ANALYSIS OF THE RULES OF EVIDENCE AND THE ELECTRONIC RULES OF EVIDENCE FOR THE REPUBLIC OF THE PHILIPPINES

ABA-Asia Legal Assessment Series
April 9th, 2006
Analysis of the Rules of Evidence and Rules on Electronic Evidence for the Republic of the Philippines
Table of Contents

I. Introduction ........................................................................................................................................ 1
II. Historical Context .......................................................................................................................... 2
III. Legal Standards .......................................................................................................................... 2
IV. Relevancy ....................................................................................................................................... 2
V. Best Evidence Rule ....................................................................................................................... 3
VI. Parol Evidence and Interpretation of Documents ........................................................................ 4
VII. Privileges ...................................................................................................................................... 5
VIII. Admissions ................................................................................................................................... 7
IX. Exceptions to the Hearsay Rule ..................................................................................................... 10
X. Expert Opinions ............................................................................................................................ 13
XI. Burden of Proof and Presumptions ............................................................................................. 14
XII. Examination of Witnesses .......................................................................................................... 14
XIII. UNODC Model Foreign Evidence Bill ................................................................................... 18
XIV. The Philippine Rules on Electronic Evidence .......................................................................... 18
  A. Structural Issues Concerning the Philippine Rules of Electronic Evidence ............................... 18
  B. Definitional Issues Concerning the Philippine Rules of Electronic Evidence ......................... 19
  C. Best Evidence, Authentication and Hearsay Issues Related to the Philippine Rules of Electronic Evidence ......................................................................................................................... 21
XV. Electronic Testimony Rules ....................................................................................................... 23
XVI. Conclusion .................................................................................................................................. 24

Biographical Statements of Experts Assessing the Laws ................................................................. Appendix A
Federal Rules of Evidence of the United States ............................................................................... Appendix B
Uniform Rules of Evidence Act of the United States ..........................Appendix C
UNODC Model Foreign Evidence Bill ..................................................Appendix D
Rules of Evidence of the Republic of the Philippines ..........................Appendix E
Rules on Electronic Evidence of the Republic of the Philippines ..........Appendix F
Analysis of the Rules of Evidence and the Rules on Electronic Evidence for the Republic of the Philippines

I. Introduction

The Supreme Court of the Philippines’ Committee on the Revision of Rules (“Supreme Court Committee”) has requested the assistance of the American Bar Association Asia Law Initiative (“ABA-Asia”) in conducting an assessment of the Philippine Rules of Evidence (“PRE”) and the Philippine Rules on Electronic Evidence (“PREE”). The Supreme Court has recognized the need to determine whether the current evidence rules are sufficient to address evidentiary issues in connection with an anticipated increase in graft, corruption and anti-money laundering cases. Criminal and civil actions in connection with the increasing number of these types of cases in the Philippines will likely involve evidentiary issues that may have not yet been substantially addressed.¹

As background information, it is important to note that much of the Philippines judicial system remains in non-electronic form. Computer records are scarce. The mail delivery system is unreliable. The lack of resources reduces the ability to locate or produce original documents. There is often a lack of funds to bring witnesses long distances to court for live testimony, but Philippine judges are reluctant to allow documentary evidence without foundation established by live testimony. At this time, the concept of video conferencing witnesses is not available due to lack of funding. Lastly, frequent mishandling of evidence and inaccurate introduction of evidence into the court record result in delays and affect the ability of judges to exercise proper authority over trials.

The goal of this assessment is to aid the Supreme Court Committee in revising their rules of evidence in accordance with the fundamental principles of fairness and clarity. Overall, the PRE and the PREE, which are reviewed herein, represent a great deal of time and effort, with some considerable success. However, a substantial amount of work remains to be done. Most of the topics relevant to a set of evidence rules have been touched upon, some of them in a thorough and clear way, but many others in such a fashion that will lead to inefficiencies and errors. Some issues have not been addressed at all. There are some topics treated that deal with substantive law rather than evidentiary rules and should be removed from these rules. In addition, it is suggested that the PREE should be integrated with the general evidence rules, the PRE, in order to ensure that lawyers can easily locate all of the evidence rules at once and to avoid confusion as to which rules are applicable under which circumstances.

¹Written and compiled by Nancy Prendergast, J.D., Case Western Reserve University School of Law; B.A. in Literature and Philosophy, Simmons College.

¹ For example, “tracing the money” in money laundering cases may well include voluminous bank records, wire transfer evidence, evidence obtained electronically and the need for expert testimony to explain evidence used to show concealment and transfer of funds, as well as the money laundering methodologies involved. Cf. Global Programme against Money Laundering, Model Legislation on Laundering, Confiscation and International Cooperation in Relation to the Proceeds of Crime, intro., art. 3.3.1 (1999), available at http://www.imolin.org/imolin/ml99eng.html.
II. Historical Context

The Philippine nation was once a civil law jurisdiction as a result of the Spanish colonization which occurred in the mid-sixteenth century. A written code as the primary source of legal authority serves as the hallmark of the civil law tradition and a central distinction from the common law. However, after the Spanish American war, the Philippines islands were transferred to the United States under the auspices of the 1898 Treaty of Paris. The US common law influence is apparent as judicial institutions based on the Anglo-American tradition were created and American common law trained judges developed legal methodologies consistent with that tradition.2

“The Philippines has a US-style, post-WWII constitution, which was revised and re-enacted in 1987, after the fall of the Marcos regime. The legal system and the system of courts is unitary rather than federal.”3 The Philippine courts are organized pursuant to the US pattern. Today the Philippines is considered a “mixed jurisdiction,” a hybrid of civil and common law traditions, along with Quebec, Louisiana and Puerto Rico.4 The Philippines judicial system does not include jury trials. Judges are the triers of fact. The court system currently does not follow a continuous trial system, although efforts are being made towards that end in some courts. At present, certain court cases, such as actions for graft, average approximately six years from initial filings to judgment. Hearings on a particular case can spread out over months and often years as attorneys file motions seeking continuances due to the improper handling of evidence among other reasons.

III. Legal Standards

Since the PRE and PREE seem to already be based, in part, on some of the Federal Rules of Evidence of the United States (“FRE”),5 we offer that statute as the starting point for the reform of the current rules. The FRE govern evidence in federal courts and informally have served as a model statute for many of the fifty US states. The FRE is considered to be the “most influential codification of evidence law”6 that exists in the United States. This assessment also refers to the Uniform Rules of Evidence (“URE”)7 that were drafted by the National Conference of Commissioners on Uniform State Laws to serve as a model for state laws in the United States. While there are many similarities between the URE and the FRE, there are differences, particularly in their treatment of electronic evidence.

IV. Relevancy

PRE 128(4) establishing relevancy may be setting too high a standard. The first requirement for evidence to be admissible is that it must be relevant; however, that is a very low standard. FRE 4018 sets forth the guideline that “evidence is relevant if it has ‘any tendency’ to render some fact that is ‘of consequence’ to the outcome, under the applicable substantive law and pleading, ‘more

---

4 See MARY ANN GLENDON ET AL., COMPARATIVE LEGAL TRADITIONS 48 (2nd ed. 1999).
8 See Fed. R. Evid. 401.
probable or less probable’ in any degree than it appeared before the introduction of the evidence.” ¹⁹

The reason for the lower threshold is that a piece of evidence is only one building block in a case

and cannot be expected to prove the whole case by itself. There are other rules of evidence that

edo not allow what the rule of relevance would otherwise allow into the record.

Perhaps the aspect of the PRE that most differs from its US counterpart relates to the absence of

any equivalent to FRE 403,¹⁰ which gives discretion to the judge to exclude relevant evidence “if its

probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues,
or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation

of cumulative evidence.”¹¹ The application of this rule, which is entitled “Exclusion of Relevant

Evidence on Grounds of Prejudice, Confusion, or Waste of Time” is reviewed by US appellate
courts based on an abuse of discretion standard. FRE 403 is integral to a trial with a jury. However,

several of these concepts appear to apply equally to bench trials (i.e., trials without juries). The only

Philippine rules that cover at least some of these concepts are PRE 128(4), which provides that

evidence on collateral matters shall not be allowed unless it tends in any reasonable degree to
establish the facts in issue, and PRE 133(6), that gives the court power to stop further evidence but

curiously cautions against exercising this power. Taken together, these two rules do not give judges

as much authority to exclude evidence as FRE 403.¹² It may be that, in practice, judges in the

Philippines informally exercise such power, or that judges are not concerned with the admission of

marginal evidence that will be excluded in appellate review. However, if there is dissatisfaction with

excessive time being spent at trial due to numerous continuances or with unduly lengthy appellate

records, it might be useful to consider adopting a rule that has some of the attributes of FRE 403.¹³

V. Best Evidence Rule

The Philippine Supreme Court Committee has informed ABA-Asia that “a lack of resources

reduces the ability to locate or produce original documents.” One way to address this problem

would be to add a provision akin to FRE 1003¹⁴ that makes a “duplicate” admissible to the same

extent as an original in most cases, without having to account for the loss or destruction of the

original.¹⁵ The Supreme Court Committee may choose to follow the example of the FRE and draw

a more comprehensive definition of an original document and a duplicate such as that found in FRE

1001(3) and FRE 1001(4), respectively.¹⁶ The Committee could then choose to allow for the

admissibility of duplicates to the same extent as originals unless a genuine question is raised as to the

authenticity of the originals or in the circumstances it would be unfair to admit the duplicates rather

than the originals.¹⁷

---

¹⁹ ROSENTHAL, supra note 6, at 58.
¹⁰ See Fed. R. Evid. 403.
¹¹ Id.
¹² See id.
¹³ See id.
¹⁴ See Fed. R. Evid. 1003.
¹⁵ See id.
¹⁶ See Fed. R. Evid. 1001.
¹⁷ See Fed. R. Evid. 1003.
The Supreme Court Committee may choose to review FRE 1006, which deals with summaries, and consider adding language to PRE 130(3)(c) to the effect that the other party should have the opportunity to examine the underlying material before trial and that such material would be of a kind that would have been otherwise admissible. 18 PRE 130(4)(c) might also benefit from additional language to cover the case where transfers are made within the company later, e.g., from an original account book to a computer, and then just before the trial, a copy is printed out from the computer. It seems that allowance should be made for this type of duplicate as long as it is done in the regular course of business and there is no alteration of the material. While the PRE do provide exceptions for the need to produce the original, such as when it is lost, destroyed, in the possession of the opponent or not obtainable by judicial process, the FRE add another useful exception for when the original is collateral and not closely related to the controlling issue. 19

There is some thought that the Philippine best evidence rule is a departure from modern evidence codes which facilitate the admissibility of documents rather than make admissibility turn on criteria that is often hard to establish. In contrast to the current Philippine approach, experts suggest that the party opposing the admission of a document or a copy should have a high burden to show that the offered evidence is unreliable. The fact of modern practice in US courts is that originals are rarely used in civil litigation and copies are routinely admitted unless there is a bona fide challenge to the duplicate.

VI. Parol Evidence and Interpretation of Documents

In the United States, the parol evidence rule and interpretation of documents rule are considered to be substantive contract law issues, not evidentiary concepts. As a practical matter, this distinction may not matter in the Philippines. In the United States, some cases that are governed by state law are brought in federal court using diversity jurisdiction. In such cases, the federal court would apply the substantive law of the state as well as the FRE, meaning that the parol evidence rule would be supplied by the state, rather than by the federal evidence rules.

Under the parol evidence rule, “parol evidence [i.e., evidence of prior or contemporaneous oral expressions] is inadmissible in evidence to vary, contradict, or add to the terms of a written instrument.” 20 According to Professor Paul F. Rothstein, a US evidence expert, there are a number of exceptions and qualifications to this rule that vary from jurisdiction to jurisdiction within the United States. “E.g., the rule may be inapplicable if the writing is incomplete, or only a partial memorandum, or not a full integration of the terms; or if the oral expression is a separate or collateral agreement; or if the writing is ambiguous.” 21 However, the Supreme Court Committee should consider that the language delineated in PRE 130(9)(a), “[a] …mistake or imperfection in the written agreement,” and PRE 130(9)(b), “the failure of the written agreement to express the true intent and agreement of the parties thereto” creates an exception so broad that it effectively vitiates the parol evidence rule. If one of the parties can contradict a written contract with proof of some mistake or that the agreement fails to express “the true intent and agreement,” such an action would seem to

---

18 See Fed. R. Evid. 1006.
19 See Fed. R. Evid. 1004(4).
20 Rothstein, supra note 6, at 598.
21 Id.
undermine the law of contract. Experts would recommend any exceptions to the parol evidence rule to be limited in scope.

PRE 130(10) through PRE 130(19) should be confined to documents which themselves have legal significance, other than evidentiary, in the litigation such as a will, contract or deed. When the document’s purpose is merely evidentiary, as in, for example, a business record offered into evidence to prove that a certain item was sold in a lawsuit for personal injury from the product), PRE 130(11) and PRE 130(12) should not apply. However, these nine sections, (PRE 130(10) through PRE 130(19)) taken altogether, seem to further the destruction of the general prohibition on oral testimony by not only allowing but encouraging it in various circumstances. The parol evidence rule and the interpretation of the document rule should be reconsidered.

VII. Privileges

The PRE appear to disqualify more witnesses than their American counterparts. For example, PRE 130(21) no longer exists in the FRE, which considers disqualification a function of balancing relevance against undue privilege. However, some US states still follow the approach delineated in PRE 130(21).

PRE 130(22) indicates that “[d]uring their marriage, neither the husband nor the wife may testify for or against the other without the consent of the affected spouse.” In the United States, the FRE and many state evidentiary laws now view the holder of the spousal testimonial privilege to belong to the witness spouse, not the affected spouse. This is a policy matter for the Philippine Supreme Court Committee to ponder when reviewing PRE 130(22) (adverse spousal testimony privilege), based on the consideration that a spouse’s willingness to testify against the other should be the central consideration. Marital harmony has always been the purpose of the adverse spousal testimony privilege, but it needs to be balanced against the government’s right to elicit valuable testimony from a spouse. This is particularly important in cases of domestic violence where the spouse is herself the victim of abuse. However, in cases other than domestic violence, it is worth noting that some in the United States have criticized this approach as encouraging prosecutors to charge wives with criminal conspiracy in order to obtain their testimony against husbands in exchange for immunity.

Under PRE 130(24)(a), because both spouses hold the marital communications privilege, the witness spouse can only testify to matters that are not considered confidential in a jurisdiction like the United States. However, the PRE do not contain a crime-fraud waiver to privileges in rule 130(24). The crime-fraud waiver is a significant limitation on privilege rules in the United States that applies when the confidential communication furthers a crime or fraud. It has also been applied to the spousal privilege not to testify if the spouses are engaged in criminal activity. If no crime-fraud exception to the privilege exists, experts suggest the Supreme Court Committee consider adopting such a rule. Without such exception, where one member of a couple is willing to cooperate with the government by providing testimony, the other spouse will be able to prevent her from testifying against him.22

---

22 For pertinent examples, see Unif. R. Evid. 504.
PRE Rule 130(23) is what is known in the United States as the dead man’s rule, a rule that forbids evidence of interactions with people now deceased. Experts generally felt that the dead man’s rule is unjust, disabling sometimes deserving parties from pursuing legitimate claims. The FRE have abolished it. The almost universal sense in common law countries is that such a rule creates more problems than it solves. Eliminating this rule completely is one possibility for the Philippines. Another option would be to create language that allows reliable hearsay of the dead or insane person to combat the idea that s/he cannot testify for himself/herself.

The physician-patient privilege delineated in PRE Rule 130(24)(c) is narrower than its US equivalent, which extends to mental health providers who act in the capacity of psychotherapists. In addition, the concept that a doctor may not testify against his/her patient if it would “blacken the reputation of the patient” is a notion that does not exist in the FRE.

It should also be acknowledged that in the United States, a privilege can be waived by putting the condition in issue. Thus, in a personal injury case, for example, the plaintiff typically waives any medical privilege and must reasonably expect that his/her doctors will have to provide full and complete disclosure, even when it would injure the patient’s reputation. The Supreme Court Committee may wish to review Rule 503 of the URE to see the latest thinking in the American bar on the physician-patient privilege.

PRE 130(24)(e) is broader than the equivalent of executive privilege in the United States. The Philippine rule prohibits a public officer from giving testimony about communications made to him/her if the court finds that the public interest would suffer by such disclosure. This disqualification seems overly broad. The experts suggested adding language to this privilege that would balance the government’s need for confidentiality with the public’s right to know, i.e., that public interest would suffer more from disclosure than it would from keeping the information secret.

On its face PRE 130(24)(b), which creates an attorney-client privilege, has no exception for the situation in which the communications are made to the attorney for the purpose of furthering ongoing or future criminal or fraudulent activity, an exception that exists under US law. Such communications are most often made by those engaging in white collar crimes of the sort highlighted by the Philippine Supreme Court Committee. Efforts to use an attorney’s advice to further ongoing or future criminal or fraudulent activity are inconsistent with the rationales for the privilege, and thus there is no sound reason to prevent such communications from being admitted into evidence.

“The policy of limiting the extent to which privileges defeat the truth-seeking function, as well as the difficulty of defining them, have led most jurisdictions to reject many … privileges.” In that regard, only a handful of US states retain the parental or filial privilege found in PRE Rule 130(25). The Supreme Court Committee may choose to retain this privilege on the basis of preventing the emotional duress and temptation to perjury that compelling adverse testimony in

23 See Unif. R. Evid. 510.
24 See Unif. R. Evid. 503.
26 ROTHSTEIN, supra note 6, at 228-29.
such close relationships could create. However, if the Committee chooses to retain this privilege, it should consider establishing an exception where one family member has committed a crime against another family member.

VIII. Admissions

The rationale for excluding an offer to pay, settle or compromise a disputed claim from being admitted into evidence represents a US public policy in favor of encouraging settlements. The functioning of the court system would be substantially slowed if settlement of claims were not encouraged. An additional motivation to exclude offers of settlement is a policy that favors “humanitarian” acts. The same rationale seems to have been included in the PRE.

The Philippine Supreme Court Committee may wish to consider broadening the language of the first paragraph of PRE 130(27) to include facts or opinions stated in settlement negotiations as well as offers of compromise.27 FRE 408 takes this approach; “…the drafters of the rule seem to have given paramount importance to the policy of encouraging settlement….”28 In line with this policy, it is common sense to include statements of fact and opinions exchanged in the negotiations since these are the facts that aid both parties in assessing the pros and cons of their case which can then lead to settlement.

