledge and Hearsay was already apparent —

> Section 276. *Personal Knowledge and Hearsay Evidence.* — A witness can testify to those facts only which he knows of his own knowledge; that is, which are derived from his own perception, except in those few express cases in which his opinions or inferences from the declarations of others, as hereinafter stated, are admissible.[36]

This equivalence was further complicated by the fact that the *Res Inter Alios Acta* Rule[37] followed immediately after in sequence, implying that it was established as an exception to the rule on hearsay. Other exceptions to the rule on hearsay under Section 276 of the Code of Civil Procedure included

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33. Excepted from this criterion of modernity are the rules of procedure effective when the Philippines was under the Spanish colonial regime, which would require a more intimate historiographical inspection.

34. An Act Providing a Code of Procedure in Civil Actions and Special Proceedings in the Philippine Islands, Act No. 190 (1901) [hereinafter CODE OF CIVIL PROCEDURE].

35. Alzua and Arnalot v. Johnson, 21 Phil. 308, 349 (1912). This case provides —

> Before entering on an examination of the complaint for this purpose, it will be well to refer briefly to certain elementary rules of pleading, as to which we believe there can be no cavil under the system of procedure in civil cases borrowed from Anglo-American jurisprudence and introduced in these Islands under the new Code of Civil Procedure.

Id. See also Manila Railroad Company v. Paredes, 31 Phil. 118, 129 (1915) & Harden v. The Director of Prisons, 81 Phil. 741, 749 (1948).

36. CODE OF CIVIL PROCEDURE, § 276. Falling under Part I, Chapter X: Rules on Evidence, Affidavits and Depositions, Perpetuation of Testimony.

37. CODE OF CIVIL PROCEDURE, § 277. "*Rights of Party Not Prejudiced by Act, Declaration, or Omission of Another.* — The rights of a party cannot be prejudiced by the declaration, act, or omission of another, except by virtue of a particular relation between them, as hereinafter stated; therefore, proceedings against one cannot affect another." *Id.*

Declaration by Predecessors-in-Interest,[38] *Res Gestae*,[39] Pedigree Exception,[40] and Declaration Against Interest.[41]

Under the 1940 Rules of Court, the Rules on Evidence were treated as part of the General Provisions of the Rules.[42] All the Rules on Evidence, exactly 100 provisions, fell under the same Rule number — Rule 123. Yet again, the 1940 Rules maintained the problematic equivalence between the Firsthand Knowledge Rule and the Hearsay Rule: "Section 27. *Testimony Generally Confined to Personal Knowledge*. — A witness can testify to those facts only which he knows of his own knowledge; that is, which are derived from his own perception, except as otherwise provided in this rule."[43]

As is apparent, its only difference from the 1901 Code of Civil Procedure is the more economical phrasing of the excepting clause.

The 1940 Rules enumerated 10 discrete exceptions to the Hearsay Rule:

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38. *Id.* § 278. "*Exceptions Where One Derives Title to Real Property From Another*. — Where, however, one derives title to real property from another, the declaration, act, or omission of the latter, while holding the title, in relation to the property, is evidence against the former." *Id.*

39. *Id.* § 279.

> *Exception Where Declaration, Act, or Omission Forms Part of the Transaction*. — Where, also, the declaration, act, or omission forms part of a transaction, which is itself a fact in dispute, or evidence of that fact, such declaration, act, or omission, is evidence as part of the transaction. Such evidence may be termed admissible as constituting a part of the *res gestae*.

Id.

40. CODE OF CIVIL PROCEDURE, § 281.

> *Hearsay Evidence of Questions of Pedigree*. — The declaration, act, or omission of a member of a family who is not living, or is outside the jurisdiction of the Philippine Islands, is admissible as evidence of pedigree or relationship, or family genealogy in cases where pedigree, relationship, or family genealogy are questions at issue.

Id. § 281.

41. *Id.* § 282. "*Declaration, Act, or Omission of Deceased Person Against His Interests*. — The declaration, act, or omission of a deceased person, having sufficient knowledge of the subject, against his pecuniary interest, is admissible as evidence to that extent against his successor in interest." *Id.*

42. *See* 1940 RULES OF COURT, pt. IV, rule 123.

43. 1940 RULES OF COURT, rule 123, § 27.

(1) Dying Declaration;[44]

(2) Declaration against Interest;[45]

(3) Act or Declaration about Pedigree;[46]

(4) Family Reputation or Tradition Regarding Pedigree;[47]

(5) Common Reputation;[48]

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44. *Id.* rule 123, § 28. "*Dying Declaration.* — The declaration of a dying person, made under a consciousness of an impending death, may be received in a criminal case wherein his death is the subject of inquiry, as evidence of the cause and surrounding circumstances of such death." *Id.*

45. *Id.* rule 123, § 29. "*Declaration Against Interest.* — The declaration made by a person deceased, or outside of the Philippines, or unable to testify, against his pecuniary or proprietary interest, with sufficient knowledge of the matter by him stated, may be received in evidence against his successors in interest and against third persons." *Id.*

46. *Id.* rule 123, § 30.

> *Act or Declaration about Pedigree.* — The act or declaration of a person deceased, or outside of the Philippines, 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.

1940 RULES OF COURT, rule 123, § 30.

47. *Id.* rule 123, § 31.

> *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 thereto be also a member of the family. 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.

Id.

