Republic of the Philippines
Supreme Court
Manila

A.M. No. 19-08-15-SC

2019 PROPOSED AMENDMENTS TO THE REVISED RULES ON EVIDENCE

RESOLUTION

WHEREAS, pursuant to Section 5(5), Article VIII of the 1987 Constitution, the Supreme Court is vested with the power to promulgate rules concerning the pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged;

WHEREAS, the proposed amendments to the Revised Rules on Evidence date back to 2008 when then Chief Justice Reynato S. Puno organized the Sub-Committee for its revision;

WHEREAS, the Sub-Committee is composed of then Supreme Court (SC) Associate Justice (now Philippine Judicial Academy Vice-Chancellor) Romeo J. Callejo, Sr., as Chairperson; then SC Associate Justice Bernardo P. Pardo and retired Court of Appeals Justice Oscar C. Herrera,+ as Consultants, as well as the following, as members: then Court of Appeals (now Chief Justice) Lucas P. Bersamin, then Sandiganbayan Associate Justice (now SC Associate Justice) Diosdado M. Peralta, Judge Aloysius C. Alday, then Judge (now Deputy Court Administrator) Raul B. Villanueva, Atty. Rogelio A. Vinluan, Atty. Francis Ed Lim, and Atty. Jose C. Sison, representing the academe and private practitioners;

WHEREAS, after a series of intensive consultative meetings, the Sub-Committee was able to complete and submit its proposed amendments in 2010, but their approval was put on hold in view of advances in technology and developments in both procedural and substantive law, jurisprudence, as well as international conventions;

WHEREAS, after several meetings in 2019, the re-organized Committee on the Revision of the Rules of Court (*Mother Rule Committee*)[1]—which included the original Sub-Committee members, like Chief Justice Bersamin (Chairperson), Justice Peralta (Vice/Working Chairperson), Justice Callejo and Atty. Lim, as well as new members, namely: SC Associate Justice Francis H. Jardeleza, SC Associate

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[1] Memorandum Order No. 03-2019 dated January 14, 2019.

Justice Alfredo Benjamin S. Caguioa, SC Associate Justice Alexander G. Gesmundo, Department of Justice Secretary Menardo I. Guevarra, Philippine Judicial Academy Chancellor and retired SC Associate Justice Adolfo S. Azcuna, Court Administrator Jose Midas P. Marquez; Atty. Tranquil Gervacio S. Salvador III and Atty. Ramon S. Esguerra (representing the academe and private practitioners); and Atty. Amador Z. Tolentino, Jr. (representing the Integrated Bar of the Philippines)—has finally finished amending and updating the 2010 Proposed Amendments to the Revised Rules on Evidence, in order to incorporate the technological advances and developments in law, jurisprudence and international conventions in the past decade;

NOW, THEREFORE, acting on the recommendation of the Chairperson of the Committee on the Revision of the Rules of Court, the Court resolves to **APPROVE** the "***2019 Proposed Amendments to the Revised Rules on Evidence.***"

The 2019 Proposed Amendments to the Revised Rules on Evidence shall take effect on May 1, 2020, following its publication in the Official Gazette or in two newspapers of national circulation.

October 8, 2019, Manila, Philippines.

LUCAS P. BERSAMIN
Chief Justice

ANTONIO T. CARPIO
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ANDRES B. REYES, JR.
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

JOSE C. REYES, JR.
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

On official business but left his vote

AMY C. LAZARO-JAVIER
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

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A.M. No. 19-08-15-SC

2019 PROPOSED AMENDMENTS TO THE REVISED RULES ON EVIDENCE

RULE 128
GENERAL PROVISIONS

Section 1. *Evidence defined.* – Evidence is the means, sanctioned by these rules, of ascertaining in a judicial proceeding the truth respecting a matter of fact. (1)

Sec. 2. *Scope.* – The rules of evidence shall be the same in all courts and in all trials and hearings, except as otherwise provided by law or these rules. (2)

Sec. 3. *Admissibility of evidence.* – Evidence is admissible when it is relevant to the issue and not excluded by the Constitution, the law or these Rules. (3a)

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

RULE 129
WHAT NEED NOT BE PROVED

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

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

Sec. 3. *Judicial notice, when hearing necessary.* – During the pre-trial and the trial, the court, *motu proprio* or upon motion, shall hear the parties on the propriety of taking judicial notice of any matter.

Before judgment or on appeal, the court, *motu proprio* or upon motion, may take judicial notice of any matter and shall hear the parties thereon if such matter is decisive of a material issue in the case. (3a)

Sec. 4. *Judicial admissions.* - An admission, oral or written, made by the party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that the imputed admission was not, in fact, made. (4a)

RULE 130
RULES OF ADMISSIBILITY

A. OBJECT (REAL) EVIDENCE

Section 1. *Object as evidence.* – Objects as evidence are those addressed to the senses of the court. When an object is relevant to the fact in issue, it may be exhibited to, examined or viewed by the court. (1)

B. DOCUMENTARY EVIDENCE

Sec. 2. *Documentary evidence.* - Documents as evidence consist of writings, recordings, photographs or any material containing letters, words, sounds, numbers, figures, symbols, or their equivalent, or other modes of written expression offered as proof of their contents. Photographs include still pictures, drawings, stored images, x-ray films, motion pictures or videos. (2a)