In the United States there is controversy as to whether civil litigation settlements and statements made in civil litigation settlement discussions are precluded from admission in later related criminal prosecution. An offer to compromise in a private civil case cannot typically be used in a criminal case based on the same conduct in certain jurisdictions. The rationale behind this policy is that “…the potential prejudicial effect of the admission of evidence of a settlement can be more devastating to a criminal defendant….”29 In other federal jurisdictions, the position is that FRE 408 does not exclude the evidence of settlements in civil cases because “[t]he public interest in the prosecution of crime is greater than the public interest in the settlement of civil disputes.”30 However, it is important to note that civil and criminal actions are completely separate in the United States, unlike the approach indicated in the Philippines Rules of Criminal Procedure.31

Another point for consideration by the Philippine Supreme Court Committee as it reviews PRE 130(27) is the slightly different issue regarding settlements that the defendant has resolved and completed or offered to third parties who were involved in the same incident. As a rule, US courts have held that these are included within the exclusion as well, in accordance with its policy of encouraging settlement.32

---

27 See Fed. R. Evid. 408.
29 Id. at 174.
30 United States v. Gonzalez, 748 F.2d 74 (2nd Cir. 1984).
31 See RULES OF CRIMINAL PROCEDURE [R. CRIM. PRO.] art. 111(1) (Phil.).
32 See Fed. R. Evid. 408; see also Unif. R. Evid. 408 (using more correctly the language “…the claim or any other claim….”).
The third paragraph of PRE 130(27) addresses guilty pleas. In contrast to this Philippine rule that has an admirable simplicity, FRE 410 contains much more detail. According to the US rule, the following type of evidence is not admissible in any civil or criminal proceeding:

- a plea of guilty that was later withdrawn
- a plea of nolo contendere
- any statement made in court at hearings regarding the acceptance of the plea
- any statement made in the course of plea discussions with an attorney for the prosecuting authority.  

However, “[u]nder Rule 410 as written, a factual admission made to an FBI agent or police officer in negotiations is not excludable from evidence; it is a confession, much like any other confession. Rule 410 appears to reflect a policy of allowing into evidence such confessions to police officers and avoiding factual controversies about whether they were part of plea negotiations.”

The US federal approach to the admissibility of guilty pleas is offered for the Committee’s consideration.

The language used in PRE 130(28) regarding the introduction of admissions by third parties into evidence should be revised. As presently written, it seems to mean that no testimony of anyone can be used against anyone.

PRE 130(29) and PRE 130(30) deal with admissions made by a partner or agent as well as admissions by a conspirator. These sections are discussed together since there is overlap between the conspirator provisions and the ordinary agent provisions under the FRE. The language of PRE 130(29) which states that “[t]he act or declaration of a partner or agent of the party within the scope of his authority…” could be clarified further. FRE 801(d)(2)(C) and FRE 801(d)(2)(D) qualify an agent’s statement as admissible if it is “authorized” speaking or writing or if such statement relates to something that is within the scope of the agent’s job and it is made while still employed, even though the agent was not authorized to speak or write. Under US federal law “[i]t has been resolved that doing an authorized act is ‘within the scope’ even if done negligently or in a wrongful manner.” However, the agent must be currently employed when the statement is made to “safeguard against grudge statements and those with only a motive to deflect liability.”

PRE 130(30) admits statements “relating to the conspiracy” although PRE 130(29) does not have equivalent language. The US counterpart, FRE 801(d)(2)(E) requires the statement to be “[i]n furtherance of the conspiracy.” While it is appropriate not to let the declaration itself be sufficient to prove the prerequisite for invoking this provision, the existence of a conspiracy, it would be

33 See Fed. R. Evid. 410.
34 ROTHSTEIN, supra note 6, at 95.
35 See Fed. R. Evid. 801(d)(2)(C), 801(d)(2)(D); see also ROTHSTEIN, supra note 6, at 481-82.
36 ROTHSTEIN, supra note 6, at 483.
37 Id. at 482.
appropriate to let the court consider the declaration itself along with other proof of the conspiracy. FRE 801(d)(2) permits the co-conspirator statement to be considered in establishing the foundation for admission, but requires evidence in addition to the statement to support admission. Arguably, this language results in the FRE being more likely to admit more conspirator statements.

In light of the fact that the US government has come to find the hearsay exemption for co-conspirator statements very useful in prosecuting white collar crime, drug charges and terrorism, the Philippine Supreme Court Committee may find the US approach helpful to deal with their fraud and corruption cases. However, its utility extends beyond those types of cases. “In theory [FRE 801(d)(2)(E)] … can be used by either side in any civil or criminal case, regardless of whether conspiracy is part of the formal charges or not, and in fact it is continually used in a wide variety of cases.” The philosophy underlying the co-conspirator hearsay exemption “is that when individuals join a conspiracy, they are irrebuttable deemed by the law to have authorized all co-conspirators to make statements on their behalf to advance the goals of the conspiracy, or at least they take the risk of such statements that are made for that purpose. In other words, this exemption has an agency basis, just as that for statements by ordinary employees.”

As to the language of PRE 130(29) dealing with co-partners or agents, it is suggested that language be added that the act or declaration be in furtherance of the joint enterprise, if it is a criminal enterprise, for the same reasoning.

“Similar acts as evidence” are treated in PRE 130(34). This provision, like US law, bars evidence that a defendant engaged in other crimes, wrongs or acts offered as proof that he has committed the crime charged. Yet the concern with propensity evidence is not so much its lack of probative force, but rather a concern that a lay trier of fact will overvalue the weight of such evidence. Given that the Philippines judicial system does not include jury trials, and thus that the trier of fact is a professional judge who, presumably, is better able to accord propensity evidence its proper weight, it is worth reconsidering whether the absolute bar on propensity evidence is sound.

Further clarification needs to be pursued in connection with PRE 130(36) that deals with “personal knowledge.” Under the US federal approach, “[f]irsthand (personal) knowledge as a prerequisite to admissibility, is decided by the standard of [FRE] 104(b) (how preliminary facts related to relevancy are determined), which admits the evidence if a rational juror could make a finding that the witness has personal knowledge. The testimony of the witness herself is usually sufficient to establish this.” However, “[t]he requirement of firsthand (personal) knowledge should not be confused with the hearsay rule. If a witness states ‘Jack shot Mary’ but knows this only from others, she violates the firsthand (personal) knowledge rule. If the same witness in the same circumstances testifies instead that ‘Joe told me that Jack shot Mary,”’ the firsthand knowledge rule is not violated

---

39 See Fed. R. Evid. 801(d)(2).
40 See ROTHSTEIN, supra note 6, at 486.
41 Id.
42 Id. at 486-87.
44 ROTHSTEIN, supra note 6, at 301.
(assuming the witness has firsthand knowledge of Joe’s statement), but the hearsay rule may be violated.\textsuperscript{45}

**IX. Exceptions to the Hearsay Rule**

Given that the main purpose of rules of evidence in a common law country is to regulate jury decision-making as well as concerns about the ability of jurors to appropriately process information, were juries to be eliminated in the United States, many of the US rules of evidence would be discarded or fall into disuse (apart from those that are applicable in a bench trial). The best example by far is the hearsay rule, which is, in civil cases, purely an outgrowth of concerns about jury reasoning. In criminal cases, there are issues concerning the right to confront witnesses. The Philippines do not have a jury system, thus, experts would query as to why the PRE replicates all the complexities of this and other evidence rules.

However, if the Supreme Court Committee decides to continue to include hearsay within the PRE, it is necessary to start with a definition of hearsay and then include exceptions to that rule. The PRE does not have a general hearsay rule. Such a rule could define hearsay as a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.\textsuperscript{46} The US federal rule on hearsay goes on to exempt from the definition prior statements by a witness and admissions by a party-opponent.\textsuperscript{47} These two features of the US general hearsay rule are most important in a very practical sense since they are used for the admission of the bulk of all out of court statements. While an admission by party opponent delineated in FRE 801(d)(2) is treated to a certain extent by PRE 130(28) and PRE 130(29), the separation of these sections from other hearsay rule exceptions listed in PRE 130(37) through PRE 130(47) presents a drafting problem that should be addressed by the Supreme Court Committee.

In addition, the “admission” exception may also be covered in PRE 130(26) but none of these sections seems to apply to documentary proof. Should the Supreme Court Committee desire to embrace the US federal approach to hearsay, it is suggested that FRE 801 be adopted in its entirety.\textsuperscript{48}

The hearsay exceptions listed in PRE 130(37) through PRE 130(47) generally track the myriad of exceptions contained in FRE 803 and 804.\textsuperscript{49} However, it does not appear that the Philippine rules include a number of documentary statements, including documents reflecting interests in property, family records, marriage certificates, records of religious organizations, records of vital statistics, etc.\textsuperscript{50} It is suggested to include these type of documents as exceptions to the hearsay rule in the PRE but the rules should provide the court with the ability to keep such documents out if there is any question as to their accuracy.

\textsuperscript{45} Id.
\textsuperscript{46} See Fed. R. Evid. 801(c).
\textsuperscript{47} See Fed. R. Evid. 801(d)(1), 801(d)(2).
\textsuperscript{48} See Fed. R. Evid. 801.
\textsuperscript{49} See Fed. R. Evid. 803, 804.
\textsuperscript{50} See Fed. R. Evid. 803(9), 803(11)-(14).
The PRE do not address an exception for statements made for the purposes of medical diagnoses or treatment. FRE 803(4) makes most medical records admissible and alleviates the need to call the treating physician to the witness stand. This exception may prove beneficial to the Philippine judicial system that may lack the financial resources to sustain the requirements of such testimony.

PRE 130(37) addresses the issue of the dying declaration, or statements made under belief of impending death. The common law theory behind this exception was the perhaps naïve belief that a person would not make false statements just before departing this world and facing judgment day, having abandoned all hope of material gain in the world. However, that rationale ignored the possibility of other beliefs or motivations that might affect the truthfulness of such statements. “Despite its questionable basis, the concept of [the dying declaration] has endured…. F.R.E. 804(b)(2) widens the traditional rule … to include all civil cases but in criminal actions it is still confined to homicide. This strange line seems to have even less rationale than the common law. Now, the most serious and the least serious cases are embraced. The in-between ones are not.”

The Supreme Court Committee may wish to revise PRE 130(37) with the above proviso in mind. They may wish to consider whether the declaration of a dying person should be received even if s/he does not die, but thought s/he was going to die imminently, and the prosecution or lawsuit is for the assault, for example, and the assaulted person is unavailable (i.e. if s/he is deceased from another cause or refuses to testify, as often happens in domestic violence cases).

PRE 130(38), PRE 130(39) and PRE 130(47) are provisions that create exceptions to the hearsay rule for declarations against interest, declarations about pedigree and former testimony. The language provides that these sections are applicable only if the witness is “deceased or unable to testify.” The phrase “unable to testify” is somewhat vague and it is thus unclear whether it would encompass the situation in which a witness is present at trial but successfully invokes a privilege or simply refuses to testify. Clarification of this language to encompass these situations would be a positive development.

In addition, it would be worthwhile to amend the language of PRE 130(38), PRE 130(39) and PRE 130(47) to make clear that a party who makes a witness “unable to testify” by, for example, threatening or killing him/her, forfeits his/her right to invoke these provisions. Such a provision is useful because it effectively removes the incentive that criminal defendants might have to threaten or kill potential witnesses and would ensure that criminal defendants who nonetheless engage in such behavior are not able to benefit from doing so.

---

51 See Fed. R. Evid. 803(4).
52 ROTHSTEIN, supra note 6, at 564.
53 Fed. R. Evid. 804(b)(3) which deals with statements against interest has generated a number of United States Supreme Court cases on both evidentiary and confrontation grounds. Declarations against penal interest made to law enforcement are not considered testimonial and therefore violate the confrontation clause unless subject to prior cross-examination. On evidentiary grounds, such narratives are evaluated on a statement by statement basis. In other words, any neutral or self-serving statement within the larger narrative must be excluded from the exception. See ROTHSTEIN, supra note 6, at 568-71.
54 See Fed. R. Evid. 804(a).
Res gestae, referred to in PRE 130(42), is not an approach that is currently in use in the United States, because res gestae can include excited utterances, present sense impressions, statements reflecting the state of mind or bodily condition as well as non-hearsay concepts such as operative facts that are listed separately in the US federal rules. Indeed, the last sentence of PRE 130(42) “legal significance” would not be considered as hearsay under the FRE. If the Supreme Court Committee has not experienced problems with this method, it may not be necessary to modify the res gestae exception. However, it is typically easier to identify the exact rationale for admission to aid appellate review under the US approach.\(^{55}\)

The “business records” exception to the hearsay rule is set forth in PRE 130(43). As currently written, it is an extremely narrow exception and would benefit from redrafting in several ways. First, the current business record exception is made applicable only if the record was made “by a person deceased, or unable to testify.” Under US law, such records are admissible without regard to the availability of the persons who made the entry because the business duty to create accurate records is believed to make them inherently reliable.\(^{56}\) Second, to make this provision more useful in prosecuting those who operate unlawful criminal enterprises, it is worth clarifying that the word “business” includes such criminal enterprises. Third, this section conflicts with the PREE, on electronic evidence, which contain a much more current rendition of the US business record hearsay exception. This issue will be discussed at further length in the electronic evidence section of this assessment.

PRE 130(44) creates a prima facie presumption regarding the truth of entries in official records. This seems to confide an extraordinary degree of confidence in the government. It might be preferential to indicate that it is simply evidence of the facts therein stated. Otherwise, the presumption of the truth of such entries would put an undue burden on a citizen to show otherwise, a burden that the normal citizen could never meet.

PRE 130(48), a provision that excludes lay opinions is surprising. It is literally not possible to eliminate lay opinions from testimony as virtually everything any witness, lay or expert, utters is laced with opinions. Lay opinions can be constrained and minimized to some extent but not eliminated. This rule could become a fertile breeding ground for trial inefficiencies as well as delaying and obstructionist appeals. Judges should encourage witnesses to relate what they believe they have observed and to avoid highly conclusory language but, at the same time, judges need to allow witnesses to express themselves in the normal way of their thinking and speech. A broader rule that would permit more opinions by lay witnesses could use a standard that opinions may be given if they are necessary and helpful.\(^{57}\)

Using the FRE as a model, there are many other exceptions to the hearsay rule that could be considered.\(^{58}\) However, the Supreme Court Committee should seriously consider creating a catch all exception or somehow give the trial judge the discretion to admit statements that are not within otherwise listed exceptions. It is not possible a priori to identify all the situations where something

\(^{55}\) See, e.g., Fed. R. Evid. 803(3).

\(^{56}\) See Fed. R. Evid. 803(6), Advisory Committee Note.

\(^{57}\) See Fed. R. Evid. 701.

\(^{58}\) See generally Fed. R. Evid. 803, 804.
might be hearsay nonetheless is reliable enough to admit. FRE 807 is the US residual exception to hearsay and “…allows the judge to create new exceptions to the hearsay rule for particular evidence if certain conditions are met.”

X. Expert Opinions

Discovery and admissibility questions are often intertwined. This has become a matter of some controversy in the United States due to the potential costliness of retrieving information from computer systems, particularly if they have been previously erased. Similarly, when a computer is seized, and its contents searched, even if no constitutional search and seizure issues exist, authentication questions can become central to evidentiary submissions. The use of forensic experts in court concerning authentication and reliability of electronic evidence has become commonplace in the United States.

It is surprising to find very little description of requirements concerning expert testimony in the PRE. The opinion rule, PRE 130(49) appears to give virtually total discretion to the trial judge as whether to permit expert testimony, given the vague standard that the matter requires special knowledge, skill, experience or training. In the United States, experts have become commonplace at trials, but in part this may be a function of the jury system. The FRE permit experts who “will assist the trier of fact to understand the evidence or to determine a fact in issue,” obviously, a judge will have a better idea of whether expert testimony is useful. However, the experts are only admitted in federal court if: “(1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the fact of the case.” This standard was derived from Daubert v. Merrell Dow Pharmaceuticals, Inc. and is generally referred to as the Daubert test. While it arose within a scientific evidence context, the reliability standard has been expanded to apply to all expert testimony in federal court. A number of state courts use the older Frye standard, which many states limit to the admission of scientific evidence. Frye requires the expertise to be generally accepted in the scientific community.

Undoubtedly, the focus on reliability or even general acceptance may result in large measure from the US concern that jurors will be unduly influenced by experts. However, in complex cases, judges may also give unwarranted credence to questionable expertise. Thus, given the growing focus on electronic evidence, as well as the likely expansion of scientific evidence in criminal cases, it may be an appropriate time for the Philippine Supreme Court Committee to determine whether a judge’s decision to permit experts should be guided by rules.

59 ROTHSTEIN, supra note 6, at 577; see also Fed. R. Evid. 807.
60 Fed. R. Evid. 702.
61 Id.
XI. Burden of Proof and Presumptions

In the United States, conclusive presumptions of an evidentiary nature were held unconstitutional in criminal cases in Sandstrom v. Montana.\textsuperscript{64} In that case, the US Supreme Court rejected an instruction that the law presumes a person intends the ordinary consequences of his/her voluntary acts because it may have been interpreted as conclusive or as shifting the burden of persuasion, which would have violated the Fourteenth Amendment of the US Constitution. The Fourteenth Amendment requires that the prosecutor prove every element of a criminal offense beyond a reasonable doubt.\textsuperscript{65} Since the Philippine Constitution is modeled on the US Constitution, the Supreme Court Committee may want to give this issue some consideration in reference to PRE Rule 131(2)(a). In addition, it would be surprising to US evidentiary scholars if PRE 131(2)(a) and PRE 131(2)(b) were the only conclusive presumptions used in the Philippine judicial system. If there are other conclusive presumptions provided by statutory or judicial rules then they should be referenced here.

Disputable presumptions are delineated in PRE 131(3). The burden of proof in US criminal prosecutions is “beyond a reasonable doubt.” If that is also the standard used in the Philippines it should be referenced in PRE 131(3)(a) and PRE 131(3)(b). It would also be surprising to US evidentiary scholars should PRE 131(3) contain the only non-conclusive presumptions used by the Philippine judicial system. For example, in negligence suits there is the doctrine of \textit{res ipsa loquitur}, or the presumption that something that does not ordinarily happen without negligence actually happened because of the defendant’s negligence. Perhaps the addition of language which would allow the judge, in appropriate circumstances, to create other common sense presumptions could be useful to the judiciary in processing cases.

However, the Philippine Supreme Court Committee might choose to take a completely different view of disputable presumptions. To the extent that this subsection attempts to reduce common sense reasoning processes to rules, it is impossible in advance to identify even a small slice of the relevant inferential universe. Moreover, it remains unclear why these particular rules are singled out from a host of other, similar problems. The Committee may wish to reconsider this approach.

XII. Examination of Witnesses

PRE 132(1) requires examinations to be done in open court. While this is standard practice, there is no indication in the rules as to whether sessions can be closed to be public in certain circumstances. It is known that Philippine courts usually allow motions by any party to exclude the public in cases where testimony refers to personal matters. However, this is not reflected in the PRE. Additionally it may be desirable to have the PRE explicitly indicate that the answers of the witnesses given orally be subject to perjury penalties as delineated in the Philippine Penal Code.