48. *Id.* rule 123, § 32. "*Common Reputation.* — Common reputation existing previous to the controversy, respecting facts of public or general interest more than thirty years old, 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." *Id.*

(6) Res Gestae;[49]

(7) Entries in the Course of Business;[50]

(8) Entries in Official Records;[51] Books and Maps;[52] and

(9) Testimony at a Former Trial.[53]

Notably, the term "hearsay" itself did not appear in the 1940 Rules of Court. In the 1964 Rules of Court, the term "reappeared" and, again, side by side with the Firsthand Knowledge Rule.[54] This consistent juxtaposition of the term "hearsay" with the basic testimonial qualification for admissibility (i.e., personal knowledge, restricted the understanding of the concept to what a witness can testify on, and at the same time gave rise to the general confusion

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49. *Id.* rule 123, § 33.

> *Part of the 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 a 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.

1940 RULES OF COURT, rule 123, § 33.

50. *Id.* rule 123, § 34.

> *Entries in the Course 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.

Id.

51. *Id.* rule 123, § 35. "*Entries in Official Records.* — Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are prima facie evidence of the facts therein stated." *Id.*

52. *Id.* rule 123, § 36. "*Books and Maps.* — Historical works, books of science or art, and published maps or charts, when made by persons indifferent between the parties, are prima facie evidence of facts of general notoriety and interest." 1940 RULES OF COURT, rule 123, § 36.

53. *Id.* rule 123, § 37. "*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." *Id.*

54. 1964 RULES OF COURT, rule 130, § 30.

among litigants, existing until the present, regarding the proper ground for objection against testimonial evidence for lack of personal knowledge, commonly tagged as a "violation of the hearsay rule," when it is more aptly opposed as "lack of firsthand knowledge" of the witness).

The third iteration of the Rules, the 1964 Rules of Court, gave us the seven divisions of the Rules on Evidence that we use today.[55] The rules governing the admissibility of hearsay were provided for under Rule 130, Sections 30 through 41. From the exceptions were removed Books and Maps,[56] replaced by Commercial Lists,[57] and Learned Treatises.[58]

Save for a small transposition of the word "only" under the general exclusionary rule of hearsay,[59] and a clarification of the requisites of adversity and inclusion of the declarant against whom the exception may be pleaded for

55. *Id.* rules 128-134. The rules are as follows: Rule 128 on General Provisions; Rule 129 on What Need Not Be Proved; Rule 130 on the Rules of Admissibility; Rule 131 on the Burden of Proof and Presumptions; Rule 132 on the Presentation of Evidence; Rule 133 on the Weight and Sufficiency of Evidence; and Rule 134 on the Perpetuation of Testimony. *Id.*

56. 1940 RULES OF COURT, rule 123, § 36.

57. 1964 RULES OF COURT, rule 132, § 39.

> *Commercial lists and the Like.* 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.

Id.

58. *Id.* rule 132, § 40.

> *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 treatise, periodical or pamphlet is recognized in his profession or calling as expert in the subject.

Id.

59. *Id.* rule 132, § 30. "*Testimony generally confined to personal knowledge; hearsay excluded.* — A witness can ~~only~~ testify only to those facts which he knows of his own knowledge; that is, which are derived from his own perception, except as otherwise provided in these rules." *Id.*

declarations against interest,[60] none of the other provisions suffered change between the 1940 and 1964 Rules of Court.

In 1989, through Bar Matter No. 411, the Court adopted the Proposed Rules on Evidence submitted by the Rules of Court Revision Committee on 31 August 1987.[61] The 1989 Revised Rules on Evidence became effective on 1 July 1989.[62] The general exclusionary rule on hearsay was modified to remove the word "own" before personal knowledge.[63] Among the other notable amendments to the rule on hearsay were the rephrasing of the cases where Dying Declaration is applicable;[64] removal of the phrases "or outside of the Philippines" and "pecuniary or moral" in Declaration Against Interest;[65] the removal of the phrase "outside of the Philippines" in Entries in the Course

60. 1964 RULES OF COURT, rule 132, § 32.

> *Declaration against interest*. — The declaration ~~made~~ by a person deceased, or outside of the Philippines, or unable to testify, against *the* ~~his pecuniary or proprietary~~ 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, pecuniary or moral, that a reasonable man in his position would not have made the declaration unless he believed it to be true* ~~with sufficient knowledge of the matter stated by him~~, may be received in evidence against *himself or* his successors in interest and against third persons.

Id. (emphases supplied).

61. 1989 REVISED RULES ON EVIDENCE.

62. *Id*.

63. *Id*. rule 132, § 36. "*Testimony generally confined to personal knowledge; hearsay excluded*. — A witnesses can testify only to those facts which he knows of his ~~own~~ personal knowledge; that is, which are derived from his own perception, except as otherwise provided in these rules." *Id*.

64. *Id*. rule 132, § 37. "*Dying declaration*. —The declaration of a dying person, made under the consciousness of an impending death, may be received in ~~a criminal~~ any case wherein his death is the subject of inquiry, as evidence of the cause and surrounding circumstances of such death." *Id*.

65. 1989 REVISED RULES ON EVIDENCE, rule 132, § 38.

> *Declaration against interest*. — The declaration made by a person deceased, or outside of the Philippines, 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 and against third persons.

Id.

of Business[66] and in Testimony or Deposition at a Former Proceeding;[67] and inclusion of the word "law" in Learned Treatises.[68]

B. The Exceptions to the Old Hearsay Rule and their Application in Jurisprudence

Exceptions exist to the Hearsay Rule "because [the] testimony derives its value not from the credit ... [of the] witness ... [uttering the hearsay,] but from the veracity and competency of the extrajudicial source of [the] information."[69]

The enumerated exceptions to the Old Hearsay Rule may be divided into two groups: those exceptions covering instances where the declarant is no longer available to testify, prompting a relaxation of the rule to ascertain the truth, and those exceptions where the declarations are imbued with such probative value as to inspire confidence, either because of contemporaneity or reliability. Under the first group are the exceptions of Dying declaration, Declaration against interest, Act or declaration about pedigree, and Testimony or deposition at a former proceeding. To the second group belong Family

66. *Id.* rule 130, § 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, ~~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.

