BENCHBOOK FOR TRIAL COURT JUDGES

Read online (full-text search, related cases, audio case brief): https://batas.org/library/b232f67a467f/

Basic Principles and Selected Problems

I. WHEN EVIDENCE IS NECESSARY

Evidence is the means of proving a fact. It becomes necessary to present evidence in a case when the pleadings filed present factual issues. Factual issues arise when a party specifically denies material allegations in the adverse party's pleading. These are the issues which the judge cannot resolve without evidence being presented thereon. Thus, whether a certain thing exists or not, whether a certain act was done or not, whether a certain statement was uttered or not, are questions of fact that require evidence for their resolution. Questions of fact exist when the doubt or difference arises as to the truth or falsehood of alleged facts.[1] Other than factual issues, the case invariably presents legal issues. On the other hand, a question of law exists when the doubt or difference arises as to what the law is on a certain state of facts. Legal issues are resolved by simply applying the law or rules applicable, or interpreting the law applicable considering the facts of the case. Generally, no evidence need be presented on what the applicable law is. Everyone, including the judge, is presumed to know the law.

When the parties' pleadings fail to tender any issue of fact, either because all the factual allegations have been admitted expressly or impliedly (as when a denial is a general denial), there is no need of conducting a trial, since there is no need of presenting evidence anymore. The case is then ripe for judicial determination, either through a judgment on the pleadings[2] or by summary judgment.[3]

II. ADMISSIBILITY OF EVIDENCE

The study of the law on Evidence involves two main problems, viz.: (1) determining whether a given piece of evidence is admissible; and (2) the proper presentation of that evidence so that the court will consider it in resolving the issues and deciding the case. Although evidence may, by itself, be admissible, the court may not admit or consider it in the resolution of the case unless the evidence was properly presented.

A. Axiom of Admissibility of Evidence

Evidence is admissible when it is relevant to the issues and is competent, i.e., it is not excluded by the law or the Rules of Court.[4] Evidence is relevant if it tends in any reasonable degree to establish the probability or improbability of a fact in issue.[5] It is of a lesser degree of reliability as evidence than material evidence. Material evidence directly proves a fact in issue. Thus, the testimony of an eyewitness to the commission of a crime is material; the evidence of motive or flight of the accused may be relevant. Evidence that is material or relevant must also be competent to be admissible. For example, although the testimony of the eyewitness may be material, it may be inadmissible if it is excluded by the marital disqualification rule.

Relevancy or materiality of evidence is a matter of logic, since it is determined simply by ascertaining its logical connection to a fact in issue in the case. It is therefore inadvisable for a judge to ask an objecting counsel why an offered piece of evidence is irrelevant or immaterial. By his inquiry, he shows his unfamiliarity with the issues in the case. A judge is expected to be aware of the issues which he was supposed to have defined and limited in his

Turn this case into an audio lecture - facts, issues, ruling and doctrine - at batas.org

mandatory pre-trial order. On the other hand, the grounds for objection to the competency of evidence must be specified[6] and are determined by the Rules or the law.

The opposites of the three requisites for admissibility of evidence, viz, irrelevancy, immateriality or incompetency, are the general grounds for objection. The first two are valid grounds for objection without need of specification or explanation. The third ground for objection, incompetency, if offered without further explanation, is not valid for being unspecific, except when invoked in reference to the lack of qualification of a witness to answer a particular question or give a particular evidence.

B. Proper Presentation Of Evidence

Every piece of evidence, regardless of its nature, requires certain processes of presentation for its admissibility and admission.

1. Object evidence

Object evidence must generally be marked (Exhibit A, B, etc. for the plaintiff; Exhibit 1, 2, 3, etc. for the defendant) either during the pre-trial or during its presentation at the trial. It must also be identified as the object evidence it is claimed to be. This requires a testimonial sponsor. For example, a forensic chemist identifies marijuana leaves as those submitted to him in the case for examination. Further, object evidence must be formally offered after the presentation of a party's testimonial evidence.[7]

2. Oral evidence

Oral evidence is presented through the testimony of a witness. Under the 1989 Rules on Evidence, oral evidence must be formally offered at the time the witness is called to testify.[8] Objections may then be raised against the testimony of the witness. If the objection is valid, as when the witness' testimony is barred by the hearsay rule or the opinion rule, the witness will not be allowed to testify. If the witness is otherwise allowed to testify, he shall be sworn in, either by taking an oath or making an affirmation.[9] It is essential that the proper foundation for the testimony of a witness must be laid. An ordinary witness must be shown to have personal knowledge of the facts he shall testify to; otherwise, his testimony will be hearsay, or he will be incompetent to answer the questions to be asked of him. An expert witness must be specifically qualified as such; otherwise, he cannot validly give his opinion on matters for which he may have been summoned as a witness.

However, the requirement of qualifying an expert witness may be dispensed with if:

(a) the adverse counsel stipulates on the expert's qualification; or
(b) the court takes judicial notice of the witness' expertise, because the judge happens to be aware thereof on account of the judge's judicial functions.