In PRE 132(3) the rights and obligations of witnesses are set forth. PRE 132(4) has the potential of conflicting with the right against self-incrimination, which is incorporated in the

\textsuperscript{65} See id.; see also U.S. CONST. amend. XIV.
Philippine Constitution. In the United States, an individual would have to be given “use immunity” by the prosecutor to compel an answer that subjects a witness to a penalty. Similarly, The Philippine Anti-Money Laundering Act of 2001 contains a paragraph that provides that “[a]ny public official or employee who is called up to testify and refuses to do the same or purposely fails to testify shall suffer the same penalties prescribed herein.” Those penalties range from prison terms to fines of hundreds of thousand Philippine pesos. This also appears to have constitutional consequences with respect to the right against self-incrimination.

PRE 132(3)(5) generally gives the witness the right to refuse to answer questions that would tend to degrade his/her reputation. This seems to be an ill-advised provision because it is so broad. Since almost every statement can tend to degrade a reputation, witnesses would be within their rights to refuse to testify to a wide range of information. This would also make cross examination nearly impossible.

PRE 132(7) and PRE 132(8) deal with re-direct examination and re-cross examination. Both sections allow the judge wide discretion in permitting re-direct and re-cross examination. Some experts have questioned whether the Philippine Supreme Court Committee wishes to give discretion to judges to allow re-direct examination at all. In the US experience, there are some who feel that re-direct examination often rehashes testimony already well covered in direct examination or that should have been covered. Those experts believe that re-direct examination does not add anything of substance to the trial. The same reasoning applies to the discretion given to the judge for re-cross examination.

PRE 132(10)(a) addresses leading and misleading questions and indicates that a leading question is not permitted, except on cross examination. This section would be strengthened by adding that leading questions are not permitted except on cross examination of an adverse or hostile witness. It is not at all uncommon for plaintiff to call the defendant (or someone associated with the defendant) as the plaintiff’s witness. Though the examination may in name be direct examination, in spirit it is cross examination and leading questions are allowed by the plaintiff. Conversely, when the defendant rises for “cross examination,” he is actually examining a friendly cooperative witness so that leading questions are not permitted in this kind of friendly cross examination.

The touchstone of whether leading questions are allowed turns on whether the witness is inclined to be cooperative with the party doing the leading or whether s/he is inclined to be resistant and, thus, to need leading while not being susceptible to being led falsely. This standard for leading questions is partially addressed in PRE 132(10)(c) but it does not address the needs of the defendant. The language may be improved and broadened by adding “of a witness who is an adverse party or anyone associated with an adverse party of an officer.”

66 See PHIL. CONST. art. III, § 12(1).
68 See id.
69 See PHIL. CONST. art. III, § 12(1).
70 See Fed. R. Evid. 611(c).
The impeachment rules in PRE 132 raise several issues. First, PRE 132(11) does not allow an adverse party’s witness to be impeached by evidence of “particular wrongful acts” if the witness was not convicted for engaging in that act. However, such acts, even if not criminal in nature, may be highly probative of a witness’s character for truthfulness. Under US law, such acts can be inquired into on cross examination of the witness, although if the witness denies that the incident took place, such acts cannot be proven by extrinsic evidence.\(^{71}\)

At the very least, it is worth modifying PRE 132(11) to allow for inquiry on cross examination and it may be worth considering giving the court discretion to have such acts proven with extrinsic evidence.

PRE 132(11) also does not detail the type of conviction that can be used for impeachment. In the United States, there is a fair amount of disagreement about defining such crimes and what, if any, balancing test should be used to exclude a conviction. However, to the extent that such convictions include misdemeanors or crimes similar to those for which an accused is currently charged, some greater guidance to judges might be warranted.

Another issue arises in the examination of PRE 132(12), which prohibits impeachment of a party’s own witness. This approach has been uniformly rejected in the United States for a number of years.\(^{72}\) The rationale for the repudiation of this approach is that it is unrealistic to require parties to vouch for their witnesses when in many instances they do not have unfettered freedom to choose their witnesses. For example, prosecutors often call individuals who may not be enthusiastic about testifying but who are unlikely to be declared hostile witnesses. Admittedly, the basis for demonstrating hostility may develop during the testimony for some witnesses but the time and unpredictability of the results bode for rejecting the doctrine.

Similarly, in civil cases, PRE 132(10)(e) currently does not treat all employees as adverse, only those who are officers, directors or managing agents of corporation, partnership or association. Yet other employees may offer significant testimony. That is, in order to prove the substantive elements of the claim, plaintiffs often call witnesses whom they would not choose, if they had a choice. The US judicial system views it unfair to prohibit impeachment of such individuals by a rule that assumes the party vouches for its witnesses.

PRE 132(13) requires a witness to be shown an inconsistent statement before any question can be asked concerning the statement. US federal jurisdiction courts (as well as English courts where this rule was created) have abandoned this impeachment rule. This provision was seen as giving too great a benefit to a dishonest witness and thus generally diminishing the impeaching effect of prior inconsistent statements. The current approach, embodied in FRE 613, permits impeachment of a witness without revealing the document in question.\(^{73}\) It does, however, require that witnesses be afforded an opportunity to explain or deny the statement before introducing extrinsic evidence. This approach is viewed as providing the examiner with a better opportunity for conducting an effective cross examination, since a witness who sees a trap is not likely to fall into it.

---

\(^{71}\) See Fed. R. Evid. 608(b).

\(^{72}\) See, e.g., Fed. R. Evid. 607.

\(^{73}\) See Fed. R. Evid. 613.
The sequestration rule found in PRE 132(15) appears to be discretionary and to apply to all witnesses. The US federal approach distinguishes between parties and other witnesses. Natural parties cannot be excluded nor can an officer or employee who is designated as a representative of a party that is not a natural person. Similarly, a party can show that the presence of a person is essential to the presentation of that party’s cause. This latter situation can occur in complex cases when more than one governmental agent or an expert may be necessary to aid the lawyer.

In addition, PRE 132(15) allows a judge to order witnesses not to converse with one another until all such witnesses have been examined. The Supreme Court Committee should consider amending this rule to make clear that this interdiction covers not just direct communication but also communication via intermediaries. Whether “intermediaries” should also include the defendant’s attorney is an important policy question that the Committee should also consider.

PRE 132(16) combines the requirements for refreshing a witness’ recollection and past recollection recorded. The major difference with US practice is that PRE 132(16) only permits refreshing present memory by documents that could satisfy admission as past recollection recorded. In the United States, these two concepts are entirely separate. Anything can be used to refresh, including items that are false as well as those not ever previously seen by the witness. For example, a newspaper account could refresh, whether or not true, on the theory that it awakens the witness’ current memory, and that testimony can be effectively cross examined. In contrast, as in the Philippines, past recollection recorded is limited to the witness’ statements because they take the place of testimony. Experts pondered whether there is a policy justification for limiting the materials used to refresh recollection in the Philippines.

PRE 132(17) may benefit from some additional language to narrow this rule as it is currently drafted. “When part of an act, event, declaration, conversation, writing or record is given in evidence by one party, the whole [or] the same subject may be inquired into by the other … to the extent necessary to present a fair picture.” This additional language is suggested as a method to prevent the admission of all kinds of otherwise inadmissible evidence. Lawyers might use the current language to extend the length of a trial substantially and unnecessarily.

PRE 132(20) deals with proving the genuineness of handwriting. This provision only provides two means of authenticating a private document: testimony by a witness with first hand knowledge of its execution or evidence of the genuineness of the signature or handwriting of the maker. However, often meeting either of those requirements is impossible (e.g., when the document is typewritten). The Supreme Court Committee should consider broadening this provision to include other means of authentication, such as by showing that it contains information within the particular knowledge of one or a limited group of persons, language patterns that are peculiar to the purported author, and the like. At the very least, language should be added akin to that contained in PREE 11(2), which permits authentication of “ephemeral electronic communications” through the use of specific types of evidence or, barring the availability of those, through “other competent evidence.”

---

74 See Fed. R. Evid. 615.
75 See United States v. Rhynes, 218 F.3d 310 (4th Cir. 2000) (en banc).
76 See, e.g., Fed. R. Evid. 901(b)(4).
Procedurally, the timing references in PRE 132(35) and PRE 132(36) are slightly ambiguous. In the United States, the Federal Rules of Civil Procedure provide that designations and objections to documentary evidence must be made before trial. The judge can determine admissibility prior to trial or wait until trial to hear the detailed objection. If no objection is raised pretrial to documentary evidence, only relevance or prejudice can be raised at trial. While there are no equivalent pretrial requirements in criminal cases, judges have discretion in all cases to hear pretrial evidentiary rulings. Specific timing requirements in civil cases might be useful in encouraging settlement of cases and streamlining trial proceedings in the Philippines.

Finally, PRE 133, which deals with weight and sufficiency of evidence, raises two points worth noting. First, the term “moral certainty” in PRE 133(2) as applied to the determination of reasonable doubt has generated many legal challenges based on due process concerns in the United States. As a result, jury instructions typically no longer use that terminology. Second, the requirement in PRE 133(3) of corpus delicti has been rejected by a number of states. However, circumstantial evidence sufficient to satisfy a finding of reasonable doubt is required. In other words, confession standing alone would not be sufficient for conviction.

XIII. UNODC Model Foreign Evidence Bill

It also should be noted that a model law has been developed by the United Nations Office on Drugs and Crime (“UNODC”) for use in countries whose legal systems are substantially based on the common law tradition. Since the Philippine Supreme Court Committee is concerned with the effective prosecution of money laundering and corruption cases that will often be transnational in nature, a review of the UNODC model law could be helpful. The proposed provisions specify the legal requirements that a common law country should have in place in order to accept foreign evidence in its judicial system. While not all these legal requirements may be needed in a civil/common law country such as the Philippines, it is important to be aware of the existence of this model law.

XIV. The Philippine Rules on Electronic Evidence

PREE 1(2) states that the Philippine electronic rules apply to all civil actions and proceedings as well as to quasi-judicial and administrative cases. The Philippine Supreme Court amended the PREE in 2002 to extend their application to criminal proceedings. This is a welcome extension of these rules as they will be very helpful in prosecuting criminal cases.

A. Structural Issues Concerning the Philippine Rules of Electronic Evidence

Even if electronic evidence is not currently widely used in the Philippines, it is likely to be important in money laundering, graft and other high profile criminal cases. Computer and phone records are integral to such litigation and some of the electronic sources may originate outside the Philippines.

---

79 See Supreme Court Resolution, No. 01-7-01-SC (2002) (Phil.).
Experts indicated that the introduction of electronic evidence has grown dramatically in the United States in all manner of criminal cases. In addition to computer records, critical evidence may come from internet websites, chat rooms, application program files and e-mails. It may also be important to admit evidence concerning visits to particular internet or network sites, or admit audit trails that could include evidence from telephone connection records, bank logs, router logs and system access. Similarly, CD-ROM entries and transcripts from computerized sources such as LexisNexis and other research engines have been introduced as well as videotapes and other forms of evidence that are technologically dependent. Such sources may be necessary to prosecute cases but the defense may also rely on electronic evidence in its own cases or in cross examination of witnesses.

In the opinion of the experts who reviewed the PRE and the PREE, there appears to be little, if any, justification for crafting a different set of standards for admissibility of electronic evidence in different types of cases. The issues concerning reliability, authenticity, best evidence and hearsay appear to be identical regardless of whether the evidence is offered in a civil or criminal context or whether the evidence is electronic or non-electronic in nature. As a result, nothing should deter the application of identical electronic rules to all cases which, in turn, suggests the desirability of integrating the electronic rules into the general evidence rules.

B. Definitional Issues Concerning the Philippine Rules of Electronic Evidence

The PREE seem overly complex. The FRE make no specific mention of electronic evidence. It also seems that the United Kingdom, a jurisdiction that shaped the US legal system, has retreated from its earlier highly structured approach to admission of electronic evidence. A discretionary approach leaves judges free to apply the old rules to new situations in determining when authenticity and reliability of electronic evidence is demonstrated.

Unlike the FRE approach, commentators suggested that electronic evidence be specifically referenced in the Philippine rules. Even in the United States, there is criticism of the current flexible approach, on the grounds that a strict reading of many of the individual evidence rules would appear to exclude electronic evidence from their ambit, since much of this evidence does not fit the definition of a document or data compilation. However, the proposed solutions in the United States are much less structured than the PREE.

In contrast to the PREE’s two pages of definitions of a variety of records that could be proffered for admission into evidence, the URE, or model evidence rules for US states, use a simpler approach. URE 101(3) defines the term “record” to include electronic evidence, and uses that language in addition to or in lieu of other definitions of documents and writings.80 The following comment explains the reasoning of the National Conference of Commissioners on Uniform State Laws with regard to the definition of “record:”

Although the Uniform Rules prior to their amendment in 1999 included specific reference to “data compilations” to accommodate the admissibility of records stored electronically, many business and governmental records do not now consist solely of

---

80 See Unif. R. Evid. 101(3).
“data compilations.” Rather, in today’s technological environment, or as it may develop in the future, records are, or may be, kept in a variety of mediums other than in just “data compilations.” Presently, “records” may include items created, or originated, on a computer, such as through word processing or spreadsheet programs; records sent and received, such as electronic mail; data stored through scanning or image processing of paper originals; and information compiled into data bases. One, or all, of these processes may be involved in ordinary and customary business and governmental record-keeping. Modern technology thus dictates that any of the foregoing types of records should be admissible when they are relevant if reasonable evidentiary thresholds of evidentiary reliability are satisfied. The Rule 101(3) definition of “record” and the substitution of the word “record” for the terms “writing,” “memorandum,” “report,” “document,” “recorded statement,” and “data compilation,” when appropriate, are intended to accommodate the foregoing modern innovations in record keeping. At the same time, the approach accommodates the use of these more traditional forms of record keeping as evidence.

The definition of “record” in Rule 101(3) [of the URE] is derived from § 5-102(a)(14) of the Uniform Commercial Code and carries forward consistently the established policy of the Conference to accommodate the use of electronic evidence in business and governmental transactions. It should be made clear that the definition includes all writings, recordings, photographs and images for the purpose of interpreting the amendments to the Uniform Rules where the term “record” is used. “Writings,” “recordings,” “photographs,” and “images” are separately defined in Rule 1001 of Article X as these terms are used in the interpretation of the original writing rule.81

Similarly, URE 1001, and its commentary, specifically include electronic evidence in definitions that govern the interpretation of the US equivalent of the best evidence rule, now entitled the original writing rule.82 The comment elucidates:

The amendments to Article X [of the URE] consisting of Rules 1001 through 1008 elaborate on the meaning of the term “record” to facilitate the use of the term throughout Articles I through IX, as well as Article X governing various applications of the original writing (“best evidence”) rule to provide guarantees against inaccuracies and fraud. However, it should be made clear that the term “record,” when used in Rule 1002 through 1008, includes writings, recordings and photographs. Accordingly, when more traditional forms of record keeping are called in question within the original writing rule, the same governing rules are applicable as has been the case under Article X of the Uniform Rules prior to their amendment. This application of the original writing rule to writings, recordings and photographs

---

81 Unif. R. Evid. 101(3), Comment.
82 See Unif. R. Evid. 1001.
is facilitated through the definition of these terms in the amendments to Rules 1001(4) and (5) as well as the definition of record in Rule 101(c).83

The Evidence Advisory Committee of the Federal Judicial Conference in the United States is currently considering whether to adopt the URE approach or some other variation in amending the FRE to better incorporate electronic evidence. It appears unlikely that the Committee will alter each rule that could be interpreted as inconsistent with the introduction of electronic evidence. Professor Daniel Capra, the reporter of that Committee, has suggested several possible revisions, including the addition of the following rule:

Proposed Rule 107/1104. Evidence in Electronic Form

As used in these rules, the terms “written,” “writing,” “record,” “recording,” “report,” “document,” “memorandum,” “certificate,” “data compilation,” “publication,” “printed material,” and “material that is published” include information in electronic form. Any “certification” or “signature” required by these rules may be made electronically.

Proposed Committee Note:

New rule 107/1104 makes clear that the “paper-based” language of the Federal Rules of Evidence is to be construed to permit evidence in electronic form when that evidence otherwise meets the admissibility requirements of the rules. See, e.g., Costantino v. Herzog, 203 F. 3d 164 (2d Cir. 2000) (videotape was properly admitted as a learned treatise, even though Rule 803(18) refers only to “published treatises, periodicals or pamphlets”). The intent of the rule is that electronic evidence is to be governed by the same evidentiary principles as any other evidence. The rule precludes the possibility that electronic evidence will be excluded simply because the Federal Rules of Evidence, as originally drafted, understandably were written to address the admissibility of paper-based evidence.84

In contrast to either of these approaches, the PREE appear unduly complicated. It is unclear why a significant amount of detail is needed in its definitional section. The Philippine Supreme Court Committee may consider that a broad definition as is suggested by the URE or Proposed Amendment to the FRE will suffice. As technology changes, the level of detail in electronic evidence definitions is likely to hinder application of the rules, rather than be inclusive of new technique. Similarly, the definition of documentary evidence found in PRE 130(2) should be modified to include electronic evidence. The best solution is to merge the two definitions.

C. Best Evidence, Authentication and Hearsay Issues Related to the Philippine Rules of Electronic Evidence

Moreover, because PREE 1(3) indicates that the rules of court should apply to all matters not specifically covered, the PREE set a potential trap that might exclude portions of other general

83 Unif. R. Evid. 1001, Comment.
84 Draft Fed. R. Evid. 107/1104 & Advisory Committee Note.
evidence rules, partially covered by the electronic rules. In this regard, PREE 4, concerning best evidence, does not treat much of what appears in PRE 130(3) entitled “Best Evidence Rule.” Thus, an argument exists that the general best evidence rule is no longer applicable, since there is no cross-reference to it in PREE 4. Obviously, PREE 4 was meant to supplement, not replace the general rule, but a technical reading of PREE 1 might suggest that since best evidence is covered in the electronic rules (PREE 4), the general best evidence rule (PRE 130(3)) is not applicable.

The word “duplicate” appears, without definition, in PREE 4. In the United States, the term “duplicate” has a specific meaning. There seems to be no reason why the term “duplicate” should not appear in the PRE. Generally, the best evidence rule plays a relatively small role in US courts. Duplicates, usually photocopies, are typically admitted in lieu of originals. Unlike PRE 130(5), the United States has no degrees of secondary evidence. Thus, if the original is unavailable, any form of evidence concerning the document can be admitted. Like PREE 4, in the United States any printout that accurately reflects data stored in a computer is considered an original. It is unclear what difference, if any, there is between the best evidence rules found in PREE 3 and PREE 4, and the secondary evidence rules found in PRE 130(5) through PRE 130(8). Integration of the two rules would make them easier to understand.