1. Original Document Rule

Sec. 3. *Original document must be produced; exceptions.* - When the subject of inquiry is the contents of a document, writing, recording, photograph or other record, no evidence is admissible other than the original document itself, except in the following cases:

(a) When the original is lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;

(b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice, or the original cannot be obtained by local judicial processes or procedures;

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

(d) When the original is a public record in the custody of a public officer or is recorded in a public office; and

(e) When the original is not closely-related to a controlling issue. (3a)

Sec. 4. *Original of document.* —

(a) An "original" of a document is the document itself or any counterpart intended to have the same effect by a person executing or issuing it. An "original" of a photograph includes the negative or any print therefrom. If data is stored in a computer or similar device, any printout or other output readable by sight or other means, shown to reflect the data accurately, is an "original."

(b) A "duplicate" is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduce the original.

(c) A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original, or (2) in the circumstances, it is unjust or inequitable to admit the duplicate in lieu of the original. (4a)

2. Secondary Evidence

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

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

Sec. 7. *Summaries.* – When the contents of documents, records, photographs, or numerous accounts are voluminous and cannot be examined in court without great loss of time, and the fact sought to be established is only the general result of the whole, the contents of such evidence may be presented in the form of a chart, summary, or calculation.

The originals shall be available for examination or copying, or both, by the adverse party at a reasonable time and place. The court may order that they be produced in court. (n)

Sec. 8. *Evidence admissible when original document is a public record.* — When the original of a document is in the custody of a public officer or is recorded in a public office, its contents may be proved by a certified copy issued by the public officer in custody thereof. (7)

Sec. 9. *Party who calls for document not bound to offer it.* — A party who calls for the production of a document and inspects the same is not obliged to offer it as evidence. (8)

3. Parol Evidence Rule

Sec. 10. *Evidence of written agreements.* — When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, as between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.

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

(a) An intrinsic ambiguity, 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;

(c) The validity of the written agreement; or

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

The term "agreement" includes wills. (9a)

4. Interpretation of Documents

Sec. 11. *Interpretation of a writing according to its legal meaning.* — The language of a writing is to be interpreted according to the legal meaning it bears in the place of its execution, unless the parties intended otherwise. (10)

Sec. 12. *Instrument construed so as to give effect to all provisions.* — In the construction of an instrument, where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all. (11)

Sec. 13. *Interpretation according to intention; general and particular provisions.* — In the construction of an instrument, the intention of the parties is to be pursued; and when a general and a particular provision are inconsistent, the latter is paramount

to the former. So a particular intent will control a general one that is inconsistent with it. (12)

Sec. 14. *Interpretation according to circumstances.* — For the proper construction of an instrument, the circumstances under which it was made, including the situation of the subject thereof and of the parties to it, may be shown, so that the judge may be placed in the position of those whose language he or she is to interpret. (13a)

Sec. 15. *Peculiar signification of terms.* — The terms of a writing are presumed to have been used in their primary and general acceptation, but evidence is admissible to show that they have a local, technical, or otherwise peculiar signification, and were so used and understood in the particular instance, in which case the agreement must be construed accordingly. (14)

Sec. 16. *Written words control printed.* — When an instrument consists partly of written words and partly of a printed form, and the two are inconsistent, the former controls the latter. (15)

Sec. 17. *Experts and interpreters to be used in explaining certain writings.* — When the characters in which an instrument is written are difficult to be deciphered, or the language is not understood by the court, the evidence of persons skilled in deciphering the characters, or who understand the language, is admissible to declare the characters or the meaning of the language. (16)

Sec. 18. *Of two constructions, which preferred.* — When the terms of an agreement have been intended in a different sense by the different parties to it, that sense is to prevail against either party in which he or she supposed the other understood it, and when different constructions of a provision are otherwise equally proper, that is to be taken which is the most favorable to the party in whose favor the provision was made. (17a)

Sec. 19. *Construction in favor of natural right.* — When an instrument is equally susceptible of two interpretations, one in favor of natural right and the other against it, the former is to be adopted. (18)

Sec. 20. *Interpretation according to usage.* – An instrument may be construed according to usage, in order to determine its true character. (19)

C. TESTIMONIAL EVIDENCE

1. Qualification of Witnesses

Sec. 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)

[Section 21. *Disqualification by reason of mental incapacity or immaturity.* (Deleted)]

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

Sec. 23. *Disqualification by reason of marriage.* – During their marriage, the husband or the wife cannot testify against the other without the consent of the affected spouse, except in a civil case by one against the other, or in a criminal case for a crime committed by one against the other or the latter's direct descendants or ascendants. (22a)

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

(a) The husband or the wife, during or after the marriage, cannot be examined without the consent of the other as to any communication received in confidence by one from the other during the marriage except in a civil case by one against the other, or in a criminal case for a crime committed by one against the other or the latter's direct descendants or ascendants.