3. Documentary evidence

Documentary evidence is (1) marked; (2) identified as the document which it is claimed to be (as when the witness asserts that the document presented to him is the same contract which he claims was executed between the two parties); (3) authenticated, if a private document, by proving its due execution and genuineness; and (4) formally offered after all the proponent's witnesses have testified.[10]

Rule 132, Sec. 34 provides that the court shall consider no evidence which has not been formally offered, and that the purpose for which the evidence is offered must be specified. In this connection, it has been asked whether it would be proper for the judge to disregard a witness' direct testimony given without the prior formal offer thereof which Rule 132, Sec. 35 requires, and corollarily, whether the adverse party may be required to cross-examine that witness. In People v. Marcos,[11] the Supreme Court ruled that if a witness has given unoffered direct

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

testimony without objection from the adverse party, the latter is estopped from raising that objection which he is deemed to have waived; hence, although not formally offered, the testimony may be considered by the court.

The view can be advanced, however, that although the aforesaid testimony was not expressly formally offered, it was nonetheless formally offered, albeit impliedly and automatically, the moment each question was propounded to elicit an answer. This view is premised on two related provisions in Rule 132, Sec. 36, i.e., that 'Objection to evidence offered orally must be made immediately after the offer is made,' and that 'Objection to a question propounded in the course of the oral examination of a witness shall be made as soon as the grounds therefor shall have become reasonably apparent.' Clearly, the purpose of the express formal offer of oral evidence before the witness testifies is merely to determine, on the basis of the stated substance of the testimony and its purpose, whether the witness shall be allowed to testify. Once the witness is allowed to testify, each question propounded to elicit specific oral evidence may still be objected to as soon as a ground for objection becomes reasonably apparent. But it is fundamental that an objection to evidence can be validly raised only after an offer is made. Thus, every question asked of a witness especially on direct examination presupposes a formal offer of the answer, the oral evidence, sought to be elicited. It would seem therefore that unlike documentary and object evidence which are formally offered only after all the witnesses of a party have testified, oral evidence is offered twice: once, expressly, before the witness testifies, and again, with each question propounded to the witness.

C. Formal Offer Of Evidence; Need For Statement Of The Purpose Of Evidence

Evidence not formally offered will not be considered by the court in deciding the case.[12]

A party makes a formal offer of his evidence by stating its substance or nature and the purpose or purposes for which the evidence is offered.[13] Without a formal offer of evidence, and hence without a disclosure of its purpose, it cannot be determined whether it is admissible or not. This is so because it is the intended purpose of a piece of evidence which determines what rule of evidence will apply for its admissibility. A piece of evidence may be admissible if offered for one purpose but may be inadmissible if offered for another. For example, the testimony of a witness, in a libel case, that he heard the defendant call the plaintiff a liar and a crook is certainly inadmissible for being hearsay, if offered to prove the truth of the perceived statement. However, the same testimony is perfectly admissible if offered simply to prove that the statement was uttered. For that purpose, the witness would be the only person qualified to testify on, and prove, what he heard defendant say. Similarly, the declaration of a dying person made without consciousness of his impending death will not qualify as a dying declaration, although it may be admissible if offered as part of the res gestae.

It must be noted that the mere marking, identification, or authentication of documentary evidence does not mean that it will be, or has been, offered as part of the evidence of a party. This was the ruling of the Supreme Court in People v. Santito, Jr.[14]

Annexes attached to pleadings, if not offered formally, are mere scraps of paper and should not be considered by the court,[15] unless the truth of their contents has been judicially admitted.

To the general rule that the court shall not consider any evidence not formally offered, there are certain exceptions:

- Under the Rule on Summary Procedure, where no full blown trial is held in the interest of speedy administration of justice;

- In summary judgments under Rule 35 where the judge bases his decisions on the pleadings, depositions, admissions, affidavits and documents filed with the court;

Study hands-free: podcast-style lessons with read-along highlighting - batas.org

- Documents whose contents are taken judicial notice of by the court;

- Documents whose contents are judicially admitted;

- Object evidence which could not be formally offered because they have disappeared or have become lost after they have been marked, identified and testified on and described in the record and became the subject of cross-examination of the witnesses who testified on them during the trial, e.g., marijuana involved in a prohibited drugs prosecution.[16]

III. MODES OF EXCLUDING INADMISSIBLE EVIDENCE

There are two ways of excluding inadmissible evidence. One is by objection and the other is by a motion to strike out.

A. Evidence is objected to at the time it is offered and not before:

- Oral evidence is objected to after its express formal offer before the witness testifies.17 When thereafter the witness is allowed to testify, objection to a question propounded in the course of the oral examination of a witness shall be made as soon as the grounds therefor shall become reasonably apparent.[18]

- Documentary and object evidence are objected to upon their formal offer after the presentation of a party's testimonial evidence.

Failure to seasonably object to offered evidence amounts to a waiver of the grounds for objection. The rules of exclusion are not self-operating. They must be properly invoked.

The grounds for objection must be specified.[19] Grounds not raised are deemed waived. However, repetition of objection is unnecessary when a continuing objection is properly made.[20] Objection to the purpose for which evidence is offered is not proper.

B. A motion to strike out answer or testimony is proper in the following instances:

1. The witness answers prematurely.[21]

2. The answer is incompetent, irrelevant or improper.[22]

The incompetency referred to here is limited to the incompetency of the witness to answer the question posed; it does not extend to the general concept of incompetency of evidence for being excluded by law or the Rules.

3. The answer given is unresponsive.

4. The ground for objection was not apparent when the question was asked.

5. Uncompleted testimony – e.g., a witness who gave direct testimony becomes unavailable for cross-examination through no fault of the cross-examiner.

6. Unfulfilled condition in conditionally admitted testimony.

C. Objections and Ruling

Objections to evidence may be formal or substantive.