Id.

67. *Id.* rule 130, § 47.

> *Testimony or deposition at a former proceeding*. — The testimony or deposition of a witnesses deceased ~~or out of the Philippines,~~ or 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.

Id.

68. 1989 REVISED RULES ON EVIDENCE, rule 130, § 46.

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

Id. (emphasis supplied).

69. *Estibal*, 743 SCRA at 247 (citing *Patula*, 669 SCRA at 152).

reputation or tradition regarding pedigree, Common reputation, *res gestae*, Entries in the course of business, Entries in official records, and Commercial lists and the like.

It is not enough, however, for a proponent for the admission of a declaration to allege that the statement, utterance, or declaration falls under any of the enumerated exceptions. As with the basic tenet that he or she who alleges bears the burden of proof,[70] so, too, proponents of otherwise hearsay evidence need to prove that they fall under the claimed exception.

For instance, where after a mauling incident, a man was left fighting for his life on board an ambulance, and when asked by the policemen who the perpetrators were, the victim answered and gave the names of his assailants, the Court rejected the argument of the prosecution that such identification constituted a dying declaration from the victim.[71] The Court clarified that in cases of dying declarations, the following requisites must concur for the statement to be admissible:

(1) the declaration concerns the cause and the surrounding circumstances of the declarant's death;

(2) it is made when death appears to be imminent and the declarant is under a consciousness of impending death;

(3) the declarant would have been competent to testify had he or she survived; and

(4) the dying declaration is offered in a case in which the subject of inquiry involves the declarant's death.[72]

The rule is clear that in order to make a dying declaration admissible, "a fixed belief in inevitable and imminent death must be entertained by the declarant."[73] The test to be applied, therefore, is "whether the declarant has abandoned all hope of survival and looked at death as certainly impending."[74]

In the above-mentioned scenario, the belief in impending death of the victim was not satisfactorily shown by the prosecution.[75] The Court, however,

70. Lim v. Equitable PCI Bank, 713 SCRA 555, 556 (2014).

71. People v. Quisayas, 721 SCRA 16, 20 & 32 (2014).

72. *Id.* at 31-32 (citing People v. Rarugal, 688 SCRA 646, 654 (2013) & People v. Maglian, 646 SCRA 770, 778 (2011)).

73. *Quisayas*, 721 SCRA at 32.

74. *Id.* (citing Belbis, Jr. v. People, 685 SCRA 518, 530-31 (2012)).

75. *Quisayas*, 721 SCRA at 32.

considered the victim's utterances admissible as part of the *res gestae* because it was shown that (a) the principal act, the *res gestae*, qualified as a startling occurrence; (b) the victim's statement was made before he had the time to contrive or devise a falsehood; and (c) the statement made concerned the occurrence in questions and its immediate attending circumstances.[76] For evidence to be treated as part of the *res gestae*, therefore, it must be "so intimately interwoven or connected with the principal fact or event that it characterizes [such that there is no doubt that it is] part of the transaction itself[,] and [it must likewise] clearly negative[ ] any premeditation or purpose to manufacture testimony."[77]

As with a majority of our procedural rules, some of the hearsay exceptions are grounded on plain common sense such as those categorized as declarations against interest. To fall under this exception, the declarant himself must be unavailable to testify; otherwise, there would be no ground for an objection. This exception is accorded reliability because no reasonable man would have made a declaration so injurious to himself unless he believed it to be true.[78] This exception, however, must be differentiated from an admission against interest, which is not a concern of the hearsay rule, and is admissible whether or not the declarant is available as a witness or not.

One problem area in this jurisdiction that has benefitted from the enumerated exceptions to the hearsay rule is genealogy, paternity, and filiation in particular, through the two exceptions relating to pedigree under the 1989 Revised Rules on Evidence: the non-exclusion of acts or declarations about pedigree and those that pertain to family reputation or tradition regarding pedigree. Coupled with the growing reliance on deoxyribonucleic acid (DNA) paternity testing in this jurisdiction, declared admissible proof of paternity by no less than the Court in the case of *Herrera v. Alba*,[79] the pedigree exceptions can have even stronger support when presented as evidence.[80] So, too, common reputation as a basis for respecting a child's pedigree has become an acceptable means of ascertaining one's lineage, as settled in *Cruz v.*

76. *Id.* & People v. Peña, 376 SCRA 639, 465 (2002) (citing People v. Bituon, 365 SCRA 238, 246 (2001)).

77. *Estibal*, 743 SCRA at 238 (citing People v. Salafranca, 666 SCRA 501, 514 (2012)).

78. 2019 REVISED RULES ON EVIDENCE, rule 130, § 38 & Sabili v. Commission on Elections, 670 SCRA 664, 697 (2012) (citing 1987 Revised Rules on Evidence, rule 130, § 38).

79. Herrera v. Alba, 460 SCRA 197 (2005).

80. *Id.* at 207.

Cristobal,[81] where the Court allowed the testimony of a long-time neighbor of a family to prove the filiation of a party in an action for Annulment of Title with Damages.[82]

One exception which is grounded on both the unavailability of the declarant and contemporaneity is what is commonly referred to as entries in the course of business. Before this exception can be invoked, it must be shown that

(1) the person who made the entry must be dead[ ] or unable to testify;

(2) the entries were made at or near the time of the transactions to which they refer;

(3) the entrant was in a position to know the facts stated in the entries;

(4) the entries were made in his professional capacity or in the performance of a duty, whether legal, contractual, moral[,] or religious; and

(5) the entries were made in the ordinary or regular course of business or duty.[83]

Entries made in the course of business enjoy a presumption of regularity.[84] In *Land Bank of the Philippines v. Monet's Export and Manufacturing Corp., et al.*,[85] the Court explained that such entries are accorded unusual reliability because their regularity and continuity are calculated to discipline record keepers in the habit of precision; and that if the entries are financial, the records are routinely balanced and audited; hence, in actual experience, the whole of the business world function in reliance on such kind of records.[86]

In the same vein, entries made in official records are also an exception to the hearsay rule, provided that the following requisites are satisfied:

(1) that the entry was made by a public officer or by another person specially enjoined by law to do so;

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81. Cruz v. Cristobal, 498 SCRA 37 (2006).