(b) An attorney or person reasonably believed by the client to be licensed to engage in the practice of law cannot, without the consent of the client, be examined as to any communication made by the client to him or her, or his or her advice given thereon in the course of, or with a view to, professional employment, nor can an attorney's secretary, stenographer, or clerk, or other persons assisting the attorney be examined without the consent of the client and his or her employer, concerning any fact the knowledge of which has been acquired in such capacity, except in the following cases:

(i) *Furtherance of crime or fraud.* If the services or advice of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud;

(ii) *Claimants through same deceased client.* As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate or by *inter vivos* transaction;

(iii) *Breach of duty by lawyer or client.* As to a communication relevant to an issue of breach of duty by the lawyer to his or her client, or by the client to his or her lawyer;

(iv) *Document attested by the lawyer.* As to a communication relevant to an issue concerning an attested document to which the lawyer is an attesting witness; or

(v) *Joint clients.* As to a communication relevant to a matter of common interest between two or more clients if the communication was made by any of them to a lawyer retained or consulted in common, when offered in an action between any of the clients, unless they have expressly agreed otherwise.

(c) A physician, psychotherapist or person reasonably believed by the patient to be authorized to practice medicine or psychotherapy cannot in a civil case, without the consent of the patient, be examined as to any confidential communication made for the purpose of diagnosis or treatment of the patient's physical, mental or emotional condition, including alcohol or drug addiction, between the patient and his or her physician or psychotherapist. This privilege also applies to persons, including members of the patient's family, who have participated in the diagnosis or treatment of the patient under the direction of the physician or psychotherapist.

A "psychotherapist" is:

(a) A person licensed to practice medicine engaged in the diagnosis or treatment of a mental or emotional condition, or

(b) A person licensed as a psychologist by the government while similarly engaged.

(d) A minister, priest or person reasonably believed to be so cannot, without the consent of the affected person, be examined as to any communication or confession made to or any advice given by him or her, in his or her professional character, in the course of discipline enjoined by the church to which the minister or priest belongs.

(e) A public officer cannot be examined during or after his or her tenure as to communications made to him or her in official confidence, when the court finds that the public interest would suffer by the disclosure.

The communication shall remain privileged, even in the hands of a third person who may have obtained the information, provided that the original parties to the communication took reasonable precaution to protect its confidentiality. (24a)

2. Testimonial Privilege

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

Sec. 26. *Privilege relating to trade secrets.* – A person cannot be compelled to testify about any trade secret, unless the non-disclosure will conceal fraud or otherwise work injustice. When disclosure is directed, the court shall take such

protective measure as the interest of the owner of the trade secret and of the parties and the furtherance of justice may require. (n)

3. Admissions and Confessions

Sec. 27. *Admission of a party.* – The act, declaration or omission of a party as to a relevant fact may be given in evidence against him or her. (26a)

Sec. 28. *Offer of compromise not admissible.* – In civil cases, an offer of compromise is not an admission of any liability, and is not admissible in evidence against the offeror. Neither is evidence of conduct nor statements made in compromise negotiations admissible, except evidence otherwise discoverable or offered for another purpose, such as proving bias or prejudice of a witness, negativing a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

In criminal cases, except those involving quasi-offenses (criminal negligence) or those allowed by law to be compromised, an offer of compromise by the accused may be received in evidence as an implied admission of guilt.

A plea of guilty later withdrawn or an unaccepted offer of a plea of guilty to a lesser offense is not admissible in evidence against the accused who made the plea or offer. Neither is any statement made in the course of plea bargaining with the prosecution, which does not result in a plea of guilty or which results in a plea of guilty later withdrawn, admissible.

An offer to pay, or the payment of medical, hospital or other expenses occasioned by an injury, is not admissible in evidence as proof of civil or criminal liability for the injury. (27a)

Sec. 29. *Admission by third party.* – The rights of a party cannot be prejudiced by an act, declaration, or omission of another, except as hereinafter provided. (28)

Sec. 30. *Admission by co-partner or agent.* – The act or declaration of a partner or agent authorized by the party to make a statement concerning the subject, or within the scope of his or her authority, and during the existence of the partnership or agency, may be given in evidence against such party after the partnership or agency is shown by evidence other than such act or declaration. The same rule applies to the act or declaration of a joint owner, joint debtor, or other person jointly interested with the party. (29a)

Sec. 31. *Admission by conspirator.* – The act or declaration of a conspirator in furtherance of the conspiracy and during its existence may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act of declaration. (30a)

Sec. 32. *Admission by privies.* – Where one derives title to property from another, the latter's act, declaration, or omission, in relation to the property, is evidence against the former if done while the latter was holding the title. (31a)

Sec. 33. *Admission by silence.* – An act or declaration made in the presence and within the hearing or observation of a party who does or says nothing when the act or declaration is such as naturally to call for action or comment if not true, and when proper and possible for him or her to do so, may be given in evidence against him or her. (32a)

Sec. 34. *Confession.* – The declaration of an accused acknowledging his or her guilt of the offense charged, or of any offense necessarily included therein, may be given in evidence against him or her. (33a)

4. Previous Conduct As Evidence

Sec. 35. *Similar acts as evidence.* – Evidence that one did or did not do a certain thing at one time is not admissible to prove that he or she did or did not do the same or similar thing at another time; but it may be received to prove a specific intent or knowledge, identity, plan, system, scheme, habit, custom or usage, and the like. (34a)

Sec. 36. *Unaccepted offer.* – An offer in writing to pay a particular sum of money or to deliver a written instrument or specific personal property is, if rejected without valid cause, equivalent to the actual production and tender of the money, instrument, or property. (35)

[Sec. 36. *Testimony generally confined to personal knowledge; hearsay excluded.* (Transposed to Sec. 22. *Testimony confined to personal knowledge.*)]

5. Hearsay

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.