1. Formal objections are based on the defective form of the question asked. Examples:

(1) leading questions which suggest to the witness the answer desired.[23]

- If counsel finds difficulty in avoiding leading questions, the judge may suggest, to expedite questions, that counsel begin his questions with the proper interrogative pronouns, such as "who", "what", "where", "why", "how", etc.

- Leading questions are allowed of a witness who cannot be reasonably expected to be led by the examining counsel, as (a) on cross-examinations;[24] (b) when the witness is unwilling or hostile, after it has been demonstrated that the witness had shown unjustified reluctance to testify or has an adverse interest or had misled the party into calling him to the witness stand, and in either case after having been declared by the court to be indeed unwilling or hostile;[25] or (c) when the witness is an adverse party or an officer, director, or managing agent of a public or private corporation or of a partnership or association with is an adverse party.[26]

- Leading questions may also be asked when there is difficulty in getting direct and intelligible answers from a witness who is ignorant, or a child of tender years, or is feeble minded, or a deaf-mute.[27]

- Leading questions may moreover be asked on preliminary matters, i.e., on facts not in controversy, and offered only as basis for more important testimony to follow. For example, "You are Mrs Maria Morales, wife of the plaintiff in this case?"

- Likewise, asking a question which uses a premise admitted facts or the witness' previous answer is not for that reason objectionable as leading.

(2) misleading questions, which assume as true a fact not testified to by the witness ("question has no basis"), or contrary to that which he has previously stated;[28]

(3) double or multiple questions, which are two or more queries in one. For example, Q: "Did you see the defendant enter the plaintiff’s house, and was the plaintiff there?"

(4) vague; ambiguous; indefinite or uncertain questions - not allowed because the witness cannot understand from the form of the question just what facts are sought to be elicited.

(5) repetitious questions; or those already answered. However, on cross-examination, the cross-examiner may ask a question already answered to test the credibility of the witness.

(6) argumentative questions, which challenge a witness’ testimony by engaging him in an argument, e.g., Q: "Isn’t it a fact Mr Witness that nobody could possibly see all the circumstances you mentioned in a span of merely two seconds, and that either your observations are inaccurate or you are lying?"

2. Substantive objections are those based on the inadmissibility of the offered evidence, e.g.;

(1) irrelevant, immaterial

(2) best evidence rule

(3) parol evidence rule

(4) disqualification of witness

(5) privileged communication

(6) res inter alios acta

(7) hearsay

(8) opinion

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

(9) evidence illegally obtained

(10)private document not authenticated

The ruling by the court on an objection must be given immediately after an 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 situations presented by the ruling.[29] Thus, an objection to a question asked of a witness must be at once resolved by the court by either sustaining or overruling the objection. It would be incorrect for a judge to consider the objection "submitted" or "noted". Unless the objection is resolved, the examination of the witness could not be expected to continue since, in all likelihood, the next question would depend on how the objection is resolved. If the issue raised by the objection is a particularly difficult one, it would not be improper for the judge to perhaps declare a brief recess to enable him to quickly study the matter. But certainly, the resolution must be given before the trial resumes.

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, or one or some of them, must specify the ground or grounds relied upon.[30]

Judges are advised to judiciously consider the validity of the grounds for objections and carefully rule on them. A ruling that all evidence formally offered are "admitted for whatever they may be worth" will not reflect well on the judge, as it implies a hasty and ill-considered resolution of the offer and the objections. Besides, the phrase "for whatever they may be worth" is improper since it refers to the weight or credibility of the evidence; the weight of the evidence shall be considered only after the evidence shall have been admitted. Another ruling that is ludicrous and even nonsensical is "Evidence admitted subject to the objections". This is a non-ruling.

In case of an honest doubt about the admissibility of evidence, it is better policy to rule in favor of its admission. An erroneous rejection of evidence will be unfair to the offeror since the judge cannot validly consider it even if after the trial, the judge realizes his mistake. On the other hand, if the judge had erred in admitting a piece of evidence, he may simply give it little or no weight when deciding the case.

IV. LAYING THE FOUNDATIONS FOR EVIDENCE

In determining the competency of an offered piece of evidence, the court must examine the requisites provided by the pertinent rule or law for its admissibility. These requisites must be established as foundations for the evidence. For example, for a declaration of an agent to be admissible against his principal, as an exception to the res inter alios acta rule,[31] the declaration must be: (1) within the scope of the agent’s authority; (2) made during the existence of the agency; and (3) the agency is shown by evidence other than by such declaration.[32] If the agent’s declaration is on a matter outside the scope of his agency, or is made after the agency had ceased, the agent’s declaration cannot be admitted against his principal; the general rule of res inter alios acta will apply instead.

Similarly, the foundation required by the Rules for the proper presentation of evidence must be laid, lest the evidence be rejected. For example, when the original of a document is unavailable, before secondary evidence thereof is admitted, the proponent must establish: (1) the existence or execution of the original document, and (2) the circumstances of the loss or destruction of the original, or that the original cannot be produced in court.

A. Judicial Notice

1. Mandatory and Discretionary Judicial Notice

Not everything alleged in a party's pleading is required to be proved. Certain matters may be so well known to the court that to compel a party to prove it would be a waste of time and effort.