82. *Id.* at 45 & 51-52.

83. Security Bank and Trust Company v. Gan, 493 SCRA 239, 244-45 (2006) (citing Canque v. Court of Appeals, 305 SCRA 579, 585-86 (1999)).

84. *See* 1987 REVISED RULES ON EVIDENCE, rule 130, § 43 & 2019 REVISED RULES ON EVIDENCE, rule 130, § 45.

85. Land Bank of the Philippines v. Monet's Exports and Manufacturing Corp., 618 SCRA 451 (2010).

86. *Id.* at 459 (citing CHARLES TILFORD MCCORMICK, MCCORMICK ON EVIDENCE § 286 (4th ed. 2015)).

(2) that it was made by the public officer in the performance of his duties, or by such other person in the performance of a duty specially enjoined by law; and

(3) that the public officer or other person had sufficient knowledge of the facts by him stated, which must have been acquired by him personally or through official information.[87]

Thus, where the Traffic Accident Investigation Report was presented to prove the fact of the accident in an action for sum of money, but the investigating officer who prepared the same was not presented in court to testify, the Court held that the exception does not apply, stating that "[it] cannot simply assume, in the absence of proof, that the account of the incident stated in the report was based on the personal knowledge of the investigating officer who prepared it."[88]

Commercial lists are also among the exceptions to the hearsay rule. For the exception to apply, it must be shown that:

(1) [a document] is a statement of matters of interest to persons engaged in an occupation;

(2) such statement is contained in a list, register, periodical or other published compilation;

(3) said compilation is published for the use of persons engaged in that occupation, and

(4) it is generally used and relied upon by persons in the same occupation.[89]

In a case where the basis for the award of damages was the testimony of the General Manager of the company that owned the vessel that figured in a collision at sea with another vessel, supported by several documentary evidence such as ownership certificates, price quotations, and invoices issued at the request of the said General Manager, the Supreme Court struck down the ruling of the Court of First Instance and the subsequent affirmance by the Court of Appeals of the award of damages, on the logic that damages cannot

87. DST Movers Corporation v. People's General Insurance Corporation, 780 SCRA 498, 513 (2016) (citing D.M. Consunji, Inc. v. Court of Appeals, 357 SCRA 249, 254-55 (2001)).

88. *DST Movers Corporation*, 780 SCRA at 514 (citing Standard Insurance Co., Inc. v. Cuaresma, 734 SCRA 709, 721 (2014)) (emphasis omitted).

89. PNOC Shipping and Transport Corporation v. Court of Appeals, 297 SCRA 402, 422 (1998).

be awarded on the basis of hearsay evidence,[90] since the general manager was not the one who prepared the price quotations and, hence, was not competent to testify on them.[91] More importantly, the price quotations were neither published in any list, register, periodical, or other compilation on the relevant subject matter, nor could they be considered "'market reports or quotations' within the purview of 'commercial lists,' as these were not 'standard handbooks or periodicals, containing data of everyday professional need and relied upon in the work or the occupation.'"[92] The Supreme Court found that these price quotations were nothing but letters responding to the queries of Del Rosario.[93]

One of the most frequently invoked exceptions to the hearsay rule is testimony or deposition at a former proceeding. In *Ambray v. Tsuorous, et al.*,[94] the Court held that the testimony of the mother affirming the genuineness of her signatures, as well as her deceased husband's, in a Deed of Sale in an action for Falsification of Public Documents which was previously dismissed by the Metropolitan Trial Court in Cities, is admissible in an action for Annulment of Title, Reconveyance and Damages, upon showing compliance with the following requisites:

(1) the witness is dead or unable to testify;

(2) his testimony or deposition was given in a former case or proceeding, judicial or administrative, between the same parties or those representing the same interests;

(3) the former case involved the same subject as that in the present case, although on different causes of action;

(4) the issue testified to by the witness in the former trial is the same issue involved in the present case; and

(5) the adverse party had an opportunity to cross-examine the witness in the former case.[95]

90. *Id.* at 425.

91. *Id.* at 419.

92. *Id.* at 422 (citing 7 RICARDO J. FRANCISCO, THE REVISED RULES OF COURT IN THE PHILIPPINES, EVIDENCE (1990)).

93. *PNOC Shipping and Transport Corporation*, 297 SCRA at 423. The Supreme Court reproduced Exhibit D to illustrate its point. *Id.*

94. Ambray v. Tsourous, 795 SCRA 627 (2016).

95. *Id.* at 640 (citing Samalio v. Court of Appeals, 454 SCRA 462, 470 (2005)).