A statement is not hearsay if the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is (a) inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition; (b) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive; or (c) one of identification of a person made after perceiving him or her. (n)

6. Exceptions To The Hearsay Rule

Sec. 38. *Dying declaration.* – The declaration of a dying person, made under the consciousness of an impending death, may be received in any case wherein his or her death is the subject of inquiry, as evidence of the cause and surrounding circumstances of such death. (37a)

Sec. 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. (23a)

Sec. 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 the declarant's own interest that a reasonable person in his or her position would not have made the declaration unless he or she believed it to be true, may be received in evidence against himself or herself or his or her successors in interest and against third persons. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement. (38a)

Sec. 41. *Act or declaration about pedigree.* – The act or declaration of a person deceased or unable to testify, in respect to the pedigree of another person related to him or her by birth, adoption, or marriage or, in the absence thereof, with whose family he or she was so intimately associated as to be likely to have accurate information concerning his or her pedigree, may be received in evidence where it occurred before the controversy, and the relationship between the two persons is shown by evidence other than such act or declaration. The word "pedigree" includes relationship, family genealogy, birth, marriage, death, the dates when and the places where these facts occurred, and the names of the relatives. It embraces also facts of family history intimately connected with pedigree. (39a)

Sec. 42. *Family reputation or tradition regarding pedigree.* — The reputation or tradition existing in a family previous to the controversy, in respect to the pedigree of any one of its members, may be received in evidence if the witness testifying thereon be also a member of the family, either by consanguinity, affinity, or adoption. Entries in family bibles or other family books or charts, engraving on rings, family portraits and the like, may be received as evidence of pedigree. (40a)

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

Sec. 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. (42a)

Sec. 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)

Sec. 46. *Entries in official records.* – Entries in official records made in the performance of his or her 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. (44a)

Sec. 47. *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. (45)

Sec. 48. *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 or her profession or calling as expert in the subject. (46a)

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

Sec. 50. *Residual exception.* – A statement not specifically covered by any of the foregoing exceptions, having equivalent circumstantial guarantees of trustworthiness, is admissible if the court determines that (a) the statement is offered as evidence of a material fact; (b) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (c) the general purposes of these rules and the interests of justice will be best served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent makes known to the adverse party, sufficiently in advance of the hearing, or by the pre-trial

stage in the case of a trial of the main case, to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant. (n)

7. Opinion Rule

Sec. 51. *General rule.* – The opinion of a witness is not admissible, except as indicated in the following sections. (48)

Sec. 52. *Opinion of expert witness.* – The opinion of a witness on a matter requiring special knowledge, skill, experience, training or education, which he or she is shown to possess, may be received in evidence. (49a)

Sec. 53. *Opinion of ordinary witnesses.* – The opinion of a witness, for which proper basis is given, may be received in evidence regarding –

(a) The identity of a person about whom he or she has adequate knowledge;

(b) A handwriting with which he or she has sufficient familiarity; and

(c) The mental sanity of a person with whom he or she is sufficiently acquainted.

The witness may also testify on his or her impressions of the emotion, behavior, condition or appearance of a person. (50a)

8. Character Evidence

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

(a) In Criminal Cases:

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

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

(b) In Civil Cases:

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

(c) In Criminal and Civil Cases:

Evidence of the good character of a witness is not admissible until such character has been impeached.

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

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

RULE 131
BURDEN OF PROOF, BURDEN OF EVIDENCE AND PRESUMPTIONS

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

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

Sec. 2. *Conclusive presumptions.* – The following are instances of conclusive presumptions:

(a) Whenever a party has, by his or her own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he or she cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it; and

(b) The tenant is not permitted to deny the title of his or her landlord at the time of the commencement of the relation of landlord and tenant between them. (2a)

Sec. 3. *Disputable presumptions.* — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

(a) That a person is innocent of crime or wrong;

(b) That an unlawful act was done with an unlawful intent;

(c) That a person intends the ordinary consequences of his or her voluntary act;

(d) That a person takes ordinary care of his or her concerns;

(e) That evidence willfully suppressed would be adverse if produced;

(f) That money paid by one to another was due to the latter;

(g) That a thing delivered by one to another belonged to the latter;

(h) That an obligation delivered up to the debtor has been paid;

(i) That prior rents or installments had been paid when a receipt for the later one is produced;

(j) That a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act; otherwise, that things which a person possesses, or exercises acts of ownership over, are owned by him or her;

(k) That a person in possession of an order on himself or herself for the payment of the money, or the delivery of anything, has paid the money or delivered the thing accordingly;