Under the Rules, it shall be mandatory for the court to 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 nationalities, the law of nations, the admiralty and maritime courts of the world and their seals, the political Constitution and history of the Philippines, the official acts of the three departments of the Philippine government, the laws of nature, the measure of time and the geographical divisions.[33] Courts may take judicial notice of matters which are: (a) of public knowledge, (b) capable of unquestionable demonstration, or (c) ought to be known to judges because of their official functions.[34]

2. Hearing the Parties on Discretionary Judicial Notice

During the trial, when a court is uncertain whether it may, at its discretion, take judicial notice of a certain fact or not, it may call the parties to a hearing to give them a reasonable opportunity to present information relevant to the propriety or impropriety of taking judicial notice of that fact. Certainly the so-called "hearing" is not for the purpose of adducing evidence on that fact. Similarly, even after the trial and before judgment or on appeal, the court may hear the parties on the propriety of taking judicial notice of a certain matter if such matter is decisive of a material issue in the case.[35] This procedure will apprise the parties of the possibility that the judge will or will not take judicial notice of a fact, or of his resolution either way; it will thus eliminate the element of surprise and enable the parties to act accordingly.

3. Judicial Notice of Proceedings in Another Case

In the adjudication of a case pending before it, a court is not authorized to take judicial notice of the contents of another case even if said case was heard by the same judge. The following are exceptions to this general rule: (1) when in the absence of any objection, with the knowledge of the opposing party, the contents of said other case are clearly referred to by title and number in a pending action and adopted or read into the record of the latter; or (2) when the original record of the other case or any part of it is actually withdrawn from the archives at the court's discretion upon the request, or with the consent, of the parties, and admitted as part of the record of the pending case.[36] Parenthetically, a court will take judicial notice of its own acts and records in the same case.[37]

When there is an objection, and the judge therefore cannot take judicial notice of a testimony or deposition given in another case, the interested party must present the witness to testify anew. However, if the witness is already dead or unable to testify (due to a grave cause almost amounting to death, as when the witness is old and has lost the power of speech[38]), his testimony or deposition 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.[39]

If the testimony or deposition given in another proceeding is that of a party in a case, the other party may simply offer in evidence the record of that testimony or the deposition without having to call the declarant-party to testify thereon. Certainly, a party will offer the opposing party's declaration as evidence only if it is prejudicial to the latter's interest. Such declaration of a party against his interest is an extra-judicial admission which may be given in evidence against him.[40]

B. Admissions: Judicial And Extra-Judicial

An admission is a party's acknowledgment of a fact which is against his interest.

A party may make an admission in any of these ways:

- In written pleadings, motions and other papers, and stipulations filed in the case.

- In open court, either by his testimony on the stand or by his statement or that of his counsel.

- In his statement made outside the proceedings in the same case.

In the first two instances above-mentioned, the admissions made are regarded as judicial admissions. A judicial admission does not require proof and may be contradicted only by showing that it was made through palpable mistake or that no such admission was made. A judicial admission need not be offered in evidence since it is not evidence. It is superior to evidence and shall be considered by the court as established.

On the other hand, statements made by a party outside the proceedings in the same case are extrajudicial admissions which may be an act, declaration or omission made by a party as to a relevant fact and may be given in evidence against him.[41] This type of admission is regarded as evidence and must be offered as such; otherwise, the court will not consider it in deciding the case. If the extra-judicial statement of a party is not against his interest but is in his favor, it becomes a self-serving declaration which is inadmissible for being hearsay since it will be testified to by one who simply heard the statement and has no personal knowledge of it. But it will not be incompetent evidence, nor self-serving, if testified to by the party himself at the trial.[42]

By the rule's definition, not all admissions made by a party during a judicial proceeding are judicial admissions. To qualify, they must be made and offered in the proceedings in the same case. If made in one judicial proceeding, but offered in another, they become extrajudicial admissions for purposes of the latter case. Thus, the declaration of a defendant in a case that the plaintiff therein is his agent is a judicial admission of the agency relationship between them if that fact is against the defendant's interest. However, that same admission may only be an extrajudicial admission if considered in another case between the same parties.

With more reason, an admission made in a document drafted for purposes of filing as a pleading in the case but never filed, another pleading being filed in its stead, is not a judicial admission, for the unfiled document is not considered a pleading. Whether it would even be an extrajudicial admission would depend upon whether the document was signed by the client or only by his attorney. If signed only by the attorney, it would not be admissible at all, since an attorney has authority to make statements on behalf of his client only in open court or in a pleading actually filed.[43]

In criminal cases, it should be noted that an admission or stipulation made by the accused during the pre-trial cannot be used in evidence against him unless reduced to writing and signed by him and his counsel.[44] But this rule does not apply to admissions made in the course of the trial. Thus, an admission made by an accused or his counsel during the trial may be used against the accused although not signed by either of them.[45]

Admissions in a pleading which had been withdrawn or superseded by an amended pleading, although filed in the same case, are reduced to the status of extrajudicial admissions and therefore must be proved by the party who relies thereon[46] by formally offering in evidence the original pleading containing such extrajudicial admission.[47] Consistently, the 1997 Rules of Civil Procedure provides that 'An amended pleading supersedes the pleading that it amends. However, admissions in superseded pleadings may be received in evidence against the pleader xxx.'[48]

Since generally a judicial admission does not require proof and cannot be contradicted, any attempt made by a party to still prove it may be objected to as immaterial, i.e., not in issue anymore; and any attempt to adduce evidence in contradiction of that admission may also be objected to. In either case, the judge may himself block