The Court, however, cautioned that "before the former testimony [may] 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."[96]

III. THE NEW HEARSAY RULE UNDER THE 2019 AMENDMENTS TO THE RULES ON EVIDENCE

In 2008, then Chief Justice Reynato S. Puno organized the Sub-Committee for the revision of the 1989 Revised Rules on Evidence.[97] As early as 2010, the Sub-Committee had already completed the proposed revisions, but it was not until 1 June 2020 that the revisions took effect.[98]

The 2019 Amendments focused on technological advances, developments in law and jurisprudence, as well as compliance with international conventions, and changes in phraseologies to accommodate the increasing demand for gender inclusivity.[99]

Under the rules on Testimonial Evidence, Section 21 still starts off the chapter with the qualifications of a witness, "[a]ll persons who can perceive, and perceiving, can make known their perception to others[.]"[100] Immediately succeeding this, the 2019 Amendments transposed the former Section 36 of Rule 130, the basic testimonial qualification, as the new Section 22 without any change in wording save for gender inclusivity.[101] This paved the way for the more appropriate designation of the personal knowledge criterion as the Firsthand Knowledge Rule and its divorce from the concept of hearsay. The succeeding provision reads: "*Testimony confined to personal knowledge*. — A

96. *Ambray*, 795 SCRA at 641.

97. 2019 REVISED RULES ON EVIDENCE, whereas cl., para. 2.

98. *Id.* whereas cl. para. 4.

99. *Id.* whereas cl. para. 5.

100. *Id.* rule 130, § 21.

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

Id.

101. *Id.*

witness can testify only to those facts that he or she knows of his or her personal knowledge, that is, which are derived from his or her own perception."[102]

The new rule on hearsay is now a separate subsection under Testimonial Knowledge, which not only defines what hearsay is, but also specifies the parameters which will determine when it is not hearsay. The new Section 37 of the 2019 Revisions provides —

> SECTION 37. *Hearsay*. — Hearsay is a statement other than the 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.[103]

The afore-quoted provision is actually a compressed version of Rule 801 of the Federal Rules of Evidence which provides —

> *Rule 801. Definitions ...*
>
> The following definitions apply under this article:
>
> (a) Statement. A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.
>
> (b) Declarant. A "declarant" is a person who makes a statement.
>
> (c) Hearsay. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.
>
> (d) Statements which are not hearsay. A statement is not hearsay if [—]
>
> (1) Prior statement by witness. 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

102. 2019 REVISED RULES ON EVIDENCE, rule 130, § 22.

103. *Id.* rule 130, § 37.

> proceeding, or in a deposition, or (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 the person; or
>
> (2) Admission by party-opponent. The statement is offered against a party and is (A) the party's own statement, in either an individual or a representative capacity or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy. The contents of the statement shall be considered but are not alone sufficient to establish the declarant's authority under subdivision (C), the agency or employment relationship and scope thereof under subdivision (D), or the existence of the conspiracy and the participation therein of the declarant and the party against whom the statement is offered under subdivision (E).[104]

The Sub-Committee explained the rationale for adopting the definition of hearsay found in the Federal Rules of Evidence —

> The definition is quite revolutionary in this jurisdiction because, based on established practice, our courts and lawyers treat out-of-court statements by an 'at trial witness' as non-hearsay and they are usually admitted without any objection. In other words, we treat all prior statements of a witness on the stand, regardless of their nature, as exempted from the ban on hearsay rule. This is apparently based upon the rationale that when the declarant becomes a witness who can be examined about the prior statement, the purpose of the hearsay rule is satisfied because all the ideal conditions for giving testimony are met: The witness is under oath, subject to cross-examination, and his demeanor can be observed by the judge.[105]

As presently cast, the New Hearsay Rule excludes as hearsay any statement made by a declarant out of court, or not in the course of the trial or hearing in a given case.[106] The statement covers oral and written assertions, as well as conduct intended to be an assertion.[107] An example of conduct intended as an

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104. FED. R. EVID. 801 (U.S.).

105. 2019 Proposed Amendments to the Revised Rules on Evidence, 16 August 2019, Sub-Committee on the Revision of the Rules of Court, n. 38, at 21 (citing WEINSTEIN AND BERGER, WEINSTEIN'S EVIDENCE MANUAL (Student Edition, Section 15.01 [01] (2nd ed., 1995)).

106. 2019 REVISED RULES ON EVIDENCE, rule 130, § 37.

107. *Id.* rule 130, § 37, para. 1.

assertion is a nod to signify yes or assent, or a shake of the head to signify no or disagreement.

The Advisory Committee on the Proposed Rules for the Federal Rules of Evidence (Advisory Committee) clarified that "[t]he effect of the definition of 'statement' is to exclude from the operation of the hearsay rule all evidence of conduct, verbal and nonverbal, not intended as an assertion."[108] The Advisory Committee discussed further that while verbal assertions automatically fall under the definition of "statement," nonverbal conduct need further consideration.[109] An example provided was "the act of pointing to identify a suspect in a lineup."[110] Clearly, this has to be regarded as a statement, despite being nonverbal in nature and despite being, concededly, "untested with respect to the perception, memory, and narration ... of the actor[s.]"[111] The Advisory Committee is of the view that the dangers posed by these factors are minimal, stating that

> [n]o class of evidence is free of the possibility of fabrication, but the likelihood is less with nonverbal than with assertive verbal conduct. The situations giving rise to the nonverbal conduct are such as virtually to eliminate questions of sincerity. Motivation, the nature of the conduct, and the presence or absence of reliance will bear heavily upon the weight to be given the evidence.[112]

Of course, the longtime justification for the inadmissibility of hearsay is the lack of trustworthiness of the proposed evidence due to the absence of the three conditions, which are the agreed barometers of testimonial reliability: (1) cross-examination; (2) chance to observe the demeanor of the witness; and (3) oath.[113] These matters were squarely addressed by the new provision on hearsay. Simply put, when an out-of-court statement is offered in evidence through the in-court testimony of the declarant to prove the truth of the facts

108. Cornell Law School, Notes of the Advisory Committee on Proposed Rules, *available at* https://www.law.cornell.edu/rules/fre/rule_801 (last accessed Sep. 30, 2020).