(l) That a person acting in a public office was regularly appointed or elected to it;

(m) That official duty has been regularly performed;

(n) That a court, or judge acting as such, whether in the Philippines or elsewhere, was acting in the lawful exercise of jurisdiction;

(o) That all the matters within an issue raised in a case were laid before the court and passed upon by it; and in like manner that all matters within an issue raised in a dispute submitted for arbitration were laid before the arbitrators and passed upon by them;

(p) That private transactions have been fair and regular;

(q) That the ordinary course of business has been followed;

(r) That there was a sufficient consideration for a contract;

(s) That a negotiable instrument was given or indorsed for a sufficient consideration;

(t) That an indorsement of a negotiable instrument was made before the instrument was overdue and at the place where the instrument is dated;

(u) That a writing is truly dated;

(v) That a letter duly directed and mailed was received in the regular course of the mail;

(w) That after an absence of seven years, it being unknown whether or not the absentee still lives, he or she is considered dead for all purposes, except for those of succession.

The absentee shall not be considered dead for the purpose of opening his or her succession until after an absence of ten years. If he or she disappeared after the age of seventy-five years, an absence of five years shall be sufficient in order that his or her succession may be opened.

The following shall be considered dead for all purposes including the division of the estate among the heirs:

(1) A person on board a vessel lost during a sea voyage, or an aircraft which is missing, who has not been heard of for four years since the loss of the vessel or aircraft;

(2) A member of the armed forces who has taken part in armed hostilities, and has been missing for four years;

(3) A person who has been in danger of death under other circumstances and whose existence has not been known for four years; and

(4) If a married person has been absent for four consecutive years, the spouse present may contract a subsequent marriage if he or she has a well-founded belief that the absent spouse is already dead. In case of disappearance, where there is a danger of death, the circumstances hereinabove provided, an absence of only two years shall be sufficient for the purpose of contracting a subsequent marriage. However, in any case, before marrying again, the spouse present must institute summary proceedings as provided in the Family Code and in the rules for declaration of presumptive death of the absentee, without prejudice to the effect of reappearance of the absent spouse;

(x) That acquiescence resulted from a belief that the thing acquiesced in was conformable to the law or fact;

(y) That things have happened according to the ordinary course of nature and ordinary nature habits of life;

(z) That persons acting as copartners have entered into a contract of co-partnership;

(aa) That a man and woman deporting themselves as husband and wife have entered into a lawful contract of marriage;

(bb) That property acquired by a man and a woman who are capacitated to marry each other and who live exclusively with each other as husband and wife, without the benefit of marriage or under a void marriage, has been obtained by their joint efforts, work or industry;

(cc) That in cases of cohabitation by a man and a woman who are not capacitated to marry each other and who have acquired property through their actual joint contribution of money, property or industry, such contributions and their corresponding shares, including joint deposits of money and evidences of credit, are equal;

(dd) That if the marriage is terminated and the mother contracted another marriage within three hundred days after such termination of the former marriage, these rules shall govern in the absence of proof to the contrary:

(1) A child born before one hundred eighty (180) days after the solemnization of the subsequent marriage is considered to have been conceived during such marriage, even though it be born within the three hundred days after the termination of the former marriage; and

(2) A child born after one hundred eighty (180) days following the celebration of the subsequent marriage is considered to have been conceived during such marriage, even though it be born within the three hundred days after the termination of the former marriage;

(ee) That a thing once proved to exist continues as long as is usual with things of that nature;

(ff) That the law has been obeyed;

(gg) That a printed or published book, purporting to be printed or published by public authority, was so printed or published;

(hh) That a printed or published book, purporting to contain reports of cases adjudged in tribunals of the country where the book is published, contains correct reports of such cases;

(ii) That a trustee or other person whose duty it was to convey real property to a particular person has actually conveyed it to him or her when such presumption is necessary to perfect the title of such person or his or her successor in interest;

(jj) That except for purposes of succession, when two persons perish in the same calamity, such as wreck, battle, or conflagration, and it is not shown who died first, and there are no particular circumstances from which it

can be inferred, the survivorship is determined from the probabilities resulting from the strength and the age of the sexes, according to the following rules:

1. If both were under the age of fifteen years, the older is deemed to have survived;

2. If both were above the age of sixty, the younger is deemed to have survived;

3. If one is under fifteen and the other above sixty, the former is deemed to have survived;

4. If both be over fifteen and under sixty, and the sex be different, the male is deemed to have survived, if the sex be the same, the older; and

5. If one be under fifteen or over sixty, and the other between those ages, the latter is deemed to have survived;

(kk) That if there is a doubt, as between two or more persons who are called to succeed each other, as to which of them died first, whoever alleges the death of one prior to the other, shall prove the same; in the absence of proof, they shall be considered to have died at the same time. (3a)

Sec. 4. *No presumption of legitimacy or illegitimacy.* – There is no presumption of legitimacy or illegitimacy of a child born after three hundred days following the dissolution of the marriage or the separation of the spouses. Whoever alleges the legitimacy or illegitimacy of such child must prove his or her allegation. (4a)

Sec. 5. *Presumptions in civil actions and proceedings.* – In all civil actions and proceedings not otherwise provided for by the law or these Rules, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption.