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

such attempts as improper departures from the issues of the case. Unless, of course, it can be shown that the admission was made through palpable mistake or that no such admission was made at all.[49]

C. Best Evidence Rule

The Best Evidence Rule is applicable only to documents. When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original writing itself.[50] Not every writing is considered a document for purposes of the best evidence rule. Documents as evidence consist of writings or any material containing letters, words, numbers, figures, symbols or other modes of written expressions offered as proof of their contents.[51]

If a writing is offered not to prove its contents but to prove some other fact, e.g., that the writing exists, or that it is done on sheepskin, or the size of the paper it is written on, it is, for purposes of evidence, only object evidence. To determine the admissibility of object evidence, the best evidence rule does not apply. Hence, the original writing need not be presented. The existence or condition of that writing may be proved, at once, by any other evidence, like oral testimony.[52]

Closely related to the best evidence rule is the rule that a document or writing which is merely 'collateral' to the issue involved in the case on trial need not be produced. This is the collateral facts rule. Thus, where the purpose of presenting a document is not to prove its contents, but merely to give coherence to, or to make intelligible, the testimony of a witness regarding a fact contemporaneous to the writing, the original of the document need not be presented. In this case, the contents of the document are not sought to be proven, but are simply incidental to the fact being testified to. Thus, the best evidence rule cannot apply.[53]

The original of a document is one the contents of which are the subject of inquiry.[54] Even a mere photocopy of a document may be an original if it is the contents of that photocopy that are inquired into.

When a document is in two or more copies executed at or about the same time with identical contents, all such copies are equally regarded as originals. Thus, the first copy and four (4) carbon copies of a contract, all of which are identical, are all considered originals. Each of them may be offered as proof of their contents. But if a party has lost his original document, he must account not only for the unavailability of his copy but also for the loss, destruction or unavailability of the rest of the original copies. Otherwise, secondary evidence of his lost original will not be admitted. Any of the four other extant originals would still be the best available evidence.[55]

Secondary evidence may also be resorted to, as though the document had been lost, when the adverse party who has custody of the original refuses, despite reasonable notice, to produce the document.[56] In this case, such adverse party should not later be allowed to introduce the original for the purpose of contradicting the secondary evidence presented.[57]

When the proper foundation for the reception of secondary evidence has been laid, the best evidence rule insists on a preference in the type of secondary evidence that will be presented. Thus, the Rule provides:

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

Hence, before a party may offer the testimony of witnesses to prove the contents of a lost original, he must first show or prove that no copy of the document exists and, in addition, that there exists no authentic document reciting the contents of the unavailable original. This second layer of foundations may of course be established by oral testimony, but it must be established.

D. Parol Evidence Rule

The Parol Evidence Rule applies only to contractual documents.58 However, it does not apply where at least one party to the suit is not a party – nor a privy to a party – to the written instrument and does not base his claim, nor assert a right arising from the instrument or established therein. Thus, a total stranger to the writing is not bound by its terms and is allowed to introduce extrinsic – or parol – evidence against the efficacy of the writing.[59]

In order that parol evidence may be admissible, the exceptional situation, including the fact of a subsequent agreement, must be put in issue in the pleading. Otherwise, no parol evidence can be admissible. When the defendant invokes such exceptional situations in his answer, such facts are sufficiently put in issue as to allow the presentation of parol evidence. However, if, when presented, the parol evidence is not objected to, such objection is deemed waived.

E. Admissibility Of Extra-Judicial Confessions

The extra-judicial confession of an accused acknowledging his guilt of the offense charged, or of any offense necessarily included therein, may be given in evidence against him.[60] Note that if the confession is judicially given, either by way of a plea of guilty upon arraignment or made in the course of the trial, it need not be offered in evidence since it is a judicial admission.[61]

An extra-judicial confession may be given either before the custodial investigation stage or during custodial investigation. A person is placed under custodial investigation when after a crime has been committed, the authorities' investigation ceases to be a mere general inquiry into the circumstances and authorship of the crime and begins to focus on the individual as a suspect.[62] Under Republic Act 7438,63 custodial investigation shall include the practice of issuing an 'invitation' to a person who is investigated in connection with an offense he is suspected to have committed.

When under custodial investigation, a person shall have the constitutional right to be informed of his right to remain silent and to have competent and independent counsel, preferably of his own choice. If the person cannot afford the services of a counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.[64] It must be noted that neither a lawyer, NBI agent nor the City Legal Officer can be considered an independent counsel for this purpose.

If the person under custodial investigation has not been informed of any of the above-mentioned rights, any confession or declaration given by him during said investigation shall be inadmissible.[65] To be valid, the information to be given to the accused regarding his rights must be more than a perfunctory recitation of such rights; it must be made in practical terms, in a language or dialect he understands and in a manner he comprehends, the degree of explanation varying according to the person's level of education and intelligence.[66] The presumption of regularity in the performance of official duty does not apply to in-custody confessions. The prosecution must prove compliance with the aforementioned constitutional requirements.[67]

No custodial investigation shall be conducted unless it be in the presence of counsel engaged by the person arrested, or by any person in his behalf, or appointed by the court upon petition either by the detainee himself or by anyone in his behalf. The right to counsel may be waived but the waiver shall not be valid unless made with the assistance of counsel. Any statement obtained in violation of this procedure, whether inculpatory or exculpatory, in whole or in part, shall be inadmissible in evidence.[68]

In People v. Policarpio,[69] the accused who was arrested in a buy-bust operation refused to give a statement after having been informed of his Constitutional rights; but he was made to acknowledge in writing that six plastic bags of marijuana leaves were confiscated from him, and he was also made to sign a receipt for Php 20.00 as the

purchase price of the marijuana. The Supreme Court ruled that said receipts were in effect extra-judicial confessions given during custodial investigation and were therefore inadmissible for having been given without the assistance of counsel.