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.* (citing Judson F. Falknor, *The "Hear-Say" Rule as a "See-Do Rule: Evidence of Conduct*, 33 Rocky MT. L. REV. 133 (1961)).

113. Unchuan v. Lozada, 585 SCRA 421, 435 (2009) (citing Estrada v. Desierto, 356 SCRA 108, 128 (2001)).

asserted therein, the issues of oath, cross-examination, and demeanor are eliminated.

Nevertheless, the New Hearsay Rule does not declare as admissible all out-of-court statements of the declarant even if the issues of oath, cross-examination, and demeanor have been answered. The New Hearsay Rule limits the exceptions, when an out-of-court statement of a declarant (i.e., a hearsay) may be admitted, to three circumstances —

> (a) [a prior out-of-court statement, given under oath at a trial, hearing, other proceeding, or deposition, which] is inconsistent with the declarant's [in-court] testimony [in the present case;] ...
>
> (b) [a prior out-of-court statement which is] consistent with the declarant's [in-court] testimony [in the present case,] offered to rebut an express or implied charge against the declarant of recent fabrication, or improper influence, or motive; or
>
> (c) [a prior out-of-court statement of the declarant regarding the] identification of a person made after perceiving him or her.[114]

The first exception is not novel although the Advisory Committee notes that the bulk of case law has been against allowing prior statements of witnesses to be used generally as substantive evidence.[115]

In *Bridges v. Wixon*,[116] the United States (U.S.) Supreme Court reversed the deportation order for Bridges who was accused of being a member of the Communist Party.[117] Although he did not raise the violations of immigration and naturalization regulations, the fact that his deportation was decided on the basis of the statements of a certain O'Neil, a close relation of Bridges, who stated to investigating officers that he walked into Bridges' office and saw Bridges pasting assessment stamps in a Communist party book, and that Bridges reminded him that he had not been attending party meetings, was cause for the reversal of the deportation order.[118] "These statements were not signed by O'Neil. They were not made by interrogation under oath. "[I]t was [also] not shown that O'Neil was asked to swear and sign[,] or that being

114. 2019 REVISED RULES ON EVIDENCE, rule 130, § 37, para. 2.

115. 2019 Proposed Amendments to the Revised Rules on Evidence, 16 August 2019, Sub-Committee on the Revision of the Rules of Court.

116. Bridges v. Wixon, 326 U.S. 135 (1945).

117. *Id.* at 156.

118. *Id.* at 151.

asked, he refused."[119] O'Neil actually "denied making those particular statements [to the investigating officers.]"[120]

As the only case which might be thought to suggest the existence of a possible constitutional problem in admitting a witness' prior statements as substantive evidence, *Bridges v. Wixon* should be read in light of the violation of the federal evidentiary standards in deportation proceedings, rather than simplistically dismissing it as a purely evidentiary issue on hearsay.[121]

Evidently, the first exception will be more frequently applied to admit prior inconsistent out-of-court statements of a declarant for the purpose of impeaching him. This is the classic use of the first exception.

The second exception refers to prior out-of-court statements of a declarant which are consistent with his in-court testimony but only under very limited circumstances. This restrictive allowance is necessary to prevent a deluge of repetitive corroborations using prior out-of-court statements. An example of an admissible prior out-of-court statement which is consistent with a declarant's testimony is a statement that rebuts a recent express charge by the adverse party that the declarant is merely lying. For instance, the defendant during his presentation of evidence calls a witness who testifies that plaintiff's claim is only of recent fabrication, and not longstanding as alleged. By way of rebuttal, the plaintiff may use his prior out-of-court statements corroborative of his in-court testimony that his claim dates back to years ago, as when he went to the police authorities to have his claim recorded in the police blotter several years back.

The third exception to the New Hearsay Rule admits prior out-of-court statements of a declarant identifying a person which is made after perceiving such person. Again, this exception is anchored on the greater degree of reliability that the out-of-court statement possesses as when the prosecution presents the declarant's out-of-court statement at a meeting of the neighborhood association about the identity of a suspect in a robbery hold-up incident that he witnessed, which statement was made one day after the robbery. Compared to the declarant's in-court testimony identifying the suspect, given at a much later date, the out-of-court identification certainly enjoys a higher trust value for being made closer in time to the incident when the recollection of the declarant was fresher.

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119. *Id.* at 150-51.

120. *Id.* at 151.

121. California v. Green, 399 U.S. 149, 163, n. 15 (1970).

The other exceptions under the New Hearsay Rule remain substantively untouched, except for renumbering and gender inclusive language, save for the addition of two new provisions: (a) the statement of decedent or person of unsound mind,[122] and (b) the residual exception.[123]

The first addition existed as the old Section 23, the Disqualification by Reason of Death or Insanity of Adverse Party, or what is known as the Dead Man's Statute. It was properly transposed as an exception to the New Hearsay Rule under Section 39 as Statement of Decedent or Person of Unsound Mind. Anchored on the unavailability of the declarant, the Sub-Committee adopted the increasing trend in the U.S. of doing away with the disqualification

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122. 2019 REVISED RULES ON EVIDENCE, rule 130, § 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 the 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*.

Id. (emphases supplied).

123. *Id.* rule 130, § 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.