If presumptions are inconsistent, the presumption that is founded upon weightier considerations of policy shall apply. If considerations of policy are of equal weight, neither presumption applies. (n)

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

RULE 132
PRESENTATION OF EVIDENCE

A. EXAMINATION OF WITNESSES

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

Sec. 2. *Proceedings to be recorded.* – The entire proceedings of a trial or hearing, including the questions propounded to a witness and his or her answers thereto, and the statements made by the judge or any of the parties, counsel, or witnesses with reference to the case, shall be recorded by means of shorthand or stenotype or by other means of recording found suitable by the court.

A transcript of the record of the proceedings made by the official stenographer, stenotypist or recorder and certified as correct by him or her, shall be deemed *prima facie* a correct statement of such proceedings. (2a)

Sec. 3. *Rights and obligations of a witness.* – A witness must answer questions, although his or her answer may tend to establish a claim against him or her. However, it is the right of a witness:

(1) To be protected from irrelevant, improper, or insulting questions, and from harsh or insulting demeanor;

(2) Not to be detained longer than the interests of justice require;

(3) Not to be examined except only as to matters pertinent to the issue;

(4) Not to give an answer which will tend to subject him or her to a penalty for an offense unless otherwise provided by law; or

(5) Not to give an answer which will tend to degrade his or her reputation, unless it be to the very fact at issue or to a fact from which the fact in issue would be presumed. But a witness must answer to the fact of his or her previous final conviction for an offense. (3a)

Sec. 4. *Order in the examination of an individual witness.* – The order in which an individual witness may be examined is as follows:

(a) Direct examination by the proponent;

(b) Cross-examination by the opponent;

(c) Re-direct examination by the proponent;

(d) Re-cross examination by the opponent. (4)

Sec. 5. *Direct examination.* – Direct examination is the examination-in-chief of a witness by the party presenting him or her on the facts relevant to the issue. (5a)

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

Sec. 7. *Re-direct examination; its purpose and extent.* – After the cross-examination of the witness has been concluded, he or she may be re-examined by the party calling him or her to explain or supplement his or her answers given during the cross-examination. On re-direct examination, questions on matters not dealt with during the cross-examination may be allowed by the court in its discretion. (7a)

Sec. 8. *Re-cross examination.* – Upon the conclusion of the re-direct examination, the adverse party may re-cross-examine the witness on matters stated in his or her re-direct examination, and also on such other matters as may be allowed by the court in its discretion. (8a)

Sec. 9. *Recalling witness.* – After the examination of a witness by both sides has been concluded, the witness cannot be recalled without leave of the court. The court will grant or withhold leave in its discretion, as the interests of justice may require. (9)

Sec. 10. *Leading and misleading questions.* – A question which suggests to the witness the answer which the examining party desires is a leading question. It is not allowed, except:

(a) On cross-examination;

(b) On preliminary matters;

(c) When there is difficulty in getting direct and intelligible answers from a witness who is ignorant, a child of tender years, is of feeble mind, or a deaf-mute;

(d) Of an unwilling or hostile witness; or

(e) Of a witness who is an adverse party or an officer, director, or managing agent of a public or private corporation, or of a partnership or association which is an adverse party.

A misleading question is one which assumes as true a fact not yet testified to by the witness, or contrary to that which he or she has previously stated. It is not allowed. (10a)

Sec. 11. *Impeachment of adverse party's witness.* – A witness may be impeached by the party against whom he or she was called, by contradictory evidence, by evidence that his or her general reputation for truth, honesty, or integrity is bad, or by evidence that he or she has made at other times statements inconsistent with his or her present testimony, but not by evidence of particular wrongful acts, except that it may be shown by the examination of the witness, or record of the judgment, that he or she has been convicted of an offense. (11a)

Sec. 12. *Impeachment by evidence of conviction of crime.* – For the purpose of impeaching a witness, evidence that he or she has been convicted by final judgment of a crime shall be admitted if (a) the crime was punishable by a penalty in excess of one year; or (b) the crime involved moral turpitude, regardless of the penalty.

However, evidence of a conviction is not admissible if the conviction has been the subject of an amnesty or annulment of the conviction. (n)

Sec. 13. *Party may not impeach his or her own witness.* – Except with respect to witnesses referred to in paragraphs (d) and (e) of Section 10 of this Rule, the party presenting the witness is not allowed to impeach his or her credibility.

A witness may be considered as unwilling or hostile only if so declared by the court upon adequate showing of his or her adverse interest, unjustified reluctance to testify, or his or her having misled the party into calling him or her to the witness stand.