An extra-judicial confession made by an accused shall not be sufficient for conviction unless corroborated by evidence of corpus delicti.[70] Thus, in People v. Barlis,[71] the accused who validly gave a statement during custodial investigation confessing to the commission of homicide and robbery was convicted of homicide only and acquitted of the robbery charge in the absence of evidence establishing the corpus delicti of robbery.

The rights guaranteed a person under Art. III, Sec. 12 of the Constitution are not available when he is not under custodial investigation. Thus, a statement or confession voluntarily given by an employee during an administrative investigation that he had malversed his employer's funds is admissible although without a prior information of said rights and without the assistance of counsel.[72]

Similarly competent is the admission of adulterous conduct made by a woman to her husband when the latter confronted her with incriminatory evidence in their residence.[73]

F. Examination Of Witnesses

1. Generally, the testimony of a witness is elicited through questions propounded by the examining counsel in open court. 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.[74] The main purpose of requiring a witness to appear and testify orally in open court is to secure to the adverse party the opportunity to cross-examine the witness. Another reason for such rule is to enable the judge to observe the countenance and demeanor of the witness while testifying, an important factor in determining the credibility of a witness. Therefore, it would be impermissible and would be a grave abuse of discretion on the part of the trial judge to accept the affidavit of a witness in lieu of the latter's direct testimony subject to cross-examination.[75]

The aforesaid rule is relaxed under the Rule on Summary Procedure (RSP) where in criminal cases covered by said Rule, the affidavits and counter-affidavits of the parties' witnesses constitute their direct testimonies subject however to cross-examination, re-direct or re-cross examination.[76] And in civil actions covered by the RSP, no examination of witnesses is even required or allowed; the parties simply submit the affidavits of their witnesses and other evidence on the factual issues defined in the preliminary conference order prepared by the judge after the termination of said conference.[77]

Another exception is found in the trial of agrarian cases where the parties submit affidavits of their witnesses subject to cross-examination.[78]

2. One question often asked is whether a witness may be allowed to testify by narration. While the general rule is that material and relevant facts are elicited from a witness by questions put to him, it still rests within the sound discretion of the trial judge to determine whether a witness will be required to testify by question and answer, or will be permitted to testify in narrative form.79

> There is no legal principle which prevents a witness from giving his testimony in narrative form if he is requested to do so by counsel. A witness may be allowed to testify by narration if it would be the best way of getting at what he knew or could state concerning the matter at issue. It would expedite the trial and would perhaps furnish the court a clearer understanding of the matters related as they occurred. Moreover, narrative testimony may be allowed if material parts of his evidence cannot be easily obtained through piecemeal testimonies. But if in giving such testimony, the witness states matters irrelevant or immaterial or incompetent, it is the right and duty of counsel objecting to such testimony to interpose and arrest the narration by calling the attention of the court particularly to the objectionable matter and, by a motion to strike it out, obtain a ruling of

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

> the court excluding such testimony from the case.[80] While a witness may be permitted in the discretion of the court to narrate his knowledge of material facts bearing upon the case without specifically being interrogated in detail, it is also within the discretion of the court to prohibit a witness from volunteering unsought information in connection with the case.[81]

3. Some jurisprudential rules regarding uncompleted testimonies:

3.1 When a witness had testified on direct examination but was not cross-examined because he dies after numerous postponements of his cross-examination attributable to the cross-examining party whereas the witness had all the time been available for cross-examination, his direct testimony shall be allowed to remain in the record and cannot be ordered stricken off. The cross-examiner is deemed to have waived his right to cross-examine.[82]

3.2 On the contrary, when cross-examination is not and cannot be done or completed due to causes attributable to the party offering the witness, the uncompleted testimony is thereby rendered incompetent.[83]

3.3 The direct testimony of a witness who dies before conclusion of the cross-examination can be stricken only insofar as not covered by the cross-examination, and absence of a witness is not enough to warrant striking his testimony for failure to appear for further cross-examination where the witness has already been sufficiently cross-examined, and the matter on which further cross-examination is sought is not in controversy.[84]

4. A judge may intervene in the trial of a case to promote expedition and avoid unnecessary waste of time or to clear up some ambiguity. A judge is not a mere referee like that of a boxing bout. He should have as much interest as counsel in the orderly and expeditious presentation of evidence, calling the attention of counsel to points at issue that are overlooked, directing them to ask questions that would elicit the facts on the issues involved, clarifying ambiguous remarks. The number of times a judge intervenes in the examination of a witness is not necessarily an indication of bias. It cannot be taken against a judge if his clarifying questions happen to reveal certain truths which tend to spoil the theory of one party.[85]

5. 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. But this power should be exercised with caution.[86]

G. Authentication And Proof Of Documents

For the purpose of their presentation in evidence, documents are either public or private.[87] Public documents need not be authenticated; private documents have to be authenticated to be admissible in evidence.