Id.

entirely. The 2019 Amendments now allow a party to testify on the ante-mortem statements of the deceased or statements of the person of unsound mind prior to such mental incapacity, subject to the requirement of trustworthiness, as other hearsay statements are.[124]

A statement like "[n]o, there was nothing wrong with the machine, it was a good machine,"[125] made by the deceased employer to another in a case of an injured laborer, who sued the engineering company that manufactured the machinery that caused the amputation of his leg and a portion of his foot, is admissible as an exception to the hearsay rule.[126] In so ruling, the Court, in *Hileman v. Northwest Engineering Company*,[127] reasoned that the requirements of the declarant's unavailability and the nature of his statement being clearly against his own financial interest were complied with.[128] While the aforecited case dealt with the pecuniary and proprietary interest, the exception, it similarly applies to a declarant's criminal liability, or his exculpation, provided that corroborating circumstances clearly indicate the trustworthiness of the statement.[129]

The second addition is what is known as a Residual Exception, which is a catch-all exception to provide for those circumstances which may in the

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124. 2019 Proposed Amendments to the Revised Rules on Evidence, 16 August 2019, Sub-Committee on the Revision of the Rules of Court, n. 40, at 23.

125. Hileman v. Northwest Engineering Company, 346 F.2d 668, 669 (6th Cir. 1965) (U.S.).

126. *Id.* at 668-70.

127. Hileman v. Northwest Engineering Company, 346 F.2d 668 (6th Cir. 1965) (U.S.).

128. *Id.* at 670.

129. *Cf.* 2019 REVISED RULES ON EVIDENCE, rule 130, § 40.

> *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 *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.*

Id. (emphases supplied).

future also qualify as exceptions to the hearsay rule.[130] This allows for the ample exercise of judicial discretion subject only to the general requirements of notice and opportunity to prepare on the part of the adverse party. The Sub-Committee explained that the addition of this catchall provision found in Rules 803 (24) and 804 (b) (5) of the Federal Rules of Evidence stemmed from the ruling in *Dallas County v. Commercial Union Assurance Co., Ltd.*,[131] which admitted an old newspaper article to prove that a fire occurred at the court tower during construction.[132] Although not falling under any of the recognized hearsay exceptions, the news article was admitted because of "circumstantial guarantees of trustworthiness" based on the fact that the individual reporting the fire had no motive to falsify and that a false report of a matter so easily checked by readers of the paper would have subjected the reporter to considerable embarrassment.[133]

In sum, the basic precondition for admissibility as an exception to the hearsay rule remains the same. The proponent must still prove that the evidence offered falls under any of the recognized exceptions.

Dying declarations, for example, to be admissible as evidence in a trial for murder as to the fact of the killing and the identity of the assailant, must be shown by the party offering the declaration as evidence that it was made under a sense of impending death.

> This may be made to appear from what the injured person said, or from the nature and extent of the wounds inflicted being obviously such that he must have felt or known that he could not survive, as well as his conduct at the time and the communications, if any, made to him by his medical advisers, if assented to or understandingly acquiesced by him. The length of time elapsing between the making of the declaration and the death is one of the elements to be considered, although, as stated by Mr. Greenleaf, 'it is the impression of almost immediate dissolution, and not the rapid succession of death in point of fact, that renders the testimony admissible.'[134]

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130. *Id.* rule 130, § 50.

131. Dallas County v. Commercial Union Assurance Co., Ltd, 286 F.2d 388 (5th Cir. 1961) (U.S.).

132. *Id.* at 388.

133. *Id.* at 397.

134. Mattox v. United States, 146 U.S. 140, 151 (1892) (citing 1 A. §§ 156, 157, & 158 (15th ed.); State v. Wensel, 98 Mo. 137 (1889) (U.S.); Commonwealth v. Haney, 127 Mass. 455 (1879) (U.S.); Kehoe v. Commonwealth, 85 Penn. St. 127 (1998) (U.S.); Swisher v. Commonwealth, 26 Gratt. 963 (1998) (U.S.); & State v. Schmidt, 73 Ia. 469 (1966) (U.S.)).

Another noteworthy amendment refers to the inclusion of adoptive relationships in the exceptions that deal with proving one's pedigree, (i.e., (a) act or declaration about pedigree,[135] and (b) family reputation or tradition regarding pedigree).[136] The inclusion is expansive enough to cover relations of "close intimacy" or association to one's family under the justified assumption that these relations are likely to yield accurate and adequate information, are trustworthy enough, and are truthful.[137]

For the common reputation exception, the Sub-Committee patterned the revised version after Section 803 (20) of the Federal Rules of Evidence with the inclusion of land boundaries and land customs.[138] The Sub-Committee deemed these inclusions as particularly useful in the rural communities where "general reputation about facts of community interest is generally trustworthy."[139] The Sub-Committee further explained —

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135. 2019 REVISED RULES ON EVIDENCE, rule 130, § 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.

Id. (emphasis supplied).

136. *Id.* rule 130, § 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 or affinity, *or adoption*. 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.

Id. (emphasis supplied).

137. 2019 Proposed Amendments to the Revised Rules on Evidence, 16 August 2019, Sub-Committee on the Revision of the Rules of Court, n. 42 and 43, at 24-25.

138. *Id.*, n. 44, at 25.

139. *Id. See also* Wally v. U.S., 148 Ct. Cl. 371 (1960) (U.S.).

> The reputation is required to antedate the controversy, though antiquity is not a prerequisite.
>
> The proposed substitution of 'events of general history important to the community in which located' for the 'facts of public or general interest more than thirty years old' is designed to make the exception of more practical application. As it is, the phrase 'facts of public or general interest' is too vague or nebulous to serve any useful purpose. A requirement that such facts be 'more than thirty years old' further severely limits the application of the hearsay exception.
>
> The proposed revision rejects the requirement of antiquity [—] 'more than thirty years old' [—] as a prerequisite to the use of reputation to prove events of general history ... .[140]

The *res gestae* exception was only qualified by the insertion of the clarificatory phrase "under the stress of excitement caused by the occurrence[.]"[141] *Res gestae*, which literally means "things done," refers to

> those exclamations and statements made by either the participants, victims, or spectators to a crime immediately before, during, or immediately after the commission of the crime, when the circumstances are such that the statements were made as a spontaneous reaction or utterance inspired by the excitement of the occasion and there was no opportunity for the declarant to deliberate and to fabricate a false statement.[142]

In *Insurance Company v. Mosley*,[143] the U.S. Supreme Court admitted into evidence the testimonies of the widow and son of the insured person in an action upon an insurance policy, which testimonies pertained to the narration

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140. 2019 Proposed Amendments to the Revised Rules on Evidence, 16 August 2019, Sub-Committee on the Revision of the Rules of Court, n. 44, at 25.