The authentication requirements for electronic evidence appear quite restrictive. In the United States, judges permit authentication by a variety of means, and examples are included under FRE 901(b). To the extent that the Philippine Supreme Court Committee believes the authentication of electronic and digital signatures should be specifically referenced, PREE 6 might be integrated into PRE 132(19) through PRE 132(33), along with their appropriate definitions. PREE 5 appears to require proof by a preponderance of the evidence for electronic documents. In the United States, similar to PRE 132(20), admissibility is permitted so long as there is enough evidence to support a finding that a “document” is what it claims to be. However, even PRE 132(20) has an unclear reference to the proof of private documents, which suggest a preponderance standard. PREE 7 concerning evidentiary weight of electronic documents is unlikely to add much to the evaluation of electronic documents. That is, it is unclear why this is a matter of credibility, rather than admissibility. If the electronic evidence is unreliable, that should result in its exclusion, not simply downplaying its value.

Moreover, in the admissibility context, PREE 7 appears to overlap significantly with the hearsay criteria for business records. PREE 8(2) indicates that untrustworthiness of the source of information or the method or circumstance of preparation, transmission or storage may result in the exception being inapplicable. The factors in PREE 7 clearly all focus on reliability and integrity. If this focus signifies skepticism about the reliability of electronic records in the Philippines, the PREE 7 could take an approach similar to that used by the Canadian Uniform Electronic Evidence Act, which requires that the “integrity of the electronic records system in or by which the data was recorded or stored” be proved if the best evidence rule is applicable to the electronic record in question. This would shift the burden concerning reliability to the proponent, rather than the

85 See Fed. R. Evid. 1001(4).
86 See supra Part V.
87 See Fed. R. Evid. 901(b).
opponent of the electronic record being introduced. Again, this approach is a rule of admissibility, not credibility, as PREE 7 is currently worded.

The definition of “business record” in PREE 8 adopts an expansive view that includes opinions and diagnoses. This is consistent with practice in the United States, but contrasts with PRE 130(43). Indeed, the general hearsay exception for business records that appears in PRE 130(43) has an extremely limited scope. It is difficult to imagine that this is the only applicable business record exception for non-electronic records, since its requirement that the person who made the entry be deceased or unable to testify would seem to disqualify most routine business records. If PRE 130(43) is the only other business record exception, it should be deleted, and the more expansive approach to such records found in PREE 8 should be modified to include all manner of business records. It is not recommended that PREE 8 is limited to records produced by “electronic, optical or other similar means.” As previously mentioned, URE 101(3) simply uses the term “record,” which is defined to include all manner of information and sources.89

PREE 9, regarding the affidavit supporting admissibility of electronic documents, appears more restrictive than practice in the United States. While US rules typically require testimony of a custodian of the records, that person can testify to routine practice of an organization. In addition, in federal court, unless a dispute exists, the affidavit is sufficient to authenticate and establish the business records exception, meaning that the custodian of the records need not be called at trial in civil or criminal cases. In civil cases in federal court, any evidentiary issues concerning documentary evidence or exhibits are waived if not raised by objection prior to trial, with the exception of objections concerning relevance and prejudice.90 This results from the application of US rules of civil procedure, which provide broad discovery and are designed to streamline the introduction of evidence at trial. Given the more limited criminal discovery, such pretrial requirements concerning documentary evidence do not apply in federal criminal cases in the United States.

XV. Electronic Testimony Rules

PREE 10 concerning electronic testimony is more expansive than practice in the United States. While electronic testimony is not defined, it is assumed that this results from videoconferencing, or testimony given via one way or two-way television, that is real time, rather than introduction of previously given testimony. Jury trial considerations in the United States generally favor live testimony, unless witnesses are truly unavailable. Confrontation clause issues in criminal cases have impacted the adoption of such technology. It is unclear how the constitutional face-to-face confrontation right is interpreted in the Philippines concerning testimony given in real time, but not in the actual courtroom.

It would seem that electronic testimony would be a welcomed development in the Philippines, given potential costs and other difficulties of bringing witnesses to court. However, technology can be expensive and requires trained staff to operate and maintain it. Thus, it is unclear how much PREE 10 is being utilized in the Philippines.

89 See Unif. R. Evid. 101(3).
If PREE 10 is meant to address only prior videotaped depositions or testimony given at prior proceedings that are introduced at trial, such testimony is typically admitted in jurisdictions like the United States only if the proponent establishes that the witness is unavailable at trial. This is dictated in part by jury considerations, and also by confrontation clause jurisprudence. However, judges must also evaluate credibility, and virtual testimony is still viewed skeptically by many critics.

PREE 11 appears to entail a preponderance standard, rather than a standard that the audio, video and similar evidence be sufficient to show it is authentic. In the United States, this would simply be an example in the general authentication rules. Neither the FRE nor URE refers to “ephemeral electronic communications.” The general authentication rules of the FRE have been interpreted as broad enough to cover all forms of electronic evidence. While the definition of ephemeral electronic communication in PREE 11(2) is clearly state of art today, it may be limiting when technology changes. However, PREE 11(2) could be combined with PREE 2(1)(k) as an illustration of a way to ensure authenticity. The difference in approach is that PREE 11 currently requires unavailability before other authenticating evidence can be used. Authentication would not typically be so limited in the United States.

**XVI. Conclusion**

When an attorney is required to present evidence to prove factual allegations in a case, s/he relies on a comprehensive body of rules and practice, developed and refined over many years, which directs and controls the judicial process. These rules determine whether cases are successful or not, whether claims are satisfied or rejected and whether criminal convictions or acquittals are granted. The rules of evidence assist judges and lawyers to operate in a clearly defined system of procedures that stipulate the manner in which cases will be investigated, prepared for trial and tried. The effective functioning of any nation’s legal system depends on these rules and how they are put into effect.

The PRE represent a successful effort in bringing the principles of fundamental fairness to the judicial system. While the fact that the Philippines is a mixed jurisdiction, based on common and civil law, presents certain challenges in respect to the guidance offered, this assessment seeks to provide helpful, comparative information and analysis in order to assist the Philippine Supreme Court Committee in making the PRE more easily applicable to the increasing number of fraud, corruption and money laundering cases the country faces. In that regard, suggestions have been made where clarity can be improved, where certain issues need to be addressed and where more modern principles need to be established. In addition, it is suggested that the PREE be integrated into the PRE to avoid confusion and to create one cohesive set of rules for all participants in a trial.

As the world becomes ever smaller, the experience of mixed legal jurisdictions is ceasing to be unique. The legal history of the Philippines and other countries with mixed civil and common law backgrounds becomes all the more relevant to understanding global legal issues and will, no doubt, influence continuing legal developments in our global world.
Appendix A

Biographical Statements of Experts Assessing the Laws
Biographical Statements of Experts Assessing the Laws

Marta Achler-Szelenbaum

Marta Achler-Szelenbaum is an Associate Legal Officer of the Legislative Support Unit in the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR) based in Warsaw, Poland. Ms. Achler-Szelenbaum conducts assessment of laws in a variety of areas including countering trafficking in human beings, anti-corruption, gender equality, and migration issues. These assessments have been completed for a number of OSCE participating states including Armenia, Azerbaijan, Belarus, Georgia, Moldova, the former Yugoslav Republic of Macedonia, and Ukraine. Prior to beginning work at the OSCE/ODIHR in 2002, Ms. Achler-Szelenbaum worked in administrative law with the Commonwealth of Administrative Appeals Tribunal in Melbourne, Australia and the Victorian Department of Justice in Australia. She also worked with the Warsaw office of the US law firms of Hunton & Williams and Dewey Ballantine predominantly on issues of banking, financing, merger & acquisitions, and capital markets law. Ms. Achler-Szelenbaum graduated with an LLB/BA (International Relations) in 2000 from Deakin University in Australia with a focus on commercial law.

Ronald J. Allen

Ronald J. Allen is the John Henry Wigmore Professor of Law at Northwestern University in Chicago, IL. He did his undergraduate work in mathematics at Marshall University and studied law at the University of Michigan. He is an internationally recognized expert in the fields of evidence, criminal procedure, and constitutional law. He has published seven books and over ninety articles in major law reviews. He has been quoted in national news outlets hundreds of times and appears regularly on national broadcast media on matters ranging from constitutional law to criminal justice. Professor Allen began his career at the State University of New York, and has held professorships at the University of Iowa and Duke University prior to coming to Northwestern. In 1991, he was the University Distinguished Visiting Scholar at the University of Adelaide, South Australia. He was recently appointed the inaugural Fellow of the Procedural Law Research Center of the China University of Political Science and Law, Beijing, and as Chair of the Board of Advisors of the new Evidence and Forensic Science Institute in Beijing. He has also been invited to lecture by the governments of Mexico and Trinidad/Tobago. For the last ten years his research has focused on the nature of juridical proof.

Geralyn Busnardo

Geralyn Busnardo is the Justice Program Manager for the International Narcotics and Law Enforcement Affairs Bureau, US State Department, in Kabul, Afghanistan. She previously worked in Bosnia and Herzegovina for the Independent Judicial Commission and the High Judicial and Prosecutorial Council, and she served as the ABA/CEELI Rule of Law Liaison for two years in Montenegro. Prior to joining the international development community, Ms. Busnardo was a Deputy Public Defender for Los Angeles County. She is a graduate of Loyola Law School in Los Angeles, California.
A. Michael Froomkin

A. Michael Froomkin is a Professor of Law at the University of Miami School of Law in Coral Gables, Florida specializing in Internet law and administrative law. He is a founder-editor of ICANNWatch (http://www.icannwatch.org/), and serves on the Editorial Board of Information, Communication & Society and of I/S: A Journal of Law and Policy for the Information Society. He is on the Advisory Boards of several organizations including the Electronic Freedom Foundation and BNA Electronic Information Policy & Law Report and is a member of the Royal Institute of International Affairs in London. He writes primarily about Internet governance, electronic democracy, and privacy. Other subjects include e-commerce, electronic cash, the regulation of cryptography, and US constitutional law.

Edward Imwinkelried

Edward Imwinkelried could easily be a model for a character in crime fiction. News stories quoting him have included "Probers Use DNA Tests to Find Killer in Florida," "Love-Triangle Killing: Defense Questions Police," and "Will High-Tech Sleuthing Hold Up in Court?" To the country's prosecutors and defense attorneys, he is the one to consult about the admissibility of scientific evidence and evidence of uncharged crimes. Mr. Imwinkelried wrote the book on scientific evidence, literally and figuratively. Now in its second edition, “Scientific Evidence” treats such subjects as DNA typing, forensic psychiatry, and laser techniques for fingerprint detection. The admission of evidence of uncharged crimes is the topic of another of his books. Mr. Imwinkelried received his JD and his BA in Political Science from University of San Francisco.

Karen Kramer

Since July 2003, Karen Kramer has been seconded from the US Department of Justice to the United Nations Office on Drugs and Crime, Division of Operations where she conducts needs assessments as well as legislative assessments and provides training and other tools in order to strengthen capacities of law enforcement and judicial officials to better implement the Convention Against Transnational Organized Crime. From January 2001 to 2003, Ms. Kramer worked as the Resident Legal Advisor for the Department of Justice Office of Overseas Prosecutorial Development and Assistance in Bulgaria where she helped authorities draft laws on trafficking in persons and terrorist financing, provided input to amendments to the Constitution and to the Code of Criminal Procedure, in addition to conducting trainings for judicial system officials. Ms. Kramer’s experience in the area of justice reform began when she was the first criminal law liaison to Bulgaria for ABA/CEELI during 1998-1999. Previously, she worked as a prosecutor with the District Attorney’s Office in Ventura County, California and as a Deputy Public Defender in Ventura and Los Angeles Counties. Ms. Kramer holds a JD from Pepperdine University School of Law and a BA from Connecticut College.

Peter Nicolas

Peter Nicolas joined the faculty at the University of Washington Law School in 2000 following a clerkship at the US Court of Appeals for the First Circuit. His teaching and research interests include federal courts, international civil litigation, civil procedure, evidence, conflict of laws, Indian law, and sexual orientation law. He has authored a textbook entitled “Evidence: Problems, Cases and Materials.” Professor Nicolas graduated magna cum laude from Harvard in
1999 where he served on the editorial board of the Harvard Law Review and actively participated in Moot Court. Prior to pursuing a career in the law, Professor Nicolas was a Research Economist at the University of Michigan, and served for two, two-year terms as a member of the Ann Arbor, Michigan City Council.

Myrna S. Raeder

Myrna S. Raeder teaches at Southwestern University School of Law in Los Angeles, California where she was named both the 2002-03 Paul E. Treusch and the 1990-91 Irwin R. Buchalter Professor of Law. Professor Raeder is a past chair of the ABA Criminal Justice Section and of the Evidence Section of the Association of American Law Schools. She was the ABA Advisor to the 1999 Uniform Rules of Evidence Drafting Committee of the National Conference of Commissioners on Uniform State Rules. She is a co-author of “Evidence State and Federal Rules in a Nutshell” and of “Evidence, Case Materials and Problems” along with Professors Paul F. Rothstein and David Crump. She has written numerous articles on evidentiary topics, often focusing on the confrontation clause and evidentiary issues of concern to women and children. She is also a frequent speaker at conferences and CLEs and has commented on a variety of trial issues in the media. Professor Raeder has taught a course on Criminal Evidence at the National Judicial College since 1993.

Jason Reichelt

Jason Reichelt is currently a trial attorney in the Computer Crime and Intellectual Property Section of the Criminal Division of the US Department of Justice. Before joining the Justice Department, Mr. Reichelt was a criminal law liaison for ABA/CEELI in Tbilisi, Georgia from March 2004 to July 2005. Jason is a graduate of the University of Oregon and Cornell Law School, served a two-year judicial clerkship in the US Ninth Circuit Court of Appeals, and formerly worked as a criminal prosecutor in Ada County, Idaho.

Paul F. Rothstein

Paul F. Rothstein is a Professor of Law at Georgetown University Law Center specializing in evidence, torts, and other subjects related to civil and criminal litigation before the US Supreme Court as well as inferior courts. A former Washington, DC practitioner, Oxford University Fulbright Scholar, and Law Review Editor-in-Chief, his publications as sole or co-author include the books "Evidence: Cases, Materials & Problems,” “Evidence in a Nutshell,” “Federal Testimonial Privileges,” “Federal Rules of Evidence” and approximately 100 articles. He has been special counsel or consultant on matters of evidence, including the Federal Rules of Evidence, and related topics, to both Houses of the US Congress, the National Conference of Commissioners on Uniform State Laws, the National Academy of Sciences, the Federal Judicial Center, Rand, AEI-Brookings, and the government of Canada, among others. He chaired the Association of American Law Schools Evidence Section and an American Bar Association committee monitoring developments under the Federal and Uniform Rules of Evidence that suggested changes to the rules, a number of which have been made.
James W. St Clair

James W. St Clair is presently retired from the active practice of law and is working as the full time President of Huntington Realty Corporation, primarily developing commercial real estate in South Eastern United States. Previously, he practiced law for 42 years and was a partner in a small law firm in Huntington, West Virginia. He served as a volunteer for ABA/CEELI projects teaching in Ukraine, Kazakhstan, Kyrgyzstan and eleven months as a rule of law liaison in Sarajevo, Bosnia and Herzegovina. He also taught commercial law as a volunteer member of the International Senior Lawyers Project in South Africa and Brazil. Mr. St Clair received his JD from University of Virginia College of Law and his BA in History from University of Virginia.

Rupert Vining

Rupert Vining qualified as a solicitor (1990) and as Higher Court Advocate (Crime) in the United Kingdom, subsequently working as a Senior Crown Prosecutor for the Crown Prosecution Service. During this time he covered the entire gamut of criminal proceedings, specializing in organized crime, fraud, anti-money laundering and confiscation of the proceeds of crime. Latterly he worked for the Council of Europe within the Group of States against Corruption (GRECO) peer review monitoring mechanism, continuing this work as the Council of Europe Resident Expert for Anti-Corruption and Anti-Organized Crime based in Tbilisi, Georgia. Mr. Vining acted as a trainer for the UN Global Programme against Money Laundering and as a peer reviewer for the European Commission monitoring accession commitments on anti-corruption in candidate countries. Presently, Mr. Vining is based in Bucharest working as Senior Advisor to the President of Romania on anti-corruption issues.

John B. Williams

John B. Williams is a partner in the Washington, DC office of Jones Day. Mr. Williams is a litigator with more than 25 years of trial experience. He has tried cases in 14 different states and has appeared in over 30 different federal district courts. Mr. Williams has tried antitrust, RICO, commercial, intellectual property, false advertising, and defamation cases. He is a Fellow of the American College of Trial Lawyers and serves on the faculty of the National Institute for Trial Advocacy.
Appendix B

Federal Evidence Rules of the United States
Rule 101. Scope

These rules govern proceedings in the courts of the United States and before United States bankruptcy judges and United States magistrate judges, to the extent and with the exceptions stated in rule 1101.

Rule 102. Purpose and Construction

These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

Rule 103. Rulings on Evidence

(a) Effect of erroneous ruling.
Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and
   (1) Objection. - In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or
   (2) Offer of proof. - In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.

Once the court makes a definitive ruling on the record admitting or excluding evidence, either at or before trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal.

(b) Record of offer and ruling.
The court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form.

(c) Hearing of jury.
In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.

(d) Plain error.
Nothing in this rule precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the court.
Rule 104. Preliminary Questions

(a) Questions of admissibility generally.
Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of subdivision (b). In making its determination it is not bound by the rules of evidence except those with respect to privileges.

(b) Relevancy conditioned on fact.
When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

(c) Hearing of jury.
Hearings on the admissibility of confessions shall in all cases be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be so conducted when the interests of justice require, or when an accused is a witness and so requests.

(d) Testimony by accused.
The accused does not, by testifying upon a preliminary matter, become subject to cross-examination as to other issues in the case.

(e) Weight and credibility.
This rule does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.

Rule 105. Limited Admissibility

When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly.

Rule 106. Remainder of or Related Writings or Recorded Statements

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

ARTICLE II. JUDICIAL NOTICE

Rule 201. Judicial Notice of Adjudicative Facts

(a) Scope of rule.
This rule governs only judicial notice of adjudicative facts.
(b) Kinds of facts.
A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) When discretionary.
A court may take judicial notice, whether requested or not.

(d) When mandatory.
A court shall take judicial notice if requested by a party and supplied with the necessary information.

(e) Opportunity to be heard.
A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) Time of taking notice.
Judicial notice may be taken at any stage of the proceeding.

(g) Instructing jury.
In a civil action or proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

ARTICLE III. PRESUMPTIONS IN CIVIL ACTIONS AND PROCEEDINGS

Rule 301. Presumptions in General Civil Actions and Proceedings
In all civil actions and proceedings not otherwise provided for by Act of Congress or by 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, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast.

Rule 302. Applicability of State Law in Civil Actions and Proceedings
In civil actions and proceedings, the effect of a presumption respecting a fact which is an element of a claim or defense as to which State law supplies the rule of decision is determined in accordance with State law.
ARTICLE IV. RELEVANCY AND ITS LIMITS

Rule 401. Definition of "Relevant Evidence"

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Rule 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible

All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by Act of Congress, by these rules, or by other rules prescribed by the Supreme Court pursuant to statutory authority. Evidence which is not relevant is not admissible.

Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Rule 404. Character Evidence Not Admissible To Prove Conduct; Exceptions; Other Crimes

(a) Character evidence generally.

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:

(1) Character of accused - Evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same, or if evidence of a trait of character of the alleged victim of the crime is offered by an accused and admitted under Rule 404 (a)(2), evidence of the same trait of character of the accused offered by the prosecution;

(2) Character of alleged victim - Evidence of a pertinent trait of character of the alleged victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the alleged victim offered by the prosecution in a homicide case to rebut evidence that the alleged victim was the first aggressor;

(3) Character of witness - Evidence of the character of a witness, as provided in rules 607, 608, and 609.

(b) Other crimes, wrongs, or acts.

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.
Rule 405. Methods of Proving Character

(a) Reputation or opinion.
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.

(b) 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.

Rule 406. Habit; Routine Practice
Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

Rule 407. Subsequent Remedial Measures
When, after an injury or harm allegedly caused by an event, measures are taken that, if taken previously, would have made the injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove negligence, culpable conduct, a defect in a product, a defect in a product's design, or a need for a warning or instruction. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

Rule 408. Compromise and Offers to Compromise
Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is 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.

Rule 409. Payment of Medical and Similar Expenses
Evidence of furnishing or offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability for the injury.
Rule 410. Inadmissibility of Pleas, Plea Discussions, and Related Statements

Except as otherwise provided in this rule, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:

1. a plea of guilty which was later withdrawn;
2. a plea of nolo contendere;
3. any statement made in the course of any proceedings under Rule 11 of the Federal Rules of Criminal Procedure or comparable state procedure regarding either of the foregoing pleas; or
4. any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn.

However, such a statement is admissible (i) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it, or (ii) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel.

Rule 411. Liability Insurance

Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

Rule 412. Sex Offense Cases; Relevance of Alleged Victim's Past Sexual Behavior or Alleged Sexual Predisposition

(a) Evidence generally inadmissible.

The following evidence is not admissible in any civil or criminal proceeding involving alleged sexual misconduct except as provided in subdivisions (b) and (c):

1. Evidence offered to prove that any alleged victim engaged in other sexual behavior.
2. Evidence offered to prove any alleged victim's sexual predisposition.

(b) Exceptions.

1. In a criminal case, the following evidence is admissible, if otherwise admissible under these rules:
   A. evidence of specific instances of sexual behavior by the alleged victim offered to prove that a person other than the accused was the source of semen, injury, or other physical evidence;
   B. evidence of specific instances of sexual behavior by the alleged victim with respect to the person accused of the sexual misconduct offered by the accused to prove consent or by the prosecution; and
(C) evidence the exclusion of which would violate the constitutional rights of the defendant.

(2) In a civil case, evidence offered to prove the sexual behavior or sexual predisposition of any alleged victim is admissible if it is otherwise admissible under these rules and its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party. Evidence of an alleged victim's reputation is admissible only if it has been placed in controversy by the alleged victim.

(c) Procedure to determine admissibility.

(1) A party intending to offer evidence under subdivision (b) must --
   (A) file a written motion at least 14 days before trial specifically describing the evidence and stating the purpose for which it is offered unless the court, for good cause requires a different time for filing or permits filing during trial; and
   (B) serve the motion on all parties and notify the alleged victim or, when appropriate, the alleged victim's guardian or representative.

(2) Before admitting evidence under this rule the court must conduct a hearing in camera and afford the victim and parties a right to attend and be heard. The motion, related papers, and the record of the hearing must be sealed and remain under seal unless the court orders otherwise.

Rule 413. Evidence of Similar Crimes in Sexual Assault Cases

(a) In a criminal case in which the defendant is accused of an offense of sexual assault, evidence of the defendant's commission of another offense or offenses of sexual assault is admissible, and may be considered for its bearing on any matter to which it is relevant.

(b) In a case in which the Government intends to offer evidence under this rule, the attorney for the Government shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.

(c) This rule shall not be construed to limit the admission or consideration of evidence under any other rule.

(d) For purposes of this rule and Rule 415, "offense of sexual assault" means a crime under Federal law or the law of a State (as defined in section 513 of title 18, United States Code) that involved--
   (1) any conduct proscribed by chapter 109A of title 18, United States Code;
   (2) contact, without consent, between any part of the defendant's body or an object and the genitals or anus of another person;
   (3) contact, without consent, between the genitals or anus of the defendant and any part of another person's body;
   (4) deriving sexual pleasure or gratification from the infliction of death, bodily injury, or physical pain on another person; or
   (5) an attempt or conspiracy to engage in conduct described in paragraphs (1)-(4).
Rule 414. Evidence of Similar Crimes in Child Molestation Cases

(a) In a criminal case in which the defendant is accused of an offense of child molestation, evidence of the defendant's commission of another offense or offenses of child molestation is admissible, and may be considered for its bearing on any matter to which it is relevant.

(b) In a case in which the Government intends to offer evidence under this rule, the attorney for the Government shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.

(c) This rule shall not be construed to limit the admission or consideration of evidence under any other rule.

(d) For purposes of this rule and Rule 415, "child" means a person below the age of fourteen, and "offense of child molestation" means a crime under Federal law or the law of a State (as defined in section 513 of title 18, United States Code) that involved--

   (1) any conduct proscribed by chapter 109A of title 18, United States Code, that was committed in relation to a child;
   (2) any conduct proscribed by chapter 110 of title 18, United States Code;
   (3) contact between any part of the defendant's body or an object and the genitals or anus of a child;
   (4) contact between the genitals or anus of the defendant and any part of the body of a child;
   (5) deriving sexual pleasure or gratification from the infliction of death, bodily injury, or physical pain on a child; or
   (6) an attempt or conspiracy to engage in conduct described in paragraphs (1)-(5).

Rule 415. Evidence of Similar Acts in Civil Cases Concerning Sexual Assault or Child Molestation

(a) In a civil case in which a claim for damages or other relief is predicated on a party's alleged commission of conduct constituting an offense of sexual assault or child molestation, evidence of that party's commission of another offense or offenses of sexual assault or child molestation is admissible and may be considered as provided in Rule 413 and Rule 414 of these rules.

(b) A party who intends to offer evidence under this Rule shall disclose the evidence to the party against whom it will be offered, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.

(c) This rule shall not be construed to limit the admission or consideration of evidence under any other rule.
ARTICLE V. PRIVILEGES

Rule 501. General Rule

Except as otherwise required by the Constitution of the United States or provided by Act of Congress or in rules prescribed by the Supreme Court pursuant to statutory authority, the privilege of a witness, person, government, State, or political subdivision thereof shall be governed by the principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experience. However, in civil actions and proceedings, with respect to an element of a claim or defense as to which State law supplies the rule of decision, the privilege of a witness, person, government, State, or political subdivision thereof shall be determined in accordance with State law.

ARTICLE VI. WITNESSES

Rule 601. General Rule of Competency

Every person is competent to be a witness except as otherwise provided in these rules. However, in civil actions and proceedings, with respect to an element of a claim or defense as to which State law supplies the rule of decision, the competency of a witness shall be determined in accordance with State law.

Rule 602. Lack of Personal Knowledge

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of rule 703, relating to opinion testimony by expert witnesses.

Rule 603. Oath or Affirmation

Before testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness' conscience and impress the witness' mind with the duty to do so.

Rule 604. Interpreters

An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation to make a true translation.

Rule 605. Competency of Judge as Witness

The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point.
Rule 606. Competency of Juror as Witness

(a) At the trial.
A member of the jury may not testify as a witness before that jury in the trial of the case in which the juror is sitting. If the juror is called so to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.

(b) Inquiry into validity of verdict or indictment.
Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes.

Rule 607. Who May Impeach

The credibility of a witness may be attacked by any party, including the party calling the witness.

Rule 608. Evidence of Character and Conduct of Witness

(a) Opinion and reputation evidence of character.
The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

(b) Specific instances of conduct.
Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' character for truthfulness, other than conviction of crime as provided in rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.
The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of the accused's or the witness' privilege against self-incrimination when examined with respect to matters that relate only to character for truthfulness.

Rule 609. Impeachment by Evidence of Conviction of Crime

(a) General rule.
Appendix B—Federal Rules of Evidence of the United States

For the purpose of attacking the credibility of a witness,
(1) evidence that a witness other than an accused has been convicted of a crime shall be admitted,
subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year
under the law under which the witness was convicted, and evidence that an accused has been
convicted of such a crime shall be admitted if the court determines that the probative value of
admitting this evidence outweighs its prejudicial effect to the accused; and
(2) evidence that any witness has been convicted of a crime shall be admitted if it involved
dishonesty or false statement, regardless of the punishment.

(b) Time limit.
Evidence of a conviction under this rule is not admissible if a period of more than ten years has
elapsed since the date of the conviction or of the release of the witness from the confinement
imposed for that conviction, whichever is the later date, unless the court determines, in the interests
of justice, that the probative value of the conviction supported by specific facts and circumstances
substantially outweighs its prejudicial effect. However, evidence of a conviction more than 10 years
old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient
advance written notice of intent to use such evidence to provide the adverse party with a fair
opportunity to contest the use of such evidence.

(c) Effect of pardon, annulment, or certificate of rehabilitation.
Evidence of a conviction is not admissible under this rule if (1) the conviction has been the subject
of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a
finding of the rehabilitation of the person convicted, and that person has not been convicted of a
subsequent crime which was punishable by death or imprisonment in excess of one year, or (2) the
conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a
finding of innocence.

(d) Juvenile adjudications.
Evidence of juvenile adjudications is generally not admissible under this rule. The court may,
however, in a criminal case allow evidence of a juvenile adjudication of a witness other than the
accused if conviction of the offense would be admissible to attack the credibility of an adult and the
court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt
or innocence.

(e) Pendency of appeal.
The pendency of an appeal therefrom does not render evidence of a conviction inadmissible.
Evidence of the pendency of an appeal is admissible.

Rule 610. Religious Beliefs or Opinions

Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the
purpose of showing that by reason of their nature the witness' credibility is impaired or enhanced.
Rule 611. Mode and Order of Interrogation and Presentation

(a) Control by court.
The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

(b) Scope of cross-examination.
Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.

(c) Leading questions.
Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness’ testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

Rule 612. Writing Used to Refresh Memory

Except as otherwise provided in criminal proceedings by section 3500 of title 18, United States Code, if a witness uses a writing to refresh memory for the purpose of testifying, either-

(1) while testifying, or
(2) before testifying, if the court in its discretion determines it is necessary in the interests of justice,
an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness. If it is claimed that the writing contains matters not related to the subject matter of the testimony the court shall examine the writing in camera, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal. If a writing is not produced or delivered pursuant to order under this rule, the court shall make any order justice requires, except that in criminal cases when the prosecution elects not to comply, the order shall be one striking the testimony or, if the court in its discretion determines that the interests of justice so require, declaring a mistrial.

Rule 613. Prior Statements of Witnesses

(a) Examining witness concerning prior statement.
In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request the same shall be shown or disclosed to opposing counsel.
(b) Extrinsic evidence of prior inconsistent statement of witness.
Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate the witness thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in rule 801(d)(2).

Rule 614. Calling and Interrogation of Witnesses by Court

(a) Calling by court.
The court may, on its own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.

(b) Interrogation by court.
The court may interrogate witnesses, whether called by itself or by a party.

(c) Objections.
Objections to the calling of witnesses by the court or to interrogation by it may be made at the time or at the next available opportunity when the jury is not present.

Rule 615. Exclusion of Witnesses

At the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This rule does not authorize exclusion of (1) a party who is a natural person, or (2) an officer or employee of a party which is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to the presentation of the party's cause, or (4) a person authorized by statute to be present.

ARTICLE VII. OPINIONS AND EXPERT TESTIMONY

Rule 701. Opinion Testimony by Lay Witnesses

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness, and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

Rule 702. Testimony by Experts

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable
principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

Rule 703. Bases of Opinion Testimony by Experts

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted. Facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect.

Rule 704. Opinion on Ultimate Issue

(a) Except as provided in subdivision (b), testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

(b) No expert witness testifying with respect to the mental state or condition of a defendant in a criminal case may state an opinion or inference as to whether the defendant did or did not have the mental state or condition constituting an element of the crime charged or of a defense thereto. Such ultimate issues are matters for the trier of fact alone.

Rule 705. Disclosure of Facts or Data Underlying Expert Opinion

The expert may testify in terms of opinion or inference and give reasons therefor without first testifying to the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

Rule 706. Court Appointed Experts

(a) Appointment.
The court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties, and may appoint expert witnesses of its own selection. An expert witness shall not be appointed by the court unless the witness consents to act. A witness so appointed shall be informed of the witness' duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of the witness' findings, if any; the witness' deposition may be taken by any party; and the witness may be called to testify by the court or any party. The witness shall be subject to cross-examination by each party, including a party calling the witness.
(b) Compensation.
Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the court may allow. The compensation thus fixed is payable from funds which may be provided by law in criminal cases and civil actions and proceedings involving just compensation under the fifth amendment. In other civil actions and proceedings the compensation shall be paid by the parties in such proportion and at such time as the court directs, and thereafter charged in like manner as other costs.

(c) Disclosure of appointment.
In the exercise of its discretion, the court may authorize disclosure to the jury of the fact that the court appointed the expert witness.

(d) Parties' experts of own selection.
Nothing in this rule limits the parties in calling expert witnesses of their own selection.

ARTICLE VIII. HEARSAY

Rule 801. Definitions
The following definitions apply under this article:
(a) Statement.
A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) Declarant.
A "declarant" is a person who makes a statement.

(c) Hearsay.
"Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(d) Statements which are not hearsay.
A statement is not hearsay if--
(1) Prior statement by witness. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is (A) inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, or (C) one of identification of a person made after perceiving the person; or
(2) Admission by party-opponent. The statement is offered against a party and is (A) the party's own statement, in either an individual or a representative capacity or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or
(D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or
(E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.

The contents of the statement shall be considered but are not alone sufficient to establish the declarant's authority under subdivision (C), the agency or employment relationship and scope thereof under subdivision (D), or the existence of the conspiracy and the participation therein of the declarant and the party against whom the statement is offered under subdivision (E).

Rule 802. Hearsay Rule

Hearsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court pursuant to statutory authority or by Act of Congress.

Rule 803. Hearsay Exceptions; Availability of Declarant Immaterial

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(1) **Present sense impression.** A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

(2) **Excited utterance.** A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(3) **Then existing mental, emotional, or physical condition.** A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

(4) **Statements for purposes of medical diagnosis or treatment.** Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

(5) **Recorded recollection.** A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

(6) **Records of regularly conducted activity.** A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to
make the memorandum, report, record or data compilation, all as shown by the testimony of the
custodian or other qualified witness, or by certification that complies with Rule 902(11), Rule
902(12), or a statute permitting certification, unless the source of information or the method or
circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this
paragraph includes business, institution, association, profession, occupation, and calling of every
kind, whether or not conducted for profit.

(7) **Absence of entry in records kept in accordance with the provisions of paragraph (6).**
Evidence that a matter is not included in the memoranda reports, records, or data compilations, in
any form, kept in accordance with the provisions of paragraph (6), to prove the nonoccurrence or
nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or
data compilation was regularly made and preserved, unless the sources of information or other
circumstances indicate lack of trustworthiness.

(8) **Public records and reports.** Records, reports, statements, or data compilations, in any form, of
public offices or agencies, setting forth (A) the activities of the office or agency, or (B) matters
observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding,
however, in criminal cases matters observed by police officers and other law enforcement personnel,
or (C) in civil actions and proceedings against the Government in criminal cases, factual findings
resulting from an investigation made pursuant to authority granted by law, unless the sources of
information or other circumstances indicate lack of trustworthiness.

(9) **Records of vital statistics.** Records or data compilations, in any form, of births, fetal deaths,
deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of
law.

(10) **Absence of public record or entry.** To prove the absence of a record, report, statement, or
data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record,
report, statement, or data compilation, in any form, was regularly made and preserved by a public
office or agency, evidence in the form of a certification in accordance with rule 902, or testimony,
that diligent search failed to disclose the record, report, statement, or data compilation, or entry.

(11) **Records of religious organizations.** Statements of births, marriages, divorces, deaths,
legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family
history, contained in a regularly kept record of a religious organization.

(12) **Marriage, baptismal, and similar certificates.** Statements of fact contained in a certificate
that the maker performed a marriage or other ceremony or administered a sacrament, made by a
clergyman, public official, or other person authorized by the rules or practices of a religious
organization or by law to perform the act certified, and purporting to have been issued at the time of
the act or within a reasonable time thereafter.

(13) **Family records.** Statements of fact concerning personal or family history contained in family
Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns,
crypts, or tombstones, or the like.
(14) **Records of documents affecting an interest in property.** The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.

(15) **Statements in documents affecting an interest in property.** A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

(16) **Statements in ancient documents.** Statements in a document in existence twenty years or more the authenticity of which is established.

(17) **Market reports, commercial publications.** Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

(18) **Learned treatises.** To the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

(19) **Reputation concerning personal or family history.** Reputation among members of a person's family by blood, adoption, or marriage, or among a person's associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history.

(20) **Reputation concerning boundaries or general history.** Reputation in a community, arising before 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 State or nation in which located.

(21) **Reputation as to character.** Reputation of a person's character among associates or in the community.

(22) **Judgment of previous conviction.** Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility.
(23) Judgment as to personal, family or general history, or boundaries. Judgments as proof of matters of personal, family or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation.

(24) [Other exceptions.][Transferred to Rule 807]

**Rule 804. Hearsay Exceptions; Declarant Unavailable**

(a) Definition of unavailability.
"Unavailability as a witness" includes situations in which the declarant--

1. is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement; or
2. persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so; or
3. testifies to a lack of memory of the subject matter of the declarant's statement; or
4. is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or
5. is absent from the hearing and the proponent of a statement has been unable to procure the declarant's attendance (or in the case of a hearsay exception under subdivision (b)(2), (3), or (4), the declarant's attendance or testimony) by process or other reasonable means.

A declarant is not unavailable as a witness if exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of preventing the witness from attending or testifying.

(b) Hearsay exceptions.
The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

1. Former testimony. Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.
2. Statement under belief of impending death. In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be impending death.
3. Statement against interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. 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.
4. Statement of personal or family history. (A) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or (B) a statement concerning the
foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

(5) [Other exceptions.][Transferred to Rule 807]

(6) Forfeiture by wrongdoing. A statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.

Rule 805. Hearsay Within Hearsay

Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in these rules.

Rule 806. Attacking and Supporting Credibility of Declarant

When a hearsay statement, or a statement defined in Rule 801(d)(2)(C), (D), or (E), has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with the declarant's hearsay statement, is not subject to any requirement that the declarant may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine the declarant on the statement as if under cross-examination.