There are only three types of public documents, viz.: (1) the written official acts or records of official acts of the sovereign authority, official bodies and tribunals and public officers, whether of the Philippines or of a foreign country, e.g., transfer certificate of title, the Official Gazette, entries in the book of entries of judgments; (2) documents acknowledged before a notary public except last wills and testaments; (3) public records, kept in the Philippines, of private documents required by law to be entered therein, e.g., certified true copies of birth certificates or of death certificates issued by the local civil registrar.[88]

All other writings are private and thus ought to be authenticated. Their due execution and genuineness must be proved either (1) by anyone who saw the document executed or written; or (2) by evidence of the genuineness of the signature or handwriting of the maker.[89] Note that the opinion of an ordinary witness regarding the handwriting of a person is admissible under Rule 130, Sec. 50, as an exception to the opinion rule provided the witness is shown to have sufficient familiarity with the handwriting.

The last paragraph of Rule 132, Sec. 20 states that 'Any other private document need only be identified as that

which it is claimed to be.' This provision should be taken in relation to the first paragraph which reads: 'Before any private document offered as authentic is received in evidence, its due execution and genuineness must be proved.' If it is offered as a genuine writing, it must be proved to be genuine. If it is offered as a forgery, it must be proved to be a forgery. If a private writing is offered not as an authentic document, it need only be identified as that which the offeror claims it to be. Thus, if an anonymous letter a party has received is relevant to the issues in a case, he need not authenticate it since he cannot possibly do that anyway. He only has to identify it as the anonymous letter he had received. The authenticity of the document is immaterial for he is not offering it as authentic. An ancient document, although private in nature, needs no authentication either; provided, it appears to be more than thirty years old, is produced from a custody in which it would naturally be found if genuine, and is unblemished by any alteration or circumstances of suspicion.[90] Of course, also, if the authenticity of a private document is judicially admitted by the other, a party need not authenticate it.

Not all public documents have the same probative value. 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.[91] Hence, the entries made by the clerk of court in the book of entries of judgments are prima facie evidence of the entered facts; the clerk of court need not be called to attest to the truth thereof. Such evidence of course are only prima facie, i.e., good until rebutted by reliable contradictory evidence.

But "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." [92] Thus, a certified true copy of a death certificate issued by the local civil registrar – although a public document – is proof only of the fact which gave rise to its execution, i.e., the fact of death and the date of that fact. The death certificate is not evidence of the cause of death, which ought to be proved by competent evidence.

H. Tender Of Excluded Evidence

Evidence formally offered by a party may be admitted or excluded by the court. If a party's offered documentary or object evidence is excluded, he may move or request that it be attached to form part of the record of the case. If the excluded evidence is oral, he may state for the record the name and other personal circumstances of the witness and the substance of the proposed testimony. If a question asked of a witness by the counsel who presented him is objected to and the objection is sustained, counsel may manifest for the record what the witness would have answered if the witness had been allowed to do so. This procedure is known as offer of proof or tender of excluded evidence[93] and is made for purposes of appeal. If an adverse judgment is eventually rendered against the offeror, he may in his appeal assign as error the rejection of the excluded evidence. The appellate court will better understand and appreciate the assignment of error if the evidence involved is included in the record of the case. And since the offer of proof is for appellate purposes, the same cannot be denied by the trial court.

---

[1] Parañaque Kings Enterprises, Inc. v. Court of Appeals, G.R. No. 111538, February 26, 1997, 268 SCRA 727.

[2] Rules of Court, Rule 34.

[3] Ibid, Rule 35.

[4] Rules of Court, Rule 128, Sec. 3.

[5] Ibid.

[6] Rules of Court, Rule 134, Sec. 36.

[7] Rules of Court, Rule 132, Sec. 35.

[8] Ibid.

[9] Rules of Court, Rule 132, Sec. 1.

[10] Rules of Court, Rule 132, Sec. 35.

[11] G.R. No. 91646, August 21, 1992, 212 SCRA 748.

[12] Rules of Court, Rule 130, Sec. 34.

[13] Ibid.

[14] People v Santito, Jr., G.R. No. 91628, August 22, 1991, 201 SCRA 87.

[15] Llaban v. Court of Appeals, G.R. No. 63226, December 20, 1991 204 SCRA 887 (Although the decision in Llaban was withdrawn by the Supreme Court on March 17, 1993, the withdrawal affected only the validity of the final disposition of that case. This did not void the soundness of the Court's pronouncement on the treatment of annexes attached to pleadings.)

[16] People v. Napat-A, G. R. No. 84951, November 14, 1989, 179 SCRA 403; Tabuena v. Court of Appeals, G. R. No. 85423, May 6, 1991 196 SCRA 650.

[17] Rules of Court, Rule 132, Sec. 35.

[18] Ibid, Section 36.

[19] Ibid.

[20] Rules of Court, Rule 132, Section 37.

[21] Rules of Court, Rule 132, Sec. 39.

[22] Ibid.

[23] Rules of Court, Rule 132, Sec 10.

[24] Rules of Court, Rule 132, Sec 10.

[25] Ibid, Secs. 10 and 12.

[26] Ibid.

[27] Ibid.

[28] Rules of Court, Rule 132.

[29] Rules of Court, Rule 132, Sec. 38.

[30] Rules of Court, Rule 132, Sec. 38

[31] Rules of Court, Rule 130, Sec. 28.

[32] Ibid., Section 29.

[33] Rules of Court, Rule 129, Sec. 1.