141. 2019 REVISED RULES ON EVIDENCE, rule 130, § 44.

> *Part of the 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*.

Id. (emphases supplied).

142. People v. Sanchez, 213 SCRA 70, 78 (1992) (citing 1 H.C. UNDERHILL, UNDERHILL'S CRIMINAL EVIDENCE 664 (5th ed. 1973) & 1 CHARLES E. TORCIA, WHARTON'S CRIMINAL PROCEDURE 624).

143. Insurance Company v. Mosley, 75 U.S. 397 (1869).

of the deceased that he fell down the stairs.[144] This accident caused the death of the insured.[145] The U.S. Supreme Court reasoned that in relation to bodily injury of the insured, "the *res gestae* are the statements of the cause made by the assured almost contemporaneously with its occurrence, and those relating to the consequences made while the latter subsisted and were in progress."[146]

Where, however, sickness or affection is the subject of the inquiry, "the sickness or affection is the principal fact. The *res* [*gestae*] are the declarations tending to show the reality of its existence, and its extent and character."[147]

Last among the major revisions under the 2019 Amendments to the hearsay rule relates to records of regularly conducted business activity.[148] The Sub-Committee explained that the Entries in the Course of Business exception under Rule 130, Section 43 of the 1989 Revised Rules on Evidence "has had little 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."[149] As noted by the Sub-Committee that drafted the Rules on Electronic Evidence, the exception under the old rule was rendered useless because the stringent requirements resulted in undue hardship on the litigants.[150] The amendment introduced has liberalized the exception for

144. *Id.* at 399 & 405.

145. *Id.* at 398.

146. *Id.* at 408.

147. *Id.*

148. 2019 REVISED RULES ON EVIDENCE, rule 130, § 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, 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 (43a).

Id.

149. 2019 Proposed Amendments to the Revised Rules on Evidence, 16 August 2019, Sub-Committee on the Revision of the Rules of Court, n. 38, at 21.

150. *Id.*

business records in recognition of the realities of the modern business environment.[151]

In *Palmer v. Hoffman*,[152] the U.S. Supreme Court noted that the signed statement of a deceased railroad engineer giving his version of a grade crossing accident in which the locomotive he was operating was involved does not fall under the exception.[153] The report of the railroad engineer was held not for the systemic conduct of the enterprise as a railroad business.[154] The U.S. Supreme Court went on to explain: "Unlike payrolls, accounts receivable, accounts payable, bills of lading, and the like, these reports are calculated for use essentially in court, not in the business. Their primary utility is in litigating, not in railroading."[155]

IV. HEARSAY FROM HEREON

> "*So obscure are the greatest events, as some take for granted any hearsay, whatever its source, others turn truth into falsehood, and both errors find encouragement with posterity.*"
>
> — Tacitus, III THE ANNALS XIX[156]

Putting the New Hearsay Rule under close scrutiny serves a dual purpose: it provides guidance for the determination of whether a statement should be considered hearsay or not, which is the first step to answering the ultimate question of whether a statement, hearsay though it may be, should be admitted in evidence, and it highlights the deeply rooted purpose of the hearsay rule, that is, the preservation of the cherished due process right of a party to confront the evidence offered against him, through cross-examination in a traditional trial setting. It goes without saying then that the personal knowledge of a witness is not merely a procedural safeguard — it is a substantive prerequisite for accepting testimonial evidence that establishes the truth of a disputed fact.[157] A witness who does not have personal knowledge

151. *Id.*

152. Palmer v. Hoffman, 318 U.S. 109 (1943).

153. *Id.* at 115.

154. *Id.* at 114.

155. *Id.*

156. ANNALS OF TACITUS 87 (Alfred John Church & William Jackson Brodribb trans., 1876). *See also* AB EXCESSU DIVI AUGUSTI P. CORNELII TACITI, LIBER III, XIX 553 (John Jackson, trans.; T.E. Page, E. Capps, & W.H.D. Rouse eds., 1931).

157. 2019 REVISED RULES ON EVIDENCE, rule 128, § 1.

of a disputed fact cannot be called upon to testify on the same.[158] This is because his or "her testimony derives its value not from the credit accorded to her as a witness presently testifying[,] but from the veracity and competenc[e] of the extrajudicial source of her information." [159] Simply put, "[t]he information cannot be tested because the declarant is not standing in court as a witness and cannot ... be cross-examined."[160]

And yet, because evidence as a concept derives its intrinsic worth in its utility for ascertaining the truth, an out-of-court declaration *per se* should not be rejected wholesale for not being based on firsthand knowledge. The doctrine of Independently Relevant Statements highlights a need to entertain non-assertion purposes for introducing such declarations and is an effective counterweight to the New Hearsay Rule's limited coverage of assertive declarations.

Recasting the Firsthand Knowledge Rule and introducing a distinct Hearsay Rule, through the 2019 Amendments to the Rules on Evidence, promises to bring more color and shape to local litigations and dissolve some of the confusion that arises from the use of out-of-court declarations.

158. *Patula*, 669 SCRA at 152.

159. *Id.* at 152.

160. *Id.*