Rule 807. Residual Exception

A statement not specifically covered by Rule 803 or 804 but having equivalent circumstantial guarantees of trustworthiness, is not excluded by the hearsay rule, 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 best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing 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.

ARTICLE IX. AUTHENTICATION AND IDENTIFICATION

Rule 901. Requirement of Authentication or Identification

(a) General provision.
The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.
(b) Illustrations. 
By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:

(1) **Testimony of witness with knowledge.** Testimony that a matter is what it is claimed to be.
(2) **Nonexpert opinion on handwriting.** Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.
(3) **Comparison by trier or expert witness.** Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated.
(4) **Distinctive characteristics and the like.** Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.
(5) **Voice identification.** Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.
(6) **Telephone conversations.** Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if (A) in the case of a person, circumstances, including self-identification, show the person answering to be the one called, or (B) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.
(7) **Public records or reports.** Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.
(8) **Ancient documents or data compilation.** Evidence that a document or data compilation, in any form, (A) is in such condition as to create no suspicion concerning its authenticity, (B) was in a place where it, if authentic, would likely be, and (C) has been in existence 20 years or more at the time it is offered.
(9) **Process or system.** Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.
(10) **Methods provided by statute or rule.** Any method of authentication or identification provided by Act of Congress or by other rules prescribed by the Supreme Court pursuant to statutory authority.

**Rule 902. Self-authentication**

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(1) **Domestic public documents under seal.** A document bearing a seal purporting to be that of the United States, or of any State, district, Commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

(2) **Domestic public documents not under seal.** A document purporting to bear the signature in the official capacity of an officer or employee of any entity included in paragraph (1) hereof, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.
(3) **Foreign public documents.** A document purporting to be executed or attested in an official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position (A) of the executing or attesting person, or (B) of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of an embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.

(4) **Certified copies of public records.** A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph (1), (2), or (3) of this rule or complying with any Act of Congress or rule prescribed by the Supreme Court pursuant to statutory authority.

(5) **Official publications.** Books, pamphlets, or other publications purporting to be issued by public authority.

(6) **Newspapers and periodicals.** Printed materials purporting to be newspapers or periodicals.

(7) **Trade inscriptions and the like.** Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.

(8) **Acknowledged documents.** Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments.

(9) **Commercial paper and related documents.** Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.

(10) **Presumptions under Acts of Congress.** Any signature, document, or other matter declared by Act of Congress to be presumptively or prima facie genuine or authentic.

(11) **Certified domestic records of regularly conducted activity.** The original or a duplicate of a domestic record of regularly conducted activity that would be admissible under Rule 803(6) if accompanied by a written declaration of its custodian or other qualified person, in a manner complying with any Act of Congress or rule prescribed by the Supreme Court pursuant to statutory authority, certifying that the record:
(A) was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;
(B) was kept in the course of the regularly conducted activity; and
(C) was made by the regularly conducted activity as a regular practice.

A party intending to offer a record into evidence under this paragraph must provide written notice of that intention to all adverse parties, and must make the record and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge them.

(12) Certified foreign records of regularly conducted activity. In a civil case, the original or a duplicate of a foreign record of regularly conducted activity that would be admissible under Rule 803(6) if accompanied by a written declaration by its custodian or other qualified person certifying that the record:

(A) was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;
(B) was kept in the course of the regularly conducted activity; and
(C) was made by the regularly conducted activity as a regular practice.

The declaration must be signed in a manner that, if falsely made, would subject the maker to criminal penalty under the laws of the country where the declaration is signed. A party intending to offer a record into evidence under this paragraph must provide written notice of that intention to all adverse parties, and must make the record and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge them.

Rule 903. Subscribing Witness' Testimony Unnecessary

The testimony of a subscribing witness is not necessary to authenticate a writing unless required by the laws of the jurisdiction whose laws govern the validity of the writing.

ARTICLE X. CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS

Rule 1001. Definitions

For purposes of this article the following definitions are applicable:

(1) **Writings and recordings.** "Writings" and "recordings" consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

(2) **Photographs.** "Photographs" include still photographs, X-ray films, video tapes, and motion pictures.

(3) **Original.** An "original" of a writing or recording is the writing or recording 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 are stored in a computer or similar
device, any printout or other output readable by sight, shown to reflect the data accurately, is an "original."

(4) **Duplicate.** 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 reproduces the original.

**Rule 1002. Requirement of Original**

To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by Act of Congress.

**Rule 1003. Admissibility of Duplicates**

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 would be unfair to admit the duplicate in lieu of the original.

**Rule 1004. Admissibility of Other Evidence of Contents**

The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if—

1. **Originals lost or destroyed.** All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith; or

2. **Original not obtainable.** No original can be obtained by any available judicial process or procedure; or

3. **Original in possession of opponent.** At a time when an original was under the control of the party against whom offered, that party was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing, and that party does not produce the original at the hearing; or

4. **Collateral matters.** The writing, recording, or photograph is not closely related to a controlling issue.

**Rule 1005. Public Records**

The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilations in any form, if otherwise admissible, may be proved by copy, certified as correct in accordance with rule 902 or testified to be correct by a witness who has compared it with the original. If a copy which complies with the foregoing cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given.
Rule 1006. Summaries

The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at reasonable time and place. The court may order that they be produced in court.

Rule 1007. Testimony or Written Admission of Party

Contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom offered or by that party's written admission, without accounting for the nonproduction of the original.

Rule 1008. Functions of Court and Jury

When the admissibility of other evidence of contents of writings, recordings, or photographs under these rules depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is ordinarily for the court to determine in accordance with the provisions of rule 104. However, when an issue is raised (a) whether the asserted writing ever existed, or (b) whether another writing, recording, or photograph produced at the trial is the original, or (c) whether other evidence of contents correctly reflects the contents, the issue is for the trier of fact to determine as in the case of other issues of fact.

ARTICLE XI: MISCELLANEOUS RULES

Rule 1101. Applicability of Rules

(a) Courts and judges.
These rules apply to the United States district courts, the District Court of Guam, the District Court of the Virgin Islands, the District Court for the Northern Mariana Islands, the United States courts of appeals, the United States Claims Court, and to the United States bankruptcy judges and United States magistrate judges, in the actions, cases, and proceedings and to the extent hereinafter set forth. The terms "judge" and "court" in these rules include United States bankruptcy judges and United States magistrate judges.

(b) Proceedings generally.
These rules apply generally to civil actions and proceedings, including admiralty and maritime cases, to criminal cases and proceedings, to contempt proceedings except those in which the court may act summarily, and to proceedings and cases under title 11, United States Code.

(c) Rule of privilege.
The rule with respect to privileges applies at all stages of all actions, cases, and proceedings.
(d) Rules inapplicable.

The rules (other than with respect to privileges) do not apply in the following situations:

1. Preliminary questions of fact. The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under rule 104.
3. Miscellaneous proceedings. Proceedings for extradition or rendition; preliminary examinations in criminal cases; sentencing, or granting or revoking probation; issuance of warrants for arrest, criminal summons, and search warrants; and proceedings with respect to release on bail or otherwise.

(e) Rules applicable in part.

In the following proceedings these rules apply to the extent that matters of evidence are not provided for in the statutes which govern procedure therein or in other rules prescribed by the Supreme Court pursuant to statutory authority: the trial of misdemeanors and other petty offenses before United States magistrate judge; review of agency actions when the facts are subject to trial de novo under section 706(2)(F) of title 5, United States Code; review of orders of the Secretary of Agriculture under section 2 of the Act entitled "An Act to authorize association of producers of agricultural products" approved February 18, 1922 (7 U.S.C. 292), and under section 6 and 7(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499f, 499g(c)); naturalization and revocation of naturalization under sections 310 - 318 of the Immigration and Nationality Act (8 U.S.C. 1421 - 1429); prize proceedings in admiralty under sections 7651 - 7681 of title 10, United States Code; review of orders of the Secretary of the Interior under section 2 of the Act entitled "An Act authorizing associations of producers of aquatic products" approved June 25, 1934 (15 U.S.C. 522); review of orders of petroleum control boards under section 5 of the Act entitled "An act to regulate interstate and foreign commerce in petroleum and its products by prohibiting the shipment in such commerce of petroleum and its products produced in violation of State law, and for other purposes", approved February 22, 1935 (15 U.S.C. 715d); actions for fines, penalties, or forfeitures under part V of title IV of the Tariff Act of 1930 (19 U.S.C. 1581 - 1624), or under the Anti-Smuggling Act (19 U.S.C. 1701 - 1711); criminal libel for condemnation, exclusion of imports, or other proceedings under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 - 392); disputes between seamen under sections 4079, 4080, and 4081 of the Revised Statutes (22 U.S.C. 256 - 258); habeas corpus under sections 2241 - 2254 of title 28, United States Code; motions to vacate, set aside or correct sentence under section 2255 of title 28, United States Code; actions for penalties for refusal to transport destitute seamen under section 4578 of the Revised Statutes (46 U.S.C. 679); actions against the United States under the Act entitled "An Act authorizing suits against the United States in admiralty for damage caused by and salvage service rendered to public vessels belonging to the United States, and for other purposes", approved March 3, 1925 (46 U.S.C. 781 - 790), as implemented by section 7730 of title 10, United States Code.

Rule 1102. Amendments

Amendments to the Federal Rules of Evidence may be made as provided in section 2072 of title 28 of the United States Code.
Rule 1103. Title

These rules may be known and cited as the Federal Rules of Evidence.
Appendix C

Uniform Rules of Evidence Act of the United States
Uniform Rules of Evidence Act of the United States

ARTICLE I

GENERAL PROVISIONS

RULE 101. DEFINITIONS.

In these rules:

(1) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(2) “Public record” means a record of a public office or agency in which the record is prepared, filed, or recorded pursuant to law.

(3) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(4) “State” means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

RULE 102. SCOPE, PURPOSE, AND CONSTRUCTION.

(a) Rules applicable. Except as otherwise provided in subdivision (b), these rules apply to all actions and proceedings in the courts of this State.

(b) Rules inapplicable. These rules, other than those applicable to privileges, do not apply in:

(1) the determination of questions of fact preliminary to admissibility of evidence if the issue is to be determined by the court under Rule 104(a);

(2) proceedings before grand juries;

(3) proceedings for contempt in which the court may act summarily; and

(4) miscellaneous proceedings, such as proceedings involving extradition or rendition; [preliminary] [probable cause] hearings in criminal cases; [sentencing]; granting or revoking probation; issuance of warrants for arrest, criminal summonses, and search warrants; and release on bail or otherwise.

(c) Purpose and construction. These rules must be construed to secure fairness, eliminate unjustifiable expense and delay, and promote the growth and development of the law of evidence, to the end that truth may be ascertained and issues justly determined.
RULE 103. RULINGS ON EVIDENCE.

(a) Effect of erroneous ruling. Error may not be predicated upon a ruling that admits or excludes evidence unless a substantial right of the party is affected, and:

(1) if the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or

(2) if the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.

(b) Record of offer and ruling. The court may add any other or further statement that shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form.

(c) Effect of pretrial ruling. If the court makes a definitive pretrial ruling on the record admitting or excluding evidence, a party need not renew an objection or offer of proof at trial to preserve a claim of error for appeal.

(d) Hearing of jury. In jury cases, proceedings must be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions within the hearing of the jury.

(e) Errors affecting substantial rights. This rule does not preclude a court from taking notice of an error affecting a substantial right even if it was not brought to the attention of the trial court.

RULE 104. PRELIMINARY QUESTIONS.

(a) Questions of admissibility generally. Preliminary questions concerning the qualification of an individual to be a witness, the existence of a privilege, or the admissibility of evidence must be determined by the court, subject to subdivision (b). In making its determination, the court is not bound by the rules of evidence except the rules with respect to privileges.

(b) Determination of privilege. A person claiming a privilege must prove that the conditions prerequisite to the existence of the privilege are more probably true than not. A person claiming an exception to a privilege must prove that the conditions prerequisite to the applicability of the exception are more probably true than not. If there is a factual basis to support a good faith belief that a review of the allegedly privileged material is necessary, the court, in making its determination, may review the material outside the presence of any other person.

(c) Relevancy conditioned on fact. If the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon, in the court’s discretion, subject to the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

(d) Hearing of jury. A hearing on the admissibility of a confession in a criminal case must be conducted out of the hearing of the jury. A hearing on any other preliminary matter must be so
conducted if the interests of justice require or, in a criminal case, an accused is a witness and so requests.

(c) Testimony by accused. An accused, by testifying upon a preliminary matter, does not become subject to cross-examination as to other issues in the case.

(f) Weight and credibility. This rule does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.

**RULE 105. LIMITED ADMISSIBILITY.** If evidence that is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly.

**RULE 106. REMAINDER OF, OR RELATED, RECORD.** If a record or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other record that in fairness ought to be considered contemporaneously with it.

**ARTICLE II**

**JUDICIAL NOTICE**

**RULE 201. JUDICIAL NOTICE OF ADJUDICATIVE FACTS.**

(a) Scope of rule. This rule governs only judicial notice of adjudicative facts.

(b) Kinds of facts. A judicially noticed fact must be one that is not subject to reasonable dispute because it is:

(1) generally known within the territorial jurisdiction of the trial court; or

(2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) When discretionary. A court may take judicial notice, whether requested or not.

(d) When mandatory. A court shall take judicial notice if requested by a party and supplied with the necessary information.

(e) Opportunity to be heard. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of earlier notification, the request may be made after judicial notice has been taken.

(f) Time of taking notice. Judicial notice may be taken at any stage of the proceeding.

(g) Instructing jury. The court shall instruct the jury to accept as conclusive a fact judicially noticed.
ARTICLE III

PRESUMPTIONS

RULE 301. DEFINITIONS.

In this article:

(1) “Basic fact” means a fact or group of facts that give rise to a presumption.

(2) “Inconsistent presumption” means that the presumed fact of one presumption is inconsistent with the presumed fact of another presumption.

(3) “Presumed fact” means a fact that is assumed upon the finding of a basic fact.

(4) “Presumption” means that when a basic fact is found to exist, the presumed fact is assumed to exist until the nonexistence of the presumed fact is determined as provided in Rules 302 and 303.

RULE 302. EFFECT OF PRESUMPTIONS IN CIVIL CASES.

(a) General rule. In a civil action or proceeding, unless otherwise provided by statute, judicial decision, or these rules, a presumption imposes on the party against whom it is directed the burden of proving that the nonexistence of the presumed fact is more probable than its existence.

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

(c) Effect if federal law provides the rule of decision. The effect of presumption respecting a fact that is an element of a claim or defense as to which federal law provides the rule of decision is determined in accordance with federal law.

RULE 303. SCOPE AND EFFECT OF PRESUMPTIONS IN CRIMINAL CASES.

(a) Scope. Except as otherwise provided by statute or judicial decision, this rule governs presumptions against an accused in criminal cases, recognized at common law or created by statute, including statutory provisions that certain facts are prima facie evidence of other facts or of guilt.

(b) Submission to jury. The court may not direct the jury to find a presumed fact against an accused. If a presumed fact establishes guilt, is an element of the offense, or negates a defense, the court may submit the question of guilt or of the existence of the presumed fact to the jury, but only if a reasonable juror on the evidence as a whole, including the evidence of the basic fact, could find guilt or the presumed fact beyond a reasonable doubt. If the presumed fact has a lesser effect, the question of its existence may be submitted to the jury if the basic fact is supported by substantial evidence or is otherwise established, unless the court determines that a reasonable juror could not find on the evidence as a whole the existence of the presumed fact.
(c) Instructing the jury. At the time the existence of a presumed fact against the accused is submitted to the jury, the court shall instruct the jury that it may regard the basic fact as sufficient evidence of the presumed fact but is not required to do so. In addition, if a presumed fact establishes guilt, is an element of the offense, or negates a defense, the court shall instruct the jury that its existence, on all the evidence, must be proved beyond a reasonable doubt.

ARTICLE IV

RELEVANCY AND ITS LIMITS

RULE 401. DEFINITION OF “RELEVANT EVIDENCE.” In this article, relevant evidence” means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

RULE 402. RELEVANT EVIDENCE GENERALLY ADMISSIBLE; IRRELEVANT EVIDENCE INADMISSIBLE. All relevant evidence is admissible, except as otherwise provided by statute, these rules, or other rules applicable in the courts of this State. Evidence that is not relevant is not admissible.

RULE 403. EXCLUSION OF RELEVANT EVIDENCE ON GROUNDS OF PREJUDICE, CONFUSION, OR WASTE OF TIME. Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

RULE 404. CHARACTER EVIDENCE NOT ADMISSIBLE TO PROVE CONDUCT, EXCEPTIONS; OTHER CRIMES.

(a) Character evidence generally. Evidence of a person’s character or a trait of character is not admissible for the purpose of proving the person acted in conformity therewith on a particular occasion, except:

(1) evidence of a pertinent trait of the accused’s character offered by an accused, or by the prosecution to rebut that evidence;

(2) evidence of a pertinent trait of character of the alleged victim of the crime offered by an accused, or by the prosecution to rebut that evidence, or evidence of a character trait of peacefulness of the alleged victim offered by the prosecution in a homicide case to rebut evidence that the alleged victim was the first aggressor; and

(3) evidence of the character of a witness, as provided in Rules 607, 608, and 609.

(b) Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show the person acted in conformity therewith.
However, it may be admissible for another purpose, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

(c) Determination of admissibility. Evidence is not admissible under subdivision (b) unless:

(1) the proponent gives to all adverse parties reasonable notice in advance of trial, or during trial if the court excuses pretrial notice for good cause shown, of the nature of the evidence the proponent intends to introduce at trial;

(2) if offered against an accused in a criminal case, the court conducts a hearing to determine the admissibility of the evidence and finds:

   (A) by clear and convincing evidence, that the other crime, wrong, or act was committed;

   (B) that the evidence is relevant to a purpose for which the evidence is admissible under subdivision (b); and

   (C) that the probative value of the evidence outweighs the danger of unfair prejudice; and

(3) upon the request of a party, the court gives an instruction on the limited admissibility of the evidence pursuant to Rule 105.

RULE 405. METHODS OF PROVING CHARACTER.

(a) Reputation or opinion. If evidence of character or a trait of character of a person is admissible, proof may be by testimony as to reputation or in the form of opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.

(b) Specific instances of conduct. If 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 the person’s conduct.

RULE 406. HABIT; ROUTINE PRACTICE.

(a) Admissibility. Evidence of the habit of an individual or of the routine practice of a person other than an individual, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the individual or other person on a particular occasion was in conformity with the habit or routine practice.

(b) Method of proof. Habit or routine practice may be proved by testimony in the form of an opinion or by specific instances of conduct sufficient in number to warrant a finding that the habit existed or that the practice was routine.