[34] Ibid, Sec. 2.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

[35] Rules of Court, Rule 129, Sec. 3.

[36] Tabuena v. Court of Appeals, supra, note 16; People v. Mendoza, G. R. No. 96397, November 21, 1991, 204 SCRA 288.

[37] Republic v. Court of Appeals, G. R. No. 119288, August 18, 1997, 277 SCRA 633.

[38] Tan v. CA, No. L-22793, May 16, 1967, 20 SCRA 54.

[39] Rules of Court, Rule 130, Sec. 47.

[40] Ibid, Sec. 26

[41] Rules of Court, Rule 130, Sec. 26.

[42] Tuason v. Court of Appeals, G. R. Nos. 113779-80, February 23, 1995, 241 SCRA 695.

[43] Jackson v. Schine Lexington Corporation, 305 Ky. 823, 205 S.W. 2d 1013.

[44] Rules of Court, Rule 118, Sec. 4; Fule v. Court of Appeals, No. L-79094, June 22, 1988, 162 SCRA 446.

[45] People v. Hernandez, G. R. No. 108028, July 30, 1996, 260 SCRA 25.

[46] Bastida v. Menzi & Co., 58 Phil. 188 [1933].

[47] Javellana v. D. O. Plaza Enterprises, Inc., G. R. No. L-28297, March 30, 1970, 32 SCRA 261; Torres v. Court of Appeals, No. L-37420, July 31, 1984, 131 SCRA 24; Director of Lands v. Court of Appeals, G.R. No. 31408, April 22, 1991, 196 SCRA 94.

[48] Rules of Court , Rule 10, Sec. 8.

[49] Rules of Court, Rule 129.

[50] Rules of Court, Rule 130.

[51] Rules of Court, Rule 130, Sec. 2.

[52] People v. Tandoy, G. R. No. 80505, December 4, 1990, 192 SCRA 28.

[53] Air France v. Carrascoso, G. R. No. 21438, September 28, 1966, 18 SCRA 155.

[54] Rules of Court, Rule 130, Sec. 4.

[55] De Vera v. Aguilar, G. R. No. 83377, February 9, 1988, 218 SCRA 602.

[56] Rules of Court, Rule 130, Sec. 6.

[57] Wigmore on Evidence, § 1210.

[58] Cruz v. Court of Appeals, G. R. No. 79962, December 10, 1990, 192 SCRA 209.

[59] Lechugas v. Court of Appeals, Nos. L-39972 and L-40300, August 6, 1986, 143 SCRA 335.

[60] Rules of Court, Rule 130, Sec. 33.

[61] Ibid, Rule 129, Sec. 4.

[62] Miranda v. Arizona, 384 U.S. 436; Escobedo v. Illinois, 378 U.S. 478.

[63] An Act Defining Certain Rights Of Persons Arrested, Detained, Or Under Custodial Investigation As Well

As The Duties Of The Arresting, Detaining, And Investigating Officers And Providing Penalties For Violations Thereof.

[64] Constitution, Art. III, Sec. 12.

[65] People v. Jimenez, No. L-40677, May 31, 1976, 71 SCRA 186.

[66] People v. Camalog, G. R. No. 77116, January 31, 1989, 169 SCRA 816.

[67] People v. Trinidad, No. L-38930, June 28, 1988, 162 SCRA 714.

[68] People v. Galit, No. L-51770, March 20, 1985, 135 SCRA 465; Morales v. Ponce-Enrile, No. L-61016, April 20, 1983, 121 SCRA 538.

[69] People v Policarpio, No. L-69844, February 23, 1988, 158 SCRA 85.

[70] Rules of Court, Rule 133, Sec. 3

[71] People v Barlis, G. R. No. 101003, March 24, 1994, 231 SCRA 426.

[72] People v. Ayson, G. R. No. 85215, July 7, 1989, 175 SCRA 216.

[73] Arroyo v. Court of Appeals, G. R. No. 96602, November 19, 1991, 203 SCRA 750.

[74] Rules of Court, Rule 132, Sec. 1.

[75] People v. Estenzo, G. R. No. L-41166, August 25, 1976, 72 SCRA 428.

[76] Rule on Summary Procedure, Sec. 15.

[77] Rule on Summary Procedure, Sec. 9.

[78] Pres.Decree No. 946, Sec. 16.

[79] 98 C.J.S. Sec. 325, p. 26.

[80] Ibid.

[81] People v. Calixtro, G. R. No. 92355, January 24, 1991, 193 SCRA 303.

[82] Dela Paz, Jr., v. Intermediate Appellate Court, No. L-71537, September 17, 1987, 154 SCRA 65.

[83] Ortigas, Jr., v. Lufthansa German Airlines, No. L-28773, June 30, 1975, 64 SCRA 610.

[84] People v. Señeris, No. L-48883, August 6, 1980, 99 SCRA 92

[85] People v. Hatton, G. R. No. 85043, June 16, 1992, 210 SCRA 1.

[86] Rules of Court, Rule 133, Sec. 6.

[87] Rules of Court, Rule 132, Sec. 19.

[88] Ibid.

[89] Rules of Court, Rule 132, Sec. 20.

[90] Rules of Court, Rule 132, Sec. 22.

[91] Ibid, Sec. 23.

[92] Rules of Court, Rule 132, Sec. 23.

[93] Ibid, Rule 130, Sec. 40.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at https://batas.org

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.