The unwilling or hostile witness so declared, or the witness who is an adverse party, may be impeached by the party presenting him or her in all respects as if he or she had been called by the adverse party, except by evidence of his or her bad character. He or she may also be impeached and cross-examined by the adverse party, but such cross-examination must only be on the subject matter of his or her examination-in-chief. (12a)

Sec. 14. *How witness impeached by evidence of inconsistent statements.* — Before a witness can be impeached by evidence that he or she has made at other times statements inconsistent with his or her present testimony, the statements must be related to him or her, with the circumstances of the times and places and the persons present, and he or she must be asked whether he or she made such statements, and if so, allowed to explain them. If the statements be in writing, they must be shown to the witness before any question is put to him or her concerning them. (13a)

[Sec. 14. *Evidence of good character of witness.* – (Incorporated in Section 54, Rule 130)]

Sec. 15. *Exclusion and separation of witnesses.* – The court, *motu proprio* or upon motion, shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of (a) a party who is a natural person, (b) a duly designated representative of a juridical entity which is a party to the case, (c) a person whose presence is essential to the presentation of the party's cause, or (d) a person authorized by a statute to be present.

The court may also cause witnesses to be kept separate and to be prevented from conversing with one another, directly or through intermediaries, until all shall have been examined. (15a)

Sec. 16. *When witness may refer to memorandum.* – A witness may be allowed to refresh his or her memory respecting a fact by anything written or recorded by himself or herself, or under his or her direction, at the time when the fact occurred, or immediately thereafter, or at any other time when the fact was fresh in his or her memory and he or she knew that the same was correctly written or recorded; but in such case, the writing or record must be produced and may be inspected by the adverse party, who may, if he or she chooses, cross-examine the witness upon it and may read it in evidence. A witness may also testify from such a writing or record, though he or she retains no recollection of the particular facts, if he or she is able to swear that the writing or record correctly stated the transaction when made; but such evidence must be received with caution. (16a)

Sec. 17. *When part of transaction, writing or record given in evidence, the remainder admissible.* – When part of an act, declaration, conversation, writing or record is given in evidence by one party, the whole of the same subject may be inquired into by the other, and when a detached act, declaration, conversation, writing or record is given in evidence, any other act, declaration, conversation, writing or record necessary to its understanding may also be given in evidence. (17)

Sec. 18. *Right to inspect writing shown to witness.* – Whenever a writing is shown to a witness, it may be inspected by the adverse party. (18)

B. AUTHENTICATION AND PROOF OF DOCUMENTS

Sec. 19. *Classes of documents.* – For the purpose of their presentation in evidence, documents are either public or private.

Public documents are:

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

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

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

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

All other writings are private. (19a)

Sec. 20. *Proof of private documents.* – Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved by any of the following means:

(a) By anyone who saw the document executed or written;

(b) By evidence of the genuineness of the signature or handwriting of the maker; or

(c) By other evidence showing its due execution and authenticity.

Any other private document need only be identified as that which it is claimed to be. (20)

Sec. 21. *When evidence of authenticity of private document not necessary.* – Where a private document is more than thirty (30) years old, is produced from a custody in which it would naturally be found if genuine, and is unblemished by any alterations or circumstances of suspicion, no other evidence of its authenticity need be given. (21)

Sec. 22. *How genuineness of handwriting proved.* – The handwriting of a person may be proved by any witness who believes it to be the handwriting of such person because he or she has seen the person write, or has seen writing purporting to be his or hers upon which the witness has acted or been charged, and has thus acquired knowledge of the handwriting of such person. Evidence respecting the handwriting may also be given by a comparison, made by the witness or the court, with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge. (22)

Sec. 23. *Public documents as evidence.* – Documents consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts therein stated. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter. (23)

Sec. 24. *Proof of official record.* — The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his or her deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody.

If the office in which the record is kept is in a foreign country, which is a contracting party to a treaty or convention to which the Philippines is also a party, or considered a public document under such treaty or convention pursuant to paragraph (c) of Section 19 hereof, the certificate or its equivalent shall be in the

form prescribed by such treaty or convention subject to reciprocity granted to public documents originating from the Philippines.

For documents originating from a foreign country which is not a contracting party to a treaty or convention referred to in the next preceding sentence, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice-consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his or her office.

A document that is accompanied by a certificate or its equivalent may be presented in evidence without further proof, the certificate or its equivalent being *prima facie* evidence of the due execution and genuineness of the document involved. The certificate shall not be required when a treaty or convention between a foreign country and the Philippines has abolished the requirement, or has exempted the document itself from this formality. (24a)

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

Sec. 26. *Irremovability of public record.* – Any public record, an official copy of which is admissible in evidence, must not be removed from the office in which it is kept, except upon order of a court where the inspection of the record is essential to the just determination of a pending case. (26)

Sec. 27. *Public record of a private document.* – An authorized public record of a private document may be proved by the original record, or by a copy thereof, attested by the legal custodian of the record, with an appropriate certificate that such officer has the custody. (27)

Sec. 28. *Proof of lack of record.* – A written statement signed by an officer having the custody of an official record or by his or her deputy that, after diligent search, no record or entry of a specified tenor is found to exist in the records of his or her office, accompanied by a certificate as above provided, is admissible as evidence that the records of his or her office contain no such record or entry. (28a)

Sec. 29. *How judicial record impeached.* – Any judicial record may be impeached by evidence of:

(a) want of jurisdiction in the court or judicial officer;
(b) collusion between the parties; or
(c) fraud in the party offering the record, in respect to the proceedings. (29)