RULE 407. SUBSEQUENT REMEDIAL MEASURES. If, after an event, measures are taken that, if taken previously, would have made injury or harm less likely to occur, evidence of the
subsequent measures is not admissible to prove negligence, culpable conduct, a defect in a product, a defect in a product’s design, or a need for a warning or instruction. Evidence of subsequent measures may be admissible if offered for another purpose, such as impeachment or, if controverted, proof of ownership, control, or feasibility of precautionary measures. An event includes the sale of a product to a user or consumer.

**RULE 408. COMPROMISE AND OFFERS TO COMPROMISE.** Evidence of furnishing, offering, promising to furnish, or accepting, offering, or promising to accept, a valuable consideration in compromising or attempting to compromise a claim that was disputed as to either validity or amount is not admissible to prove liability for, invalidity of, or amount of the claim, or any other claim. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion if the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

**RULE 409. PAYMENT OF MEDICAL AND SIMILAR EXPENSES.** Evidence of furnishing, offering, or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability for the injury.

**RULE 410. INADMISSIBILITY OF PLEAS, PLEA DISCUSSIONS, AND RELATED STATEMENTS.**

(a) General. Except as otherwise provided in subdivision (b), evidence of the following is not admissible in a civil or criminal proceeding against the defendant who made the plea or was a participant in the plea discussions:

1. a plea of guilty that was later withdrawn;
2. a plea of nolo contendere;
3. a statement made in the course of any proceedings under Rule 11 of the Federal Rules of Criminal Procedure, [Rules 443 and 444 of the Uniform Rules of Criminal Procedure, or comparable state procedure of this or any other State] regarding either of the foregoing pleas; and
4. a statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn.

(b) Exceptions. A statement described in subdivision (a) is admissible:

1. in a proceeding in which another statement made in the course of the same plea or plea discussions has been introduced and, in fairness, the statement should be considered contemporaneously with the other statement; and
2. in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record, and in the presence of counsel.
RULE 411. LIABILITY INSURANCE. Evidence that a person was or was not insured against liability is not admissible upon the issue as to whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

RULE 412. SEXUAL BEHAVIOR.

(a) Definition. In this rule, “sexual behavior” means behavior relating to the sexual activities of an individual, including the individual’s experience or observation of sexual intercourse or sexual contact, use of contraceptives, history of marriage or divorce, sexual predisposition, expressions of sexual ideas or emotions, and activities of the mind such as fantasies or dreams.

(b) Evidence of sexual behavior generally inadmissible. Except as otherwise provided in subdivisions (c) and (d), in a criminal proceeding involving the alleged sexual misconduct of an accused, evidence may not be admitted to prove that the alleged victim engaged in other sexual behavior.

(c) Exceptions. Evidence of specific instances of an alleged victim’s sexual behavior, if otherwise admissible under these rules, is admissible to prove:

(1) that a person other than the accused was the source of the semen, injury, disease, other physical evidence, or pregnancy;

(2) that a person other than the accused was the source of the alleged victim’s knowledge of sexual behavior;

(3) consent, if the alleged victim’s sexual behavior involved the accused or constituted conduct so distinctive and which so closely resembles the accused’s version of the sexual behavior of the alleged victim at the time of the alleged sexual misconduct that it corroborates the accused’s claim of reasonable belief that the alleged victim consented to the alleged misconduct; or

(4) a fact of consequence whose exclusion would violate the constitutional rights of the accused.

(d) Procedure to determine admissibility. Evidence is not admissible under subdivision (c) unless:

(1) the proponent gives to all parties and to the alleged victim, or the alleged victim’s guardian or representative, reasonable notice in advance of trial, or during trial if the court excuses pretrial notice for good cause shown, of the nature of such evidence the proponent intends to introduce at trial;

(2) the court conducts a hearing in chambers, affords the alleged victim and the parties a right to attend the hearing and be heard, and finds:
(A) that the evidence is relevant to a fact of consequence for which the evidence is admissible under subdivision (c); and

(B) that the probative value of the evidence is not substantially outweighed by the danger of harm to the alleged victim or of unfair prejudice to any party; and

(3) upon request, the court gives an instruction on the limited admissibility of the evidence, pursuant to Rule 105.

ARTICLE V
PRIVILEGES

RULE 501. PRIVILEGES RECOGNIZED ONLY AS PROVIDED. Except as otherwise provided by constitution or statute or by these or other rules promulgated by [the Supreme Court of this State], no person has a privilege to:

(1) refuse to be a witness;

(2) refuse to disclose any matter;

(3) refuse to produce any object or record; or

(4) prevent another from being a witness or disclosing any matter or producing any object or record.

RULE 502. LAWYER-CLIENT PRIVILEGE.

(a) Definitions. In this rule:

(1) “Client” means a person for whom a lawyer renders professional legal services or who consults a lawyer with a view to obtaining professional legal services from the lawyer.

(2) A communication is “confidential” if it is not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

(3) “Lawyer” means a person authorized, or reasonably believed by the client to be authorized, to engage in the practice of law in any State or country.

(4) “Representative of the client” means a person having authority to obtain professional legal services, or to act on legal advice rendered, on behalf of the client or a person who, for the purpose of effectuating legal representation for the client, makes or receives a confidential communication while acting in the scope of employment for the client.
(5) “Representative of the lawyer” means a person employed, or reasonably believed by the client to be employed, by the lawyer to assist the lawyer in rendering professional legal services.

(b) General rule of privilege. A client has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made for the purpose of facilitating the rendition of professional legal services to the client:

(1) between the client or a representative of the client and the client’s lawyer or a representative of the lawyer;

(2) between the lawyer and a representative of the lawyer;

(3) by the client or a representative of the client or the client’s lawyer or a representative of the lawyer to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein;

(4) between representatives of the client or between the client and a representative of the client; or

(5) among lawyers and their representatives representing the same client.

c) Who may claim privilege. The privilege under this rule may be claimed by the client, the client’s guardian or conservator, the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association, or other organization, whether or not in existence. A person who was the lawyer or the lawyer’s representative at the time of the communication is presumed to have authority to claim the privilege, but only on behalf of the client.

d) Exceptions. There is no privilege under this rule:

(1) if the services 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 was a crime or fraud;

(2) 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 succession or by transaction inter vivos;

(3) as to a communication relevant to an issue of breach of duty by a lawyer to the client or by a client to the lawyer;

(4) as to a communication necessary for a lawyer to defend in a legal proceeding an accusation that the lawyer assisted the client in criminal or fraudulent conduct;

(5) as to a communication relevant to an issue concerning an attested document to which the lawyer is an attesting witness;

(6) as to a communication relevant to a matter of common interest between or among 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 or among any of the clients; or
(7) as to a communication between a public officer or agency and its lawyers unless the
communication concerns a pending investigation, claim, or action and the court determines
that disclosure will seriously impair the ability of the public officer or agency to act upon the
claim or conduct a pending investigation, litigation, or proceeding in the public interest.

RULE 503. [PSYCHOTHERAPIST] [PHYSICIAN AND PSYCHOTHERAPIST]
[PHYSICIAN AND MENTAL-HEALTH PROVIDER] [MENTAL-HEALTH
PROVIDER] – PATIENT PRIVILEGE.

(a) Definitions. In this rule:

(1) A communication is “confidential” if it is not intended to be disclosed to third persons,
except those present to further the interest of the patient in the consultation, examination, or
interview, those reasonably necessary for the transmission of the communication, and persons
who are participating in the diagnosis and treatment of the patient under the direction of a
[psychotherapist] [physician or psychotherapist] [physician or mental-health provider] [mental-
health provider], including members of the patient’s family.

[(2) “Mental-health provider” means a person authorized, in any State or country, or
reasonably believed by the patient to be authorized, to engage in the diagnosis or treatment of
a mental or emotional condition, including addiction to alcohol or drugs.] 

[(3) “Patient” means an individual who consults or is examined or interviewed by
a[psychotherapist] [physician or psychotherapist] [physician or mental-health provider]
[mental-health provider].]

[(4) “Physician” means a person authorized in any State or country, or reasonably believed by
the patient to be authorized to practice medicine.]

[(5) “Psychotherapist” means a person authorized in any State or country, or reasonably
believed by the patient to be authorized, to practice medicine, while engaged in the diagnosis
or treatment of a mental or emotional condition, including addiction to alcohol or drugs, or a
person licensed or certified under the laws of any State or country, or reasonably believed by
the patient to be licensed or certified, as a psychologist, while similarly engaged.]

(b) General rule of privilege. A patient has a privilege to refuse to disclose and to prevent any other
person from disclosing confidential communications made for the purpose of diagnosis or treatment
of the patient’s [physical,] mental[,] or emotional condition, including addiction to alcohol or drugs,
among the patient, the patient’s [psychotherapist] [physician or psychotherapist] [physician or
mental-health provider] [mental-health provider] and persons, including members of the patient’s
family, who are participating in the diagnosis or treatment under the direction of the
[psychotherapist] [physician or psychotherapist] [physician or mental-health provider] [mental-health
provider].

(c) Who may claim the privilege. The privilege under this rule may be claimed by the patient, the
patient’s guardian or conservator, or the personal representative of a deceased patient. The person
who was the [psychotherapist] [physician or psychotherapist] [physician or mental-health provider]
[mental-health provider] at the time of the communication is presumed to have authority to claim the privilege, but only on behalf of the patient.

(d) Exceptions. There is no privilege under this rule for a communication:

(1) relevant to an issue in proceedings to hospitalize the patient for mental illness, if the [psychotherapist] [physician or psychotherapist] [physician or mental-health provider] [mental-health provider], in the course of diagnosis or treatment, has determined that the patient is in need of hospitalization;

(2) made in the course of a court-ordered investigation or examination of the [physical,] mental[,] or emotional condition of the patient, whether a party or a witness, with respect to the particular purpose for which the examination is ordered, unless the court orders otherwise;

(3) relevant to an issue of the [physical,] mental[,] or emotional condition of the patient in any proceeding in which the patient relies upon the condition as an element of the patient’s claim or defense or, after the patient’s death, in any proceeding in which any party relies upon the condition as an element of the party’s claim or defense;

(4) if the services of the [psychotherapist] [physician or psychotherapist] [physician or mental-health provider] [mental-health provider] were sought or obtained to enable or aid anyone to commit or plan to commit what the patient knew, or reasonably should have known, was a crime or fraud or mental or physical injury to the patient or another individual;

(5) in which the patient has expressed an intent to engage in conduct likely to result in imminent death or serious bodily injury to the patient or another individual;

(6) relevant to an issue in a proceeding challenging the competency of the [psychotherapist] [physician or psychotherapist] [physician or mental-health provider] [mental-health provider];

(7) relevant to a breach of duty by the [psychotherapist] [physician or psychotherapist] [physician or mental-health provider] [mental-health provider]; or

(8) that is subject to a duty to disclose under [statutory law].

RULE 504. SPOUSAL PRIVILEGE.

(a) Confidential communication. A communication is confidential if it is made privately by an individual to the individual’s spouse and is not intended for disclosure to any other person.

(b) Marital communications. An individual has a privilege to refuse to testify and to prevent the individual’s spouse or former spouse from testifying as to any confidential communication made by the individual to the spouse during their marriage. The privilege may be waived only by the individual holding the privilege or by the holder’s guardian or conservator, or the individual’s personal representative if the individual is deceased.

(c) Spousal testimony in criminal proceeding. The spouse of an accused in a criminal proceeding has a privilege to refuse to testify against the accused spouse.

(d) Exceptions. There is no privilege under this rule:
(1) in any civil proceeding in which the spouses are adverse parties;

(2) in any criminal proceeding in which an unrefuted showing is made that the spouses acted jointly in the commission of the crime charged;

(3) in any proceeding in which one spouse is charged with a crime or tort against the person or property of the other, a minor child of either, an individual residing in the household of either, or a third person if the crime or tort is committed in the course of committing a crime or tort against the other spouse, a minor child of either spouse, or an individual residing in the household of either spouse; or

(4) in any other proceeding, in the discretion of the court, if the interests of a minor child of either spouse may be adversely affected by invocation of the privilege.

RULE 505. RELIGIOUS PRIVILEGE.

(a) Definitions. In this rule:

(1) “Cleric” means a minister, priest, rabbi, accredited Christian Science Practitioner, or other similar functionary of a religious organization, or an individual reasonably believed so to be by the individual consulting the cleric.

(2) A communication is “confidential” if it is made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

(b) General rule of privilege. An individual has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the individual to a cleric in the cleric’s professional capacity as spiritual adviser.

(c) Who may claim the privilege. The privilege under this rule may be claimed by an individual or the individual’s guardian or conservator, or the individual’s personal representative if the individual is deceased. The individual who was the cleric at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the communicant.

RULE 506. POLITICAL VOTE.

(a) General rule of privilege. An individual has a privilege to refuse to disclose the tenor of the individual’s vote at a political election conducted by secret ballot.

(b) Exceptions. The privilege under subdivision (a) does not apply if the court finds that the vote was cast illegally or determines that disclosure should be compelled pursuant to [the election laws of the State].

RULE 507. TRADE SECRETS. A person has a privilege, which may be claimed by the person or the person’s agent or employee, to refuse to disclose and to prevent other persons from disclosing a trade secret owned by the person, if the allowance of the privilege will not tend to conceal fraud or
otherwise work injustice. If disclosure is directed, the court shall take such protective measures as
the interest of the holder of the privilege and of the parties and the interests of justice require.

RULE 508. SECRETS OF STATE AND OTHER OFFICIAL INFORMATION; GOVERNMENTAL PRIVILEGES.

(a) Claim of privilege under law of United States. If the law of the United States creates a
governmental privilege that the courts of this State must recognize under the Constitution of the
United States, the privilege may be claimed as provided by the law of the United States.

(b) Privileges created by laws of State. No governmental privilege is recognized except as provided
in subdivision (a) or created by the constitution, statutes, or rules of this State.

(c) Effect of sustaining claim. If a claim of governmental privilege is sustained and it appears that a
party is thereby deprived of material evidence, the court shall make any further orders the interests
of justice require, including striking the testimony of a witness, declaring a mistrial, finding upon an
issue as to which the evidence is relevant, or dismissing the action.

RULE 509. IDENTITY OF INFORMER.

(a) Rule of privilege. The United States or a State has a privilege to refuse to disclose the identity of
an individual who has furnished information relating to or assisted in an investigation of a possible
violation of a law to a law enforcement officer or member of a legislative committee or its staff
conducting an investigation.

(b) Who may claim. The privilege under this rule may be claimed by an appropriate representative of
the government to which the information was furnished.

(c) Exceptions. There is no privilege under this rule if the identity of the informer or the informer’s
interest in the subject matter of the informer’s communication has been disclosed by a holder of the
privilege or by the informer’s own action to persons who would have cause to resent the
communication or if the informer appears as a witness for the government.

(d) Procedures. If it appears that an informer may be able to give testimony relevant to an issue in a
criminal case, or to a fair determination of a material issue on the merits in a civil case to which the
government is a party, and the informed government invokes the privilege, the court shall give the
government an opportunity to show in chambers facts relevant to whether the informer can, in fact,
supply the testimony. The showing ordinarily will be by affidavit, but the court may direct that
 testimony be taken if it finds that the matter cannot be resolved satisfactorily upon affidavit. If the
court finds there is a reasonable probability that the informer can give the testimony, and the
government elects not to disclose the informer’s identity, in criminal cases the court on motion of
the defendant or on its own motion shall grant appropriate relief, which may include one or more of
the following: requiring the prosecuting attorney to comply, granting the defendant additional time
or a continuance, relieving the defendant from making disclosures otherwise required of the
defendant, prohibiting the prosecuting attorney from introducing specified evidence, and dismissing
charges. In civil cases, the court may issue any order the interests of justice require. Evidence
submitted to the court must be sealed and preserved to be made available to the appellate court in
the event of an appeal, and the contents may not otherwise be revealed without consent of the informed government. All counsel and parties may be present at every stage of a proceeding under this subdivision except a showing in chambers, if the court has determined that no counsel or party may be present.

RULE 510. WAIVER OF PRIVILEGE.

(a) Voluntary disclosure. A person upon whom these rules confer a privilege against disclosure waives the privilege if the person or the person’s predecessor, while holder of the privilege, voluntarily discloses or consents to disclosure of any significant part of the privileged matter. This rule does not apply if the disclosure itself is privileged.

(b) Involuntary disclosure. A claim of privilege is not waived by a disclosure that was compelled erroneously or made without an opportunity to claim the privilege.

RULE 511. COMMENT UPON OR INFERENCE FROM CLAIM OF PRIVILEGE; INSTRUCTION.

(a) Comment or inference not permitted. A claim of privilege, whether in the present proceeding or upon a previous occasion, is not a proper subject of comment by judge or counsel. No inference may be drawn from the claim.

(b) Claiming privilege without knowledge of jury. In jury cases, proceedings must be conducted, to the extent practicable, so as to facilitate the making of claims of privilege without the knowledge of the jury.

(c) Jury instruction. Upon request, any party against whom the jury might draw an adverse inference from a claim of privilege is entitled to an instruction that no inference may be drawn therefrom.

ARTICLE VI

WITNESSES

RULE 601. GENERAL RULE OF COMPETENCY. Every individual is competent to be a witness except as otherwise provided in these rules.

RULE 602. LACK OF PERSONAL KNOWLEDGE. A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness’s own testimony. This rule is subject to Rule 703, relating to opinion testimony by expert witnesses.

RULE 603. OATH OR AFFIRMATION. Before testifying, each witness must declare under oath or affirmation that the witness will testify truthfully. The oath or affirmation must be administered in a form calculated to awaken the witness’s conscience and impress the witness’s mind with the duty to testify truthfully.

RULE 604. INTERPRETERS. An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation to make a true and
complete rendition of all communications made during the interpretive process to the best of the interpreter’s knowledge and belief.

**RULE 605. COMPETENCY OF JUDGE AS WITNESS.** The judge presiding at a trial may not testify in that trial as a witness. An objection need not be made to preserve the point.

**RULE 606. COMPETENCY OF JUROR AS WITNESS.**

(a) At the trial. A member of a jury may not testify as a witness before the jury in the trial of the case in which the juror is sitting. If the juror is called so to testify, the parties must be afforded an opportunity to object out of the presence of the jury.

(b) Inquiry into validity of verdict or indictment. Upon an inquiry into the validity of a verdict or indictment the following rules apply:

(1) A juror may not testify to a matter or statement occurring during the course of the jury’s deliberations or to the effect of anything upon that or any other juror’s mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror’s mental processes in connection therewith.

(2) A juror’s affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying may not be received.

(3) A juror may testify as to whether extraneous prejudicial information was improperly brought to the jury’s attention or whether any outside influence was improperly brought to bear upon a juror.

**RULE 607. WHO MAY IMPEACH.** The credibility of a witness may be attacked by any party, including the party calling the witness.