Sec. 30. *Proof of notarial documents.* – Every instrument duly acknowledged or proved and certified as provided by law, may be presented in evidence without

further proof, the certificate of acknowledgment being *prima facie* evidence of the execution of the instrument or document involved. (30)

Sec. 31. *Alteration in document, how to explain.* – The party producing a document as genuine which has been altered and appears to have been altered after its execution, in a part material to the question in dispute, must account for the alteration. He or she may show that the alteration was made by another, without his or her concurrence, or was made with the consent of the parties affected by it, or was otherwise properly or innocently made, or that the alteration did not change the meaning or language of the instrument. If he or she fails to do that, the document shall not be admissible in evidence. (31a)

Sec. 32. *Seal.* – There shall be no difference between sealed and unsealed private documents insofar as their admissibility as evidence is concerned. (32)

Sec. 33. *Documentary evidence in an unofficial language.* – Documents written in an unofficial language shall not be admitted as evidence, unless accompanied with a translation into English or Filipino. To avoid interruption of proceedings, parties or their attorneys are directed to have such translation prepared before trial. (33)

C. OFFER AND OBJECTION

Sec. 34. *Offer of evidence.* – The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified. (34)

Sec. 35. *When to make offer.* – All evidence must be offered orally.

The offer of the testimony of a witness in evidence must be made at the time the witness is called to testify.

The offer of documentary and object evidence shall be made after the presentation of a party's testimonial evidence. (35a)

Sec. 36. *Objection.* – Objection to offer of evidence must be made orally immediately after the offer is made.

Objection to the testimony of a witness for lack of a formal offer must be made as soon as the witness begins to testify. Objection to a question propounded in the course of the oral examination of a witness must be made as soon as the grounds therefor become reasonably apparent.

The grounds for the objections must be specified. (36a)

Sec. 37. *When repetition of objection unnecessary.* – When it becomes reasonably apparent in the course of the examination of a witness that the questions being propounded are of the same class as those to which objection has been made, whether such objection was sustained or overruled, it shall not be necessary to repeat the

objection, it being sufficient for the adverse party to record his or her continuing objection to such class of questions. (37a)

Sec. 38. *Ruling.* – The ruling of the court must be given immediately after the objection is made, unless the court desires to take a reasonable time to inform itself on the question presented; but the ruling shall always be made during the trial and at such time as will give the party against whom it is made an opportunity to meet the situation presented by the ruling.

The reason for sustaining or overruling an objection need not be stated. However, if the objection is based on two or more grounds, a ruling sustaining the objection on one or some of them must specify the ground or grounds relied upon. (38)

Sec. 39. *Striking out of answer.* – Should a witness answer the question before the adverse party had the opportunity to voice fully its objection to the same, or where a question is not objectionable, but the answer is not responsive, or where a witness testifies without a question being posed or testifies beyond limits set by the court, or when the witness does a narration instead of answering the question, and such objection is found to be meritorious, the court shall sustain the objection and order such answer, testimony or narration to be stricken off the record.

On proper motion, the court may also order the striking out of answers which are incompetent, irrelevant, or otherwise improper. (39a)

Sec. 40. *Tender of excluded evidence.* – If documents or things offered in evidence are excluded by the court, the offeror may have the same attached to or made part of the record. If the evidence excluded is oral, the offeror may state for the record the name and other personal circumstances of the witness and the substance of the proposed testimony. (40)

RULE 133
WEIGHT AND SUFFICIENCY OF EVIDENCE

Section 1. *Preponderance of evidence, how determined.* — In civil cases, the party having the burden of proof must establish his or her case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number. (1a)

Sec. 2. *Proof beyond reasonable doubt.* — In a criminal case, the accused is entitled to an acquittal, unless his or her guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding

possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. (2a)

Sec. 3. *Extrajudicial confession, not sufficient ground for conviction.* – An extrajudicial confession made by an accused shall not be sufficient ground for conviction, unless corroborated by evidence of *corpus delicti*. (3)

Sec. 4. *Circumstantial evidence, when sufficient.* — Circumstantial evidence is sufficient for conviction if:

(a) There is more than one circumstance;

(b) The facts from which the inferences are derived are proven; and

(c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

Inferences cannot be based on other inferences. (4a)

Sec. 5. *Weight to be given opinion of expert witness, how determined.* – In any case where the opinion of an expert witness is received in evidence, the court has a wide latitude of discretion in determining the weight to be given to such opinion, and for that purpose may consider the following:

(a) Whether the opinion is based upon sufficient facts or data;

(b) Whether it is the product of reliable principles and methods;

(c) Whether the witness has applied the principles and methods reliably to the facts of the case; and

(d) Such other factors as the court may deem helpful to make such determination. (n)

Sec. 6. *Substantial evidence.* – In cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. (5)

Sec. 7. *Power of the court to stop further evidence.* — The court may stop the introduction of further testimony upon any particular point when the evidence upon it is already so full that more witnesses to the same point cannot be reasonably expected to be additionally persuasive. This power shall be exercised with caution. (6a)

Sec. 8. *Evidence on motion.* – When a motion is based on facts not appearing of record, the court may hear the matter on affidavits or depositions presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions. (7)