**RULE 608. EVIDENCE OF CHARACTER AND CONDUCT OF WITNESS.**

(a) Opinion and reputation evidence of character. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, subject to the following:

(1) The evidence may refer only to character for truthfulness or untruthfulness, and

(2) Evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

(b) Specific instances of conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness’s credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. However, in the discretion of the court, if probative of truthfulness or untruthfulness, they may be inquired into on cross-examination of the witness (i) concerning the witness’s character for truthfulness or untruthfulness, or (ii) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.
APPENDIX C—UNIFORM RULES OF EVIDENCE ACT OF THE UNITED STATES

(c) Privilege against self-incrimination. The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of the accused’s or the witness’s privilege against self-incrimination when examined with respect to matters that relate only to credibility.

RULE 609. IMPEACHMENT BY EVIDENCE OF CONVICTION OF CRIME.

(a) General rule. For the purpose of attacking the credibility of a witness:

(1) Evidence that a witness other than an accused has been convicted of a crime is admissible, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime is admissible if the court determines that the probative value of the evidence substantially outweighs the danger of unfair prejudice the accused.

(2) Evidence that a witness has been convicted of a crime of untruthfulness or falsification is admissible, regardless of punishment, if the statutory elements of the crime necessarily involve untruthfulness or falsification.

(b) Time limit. Evidence of a conviction is not admissible under this rule if a period of more than 10 years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for the conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of evidence of the conviction supported by specific facts and circumstances substantially outweighs its unfair prejudicial effect.

(c) Effect of pardon, annulment, or certificate of rehabilitation. Evidence of a conviction is not admissible under this rule if the conviction has been:

(1) the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the individual convicted, and that individual has not been convicted of a subsequent crime punishable by death or imprisonment in excess of one year; or

(2) the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(d) Juvenile adjudications. Evidence of a juvenile adjudication is generally not admissible under this rule. Except as otherwise provided by statute, however, in a criminal case the court may allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission of the evidence is necessary for a fair determination of the issue of guilt or innocence.

(e) Pendency of appeal. The pendency of an appeal from a conviction does not render evidence of the conviction inadmissible. Evidence of the pendency of an appeal is admissible.

(f) Notice. Evidence is not admissible under this rule unless the proponent of the evidence gives to all adverse parties reasonable notice in advance of trial, or during trial if the court excuses pretrial notice for good cause shown, of the nature of the conviction.
Record. If objection is made to evidence offered pursuant to subdivision (a)(1) or (2), the court shall state on the record the factors it considered in determining admissibility.

Evidence. If admissible, evidence of a conviction may be by testimony of the witness during direct or cross-examination, by the introduction of a public record, or by other extrinsic evidence if the public record is not available and good cause is shown.

RULE 610. RELIGIOUS BELIEFS AND OPINIONS. Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the witness’s credibility is impaired or enhanced.

RULE 611. MODE AND ORDER OF INTERROGATION AND PRESENTATION.

(a) Control by court. The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to make the interrogation and presentation effective for the ascertainment of the truth, avoid needless consumption of time, and protect witnesses from harassment or undue embarrassment.

(b) Scope of cross-examination. Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court, in the exercise of discretion, may permit inquiry into additional matters as if on direct examination.

(c) Leading questions. Leading questions should not be used on the direct examination of a witness except as is necessary to develop the witness’s testimony. Ordinarily leading questions should be permitted on cross-examination. A party may interrogate a hostile witness, an adverse party, or a witness identified with an adverse party, by leading questions.

RULE 612. RECORD OR OBJECT USED TO REFRESH MEMORY.

(a) While testifying. If, while testifying, a witness uses a record or object to refresh the witness’s memory, an adverse party is entitled to have the record or object produced at the trial, hearing, or deposition in which the witness is testifying.

(b) Before testifying. If, before testifying, a witness uses a record or object to refresh memory for the purpose of testifying and the court in its discretion determines that the interests of justice so require, an adverse party is entitled to have the record or object produced, if practicable, at the trial, hearing, or deposition in which the witness is testifying.

(c) Terms and conditions of production and use. A party entitled to have a record or object produced under this rule is entitled to inspect it, cross-examine the witness thereon, and introduce in evidence portions of the record which relate to the testimony of the witness. If production of the record or object at the trial, hearing, or deposition is impracticable, the court may order it made available for inspection. If it is claimed that the record or object contains matter not related to the subject matter of the testimony, the court shall examine the record or object in chambers, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections must be preserved and made available to the appellate court in the event of an appeal. If a record or object is not produced, made available for inspection, or delivered pursuant to order under this rule, the court shall make any order justice requires, but in criminal...
cases if the prosecution elects not to comply, the order must be one striking the testimony or, if the court in its discretion determines that the interests of justice so require, declaring a mistrial.

RULE 613. PRIOR STATEMENT OF WITNESS.

(a) Examining witness concerning prior statement. In examining a witness concerning a prior statement made by the witness, whether in a record or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request it must be shown or disclosed to opposing counsel.

(b) Extrinsic evidence of prior inconsistent statement of witness. Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the statement and the opposing party is afforded an opportunity to interrogate the witness thereon, or the interests of justice otherwise require. This subdivision does not apply to admissions of a party-opponent as defined in Rule 801(d)(2).

RULE 614. CALLING AND INTERROGATION OF WITNESS BY COURT.

(a) Calling by court. The court, at the suggestion of a party or on its own motion, may call a witness, and all parties may cross-examine the witness thus called.

(b) Interrogation by court. The court may interrogate a witness, whether called by the court or a party.

(c) Objection. An objection to the calling or interrogation of a witness by the court may be made at the time or at the next available opportunity when the jury is not present.

RULE 615. EXCLUSION OF WITNESSES. At the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order on its own motion. This Rule does not authorize exclusion of a party who is an individual, an officer or employee of a party that is not an individual designated as its representative by its attorney, or an individual whose presence is shown by a party to be essential to the presentation of the party’s cause or is otherwise authorized by statute, judicial decision, or court rule.

RULE 616. BIAS OF WITNESS. For the purpose of attacking the credibility of a witness, evidence of bias, prejudice, or interest of the witness for or against a party to the case is admissible.

ARTICLE VII

OPINIONS AND EXPERT TESTIMONY

RULE 701. OPINION TESTIMONY BY LAY WITNESSES. If a witness’s testimony is not based on scientific, technical, or other specialized knowledge within the scope of Rule 702, the witness’s testimony in the form of opinions or inferences is limited to those opinions or inferences that are rationally based on the perception of the witness, and helpful to a clear understanding of the witness’s testimony or the determination of a fact in issue.
RULE 702. TESTIMONY BY EXPERTS.

(a) General rule. If a witness’s testimony is based on scientific, technical, or other specialized knowledge, the witness may testify in the form of opinion or otherwise if the court determines the following are satisfied:

(1) the testimony will assist the trier of fact to understand evidence or determine a fact in issue;

(2) the witness is qualified by knowledge, skill, experience, training, or education as an expert in the scientific, technical, or other specialized field;

(3) the testimony is based upon principles or methods that are reasonably reliable, as established under subdivision (b), (c), (d), or (e);

(4) the testimony is based upon sufficient and reliable facts or data; and

(5) the witness has applied the principles or methods reliably to the facts of the case.

(b) Reliability deemed to exist. A principle or method is reasonably reliable if its reliability has been established by controlling legislation or judicial decision.

(c) Presumption of reliability. A principle or method is presumed to be reasonably reliable if it has substantial acceptance within the relevant scientific, technical, or specialized community. A party may rebut the presumption by proving that it is more probable than not that the principle or method is not reasonably reliable.

(d) Presumption of unreliability. A principle or method is presumed not to be reasonably reliable if it does not have substantial acceptance within the relevant scientific, technical, or specialized community. A party may rebut the presumption by proving that it is more probable than not that the principle or method is reasonably reliable.

(e) Other reliability factors. In determining the reliability of a principle or method, the court shall consider all relevant additional factors, which may include:

(1) the extent to which the principle or method has been tested;

(2) the adequacy of research methods employed in testing the principle or method;

(3) the extent to which the principle or method has been published and subjected to peer review;

(4) the rate of error in the application of the principle or method;

(5) the experience of the witness in the application of the principle or method;

(6) the extent to which the principle or method has gained acceptance within the relevant scientific, technical, or specialized community; and

(7) the extent to which the witness’s specialized field of knowledge has gained acceptance within the general scientific, technical, or specialized community.
RULE 703. BASIS OF OPINION TESTIMONY BY EXPERT. The facts or data in a particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence for the opinion or inference to be admissible.

RULE 704. OPINION ON ULTIMATE ISSUE. Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

RULE 705. DISCLOSURE OF FACTS OR DATA UNDERLYING EXPERT OPINION. An expert may testify in terms of opinion or inference and give reasons therefore without previous disclosure of the underlying facts or data, unless the court requires otherwise. The expert may be required to disclose the underlying facts or data on cross-examination.

RULE 706. COURT APPOINTED EXPERT WITNESS.

(a) Appointment. The court, on motion of any party or its own motion, may issue an order to show cause why an expert witness should not be appointed, and may request the parties to submit nominations. The court may appoint an expert witness agreed upon by the parties, and may appoint an expert witness of its own selection. An expert witness may not be appointed by the court unless the witness consents to act. A witness so appointed must be informed of the witness’s duties by the court in writing, a copy of which must be filed with the clerk, or at a conference in which the parties have an opportunity to participate. A witness so appointed shall advise the parties of the witness’s findings, if any. The witness’s deposition may be taken by any party. The witness may be called to testify by the court or any party. The witness is subject to cross-examination by each party, including a party calling the witness.

(b) Compensation. An expert witness appointed by the court is entitled to reasonable compensation as determined by the court. The compensation is payable from funds that are provided by law in criminal cases and in civil actions and proceedings involving just compensation for the taking of property. In other civil actions and proceedings the parties shall pay the compensation in such proportion and at such time as the court directs, and the compensation is to be charged as costs.

(c) Disclosure of appointment. The court may authorize disclosure to the jury of the fact that the court appointed the expert witness.

(d) Parties’ experts of own selection. This rule does not limit the parties in calling expert witnesses of their own selection.
ARTICLE VIII

HEARSAY

RULE 801. DEFINITIONS; EXCLUSIONS.

(a) General. In this article:

(1) “Declarant” means a person who makes a statement.

(2) “Hearsay” means a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(3) “Statement” means an oral assertion, an assertion in a record, or nonverbal conduct of a person who intends it as an assertion.

(b) A statement is not hearsay if:

(1) the declarant testifies at the trial or hearing, is subject to cross-examination concerning the statement, and the statement is:

(A) inconsistent with the declarant’s testimony and was given under oath and subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition;

(B) consistent with the declarant’s testimony, is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive and was made before the supposed fabrication, influence, or motive arose; or

(C) one of identification made shortly after perceiving the individual identified.

(2) the statement is offered against a party and is:

(A) the party’s own statement, in either an individual or a representative capacity;

(B) a statement of which the party has manifested adoption or belief in its truth;

(C) a statement by an individual authorized by the party to make a statement concerning the subject;

(D) a statement by the party’s agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship; or

(E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.

RULE 802. HEARSAY RULE. Hearsay is not admissible except as provided by law or by these rules.
RULE 803. HEARSAY EXCEPTIONS: AVAILABILITY OF DECLARANT IMMATERIAL. The following are not excluded by the hearsay rule, even if the declarant is available as a witness:

(1) Present sense impression. A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

(2) Excited utterance. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(3) Then existing mental, emotional, or physical condition. A statement of the declarant’s then existing state of mind, emotion, sensation, or physical condition, such as intent, plan, motive, design, mental feeling, pain, and bodily health, but not a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant’s will.

(4) Statements for purposes of medical diagnosis or treatment. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensation, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

(5) Recorded recollection. A record concerning a matter about which a witness once had knowledge but now has insufficient recollection to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness’s memory and to reflect that knowledge correctly, which record may be read into evidence but may not be received as an exhibit unless offered by an adverse party.

(6) Record of regularly conducted business activity. A record of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person having knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the record, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with Rule 902(11) or (12), or with a statute providing for certification, unless the sources of information or the method or circumstances of preparation indicate lack of trustworthiness. In this paragraph, business includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit. A public record inadmissible under paragraph (8) is inadmissible under this exception.

(7) Absence of entry in records kept in accordance with paragraph (6). Evidence that a matter is not included in the records kept in accordance with paragraph (6), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a record was regularly made and preserved, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with Rule 902(11) or (12), or with a statute providing for certification, unless the sources of information or other circumstances indicate lack of trustworthiness.

(8) Record or report of public office. Unless the sources of information or other circumstances indicate lack of trustworthiness, a record of a public office or agency setting forth its regularly conducted and regularly recorded activities, or matters observed pursuant to duty imposed by law
and as to which there was a duty to report, or factual findings resulting from an investigation made pursuant to authority granted by law. The following are not within this exception to the hearsay rule:

(A) an investigative report by police and other law enforcement personnel, except when offered by an accused in a criminal case;

(B) an investigative report prepared by or for a government, public office, or agency when offered by it in a case in which it is a party;

(C) factual findings offered by the government in criminal cases; and

(D) factual findings resulting from special investigation of a particular complaint, case, or incident, unless offered by an accused in a criminal case.

(9) Record of vital statistics. A record of birth, fetal death, death, or marriage, if the report thereof was made to a public office.

(10) Absence of record or entry. To prove the absence of a record, or the nonoccurrence or nonexistence of a matter of which a record was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with Rule 902, or testimony, that diligent search failed to disclose the record, or entry.

(11) Record of religious organization. A statement of birth, marriage, divorce, death, legitimacy, ancestry, relationship by blood or marriage, or other similar fact of personal or family history, contained in a regularly kept record of a religious organization.

(12) Marriage, baptismal, and similar certified record. A statement of fact contained in a certified record that the maker performed a marriage or other ceremony or administered a sacrament, made by a cleric, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(13) Family record. A statement of fact concerning personal or family history contained in a family Bible, genealogy, chart, engraving on a ring, an inscription on a family portrait, an engraving on an urn, crypt, or tombstone, or the like.

(14) Record of document affecting an interest in property. A public record purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed and delivered.

(15) Statement in record affecting an interest in property. A statement contained in a record purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the record, unless dealings with the property since the record was made have been inconsistent with the truth of the statement or the purport of the record.

(16) Statement in ancient record. A statement in a record in existence 20 years or more, the authenticity of which is established.
(17) Market report, commercial publication. Market quotation, tabulation, list, directory, or other published or publicly recorded compilations, generally used and relied upon by the public or by persons in particular occupations.

(18) Learned treatise. To the extent called to the attention of an expert witness upon cross-examination or relied upon by the witness in direct examination, a statement contained in a published treatise, periodical, or pamphlet on a subject of history, medicine, or other science or art, established as a reliable authority by testimony or admission of the witness, by other expert testimony, or by judicial notice. If admitted, the statement may be read into evidence but may not be received as an exhibit.

(19) Reputation concerning personal or family history. Reputation among members of an individual’s family by blood, adoption, or marriage, or among the individual’s associates, or in the community, concerning the individual’s birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of the individual’s personal or family history.

(20) Reputation concerning boundaries or general history. Reputation in a community, arising before the controversy, as to boundaries of or customs affecting land in the community, and reputation as to an event of general history important to the community, State, or country in which located.

(21) Reputation as to character. Reputation of a person’s character among the person’s associates or in the community.

(22) Judgment of previous conviction. Evidence of a final judgment adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the State in a criminal prosecution for purposes other than impeachment, a judgment against a person other than the accused. The pendency of an appeal may be shown but does not affect admissibility.

(23) Judgment as to personal, family, or general history, or boundaries. A judgment as proof of a matter of personal, family or general history, or boundaries, essential to the judgment, if the matter is provable by evidence of reputation.

RULE 804. HEARSAY EXCEPTIONS: DECLARANT UNAVAILABLE.

(a) Unavailability as a witness. In this rule:

(1) Unavailability as a witness includes situations in which the declarant:

(A) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant’s statement;

(B) persists in refusing to testify concerning the subject matter of the declarant’s statement despite an order of the court to do so;

(C) testifies to a lack of memory of the subject matter of the declarant’s statement;

(D) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or
(E) is absent from the hearing and the proponent of the declarant’s statement has been unable to procure the declarant’s attendance, or in the case of a hearsay exception under subdivision (b)(2), (3), or (4), the declarant’s attendance or testimony, by process or other reasonable means.

(2) A declarant is not unavailable as a witness if the declarant’s exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of the declarant’s statement for the purpose of preventing the declarant from attending or testifying.

(b) Hearsay exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(1) Former testimony. Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

(2) Statement under belief of impending death. A statement made by a declarant while believing that the declarant’s death was imminent, concerning the cause or circumstances of what the declarant believed to be the declarant’s impending death.

(3) Statement against interest. A statement that at the time of its making was so far contrary to the declarant’s pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability or to render invalid a claim by the declarant against another or to make the declarant an object of hatred, ridicule, or disgrace, that a reasonable individual in the declarant’s position would not have made the statement unless the individual believed it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate an accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement. A statement or confession offered against the accused in a criminal case, made by a codefendant or other individual implicating both the codefendant or other individual and the accused, is not within this exception.

(4) Statement of personal or family history. A statement concerning:

(A) the declarant’s own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated or

(B) the matters listed in subparagraph (A) or the death of another individual if the declarant was related to the other individual by blood, adoption, or marriage or was so intimately associated with the other individual’s family as to be likely to have accurate
(5) Forfeiture by wrongdoing. A statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to and did cause the unavailability of the declarant as a witness.

RULE 805. HEARSAY WITHIN HEARSAY. Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in these rules.

RULE 806. ATTACKING AND SUPPORTING CREDIBILITY OF DECLARANT. If a hearsay statement, or a statement described in Rule 801(b)(2)(C),(D), or(E), has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence that would be admissible for those purposes if the declarant had testified as a witness. Evidence of a statement or conduct by the declarant inconsistent with the declarant’s hearsay statement is not subject to a requirement that the declarant has been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party may examine the declarant on the statement as if under cross-examination.

RULE 807. STATEMENT OF CHILD VICTIM.

(a) Statement of child not excluded. A statement made by a child under [seven] years of age describing an alleged act of neglect, physical or sexual abuse, or sexual contact performed against, with, or on the child by another individual is not excluded by the hearsay rule if:

(1) subject to subdivision (b), the court conducts a hearing outside the presence of the jury and finds that the statement concerns an event within the child’s personal knowledge and is inherently trustworthy; and

(2) the child testifies at the proceeding [or pursuant to an applicable state procedure for the giving of testimony by a child], or the child is unavailable to testify at the proceeding, as defined in Rule 804(a), and, in the latter case, there is evidence corroborative of the alleged act of neglect, physical or sexual abuse, or sexual contact.

(b) Determining trustworthiness. In determining the trustworthiness of a child’s statement, the court shall consider the circumstances surrounding the making of the statement, including:

(1) the child’s ability to observe, remember, and relate the details of the event;

(2) the child’s age and mental and physical maturity;

(3) whether the child used terminology not reasonably expected of a child of similar age, mental and physical maturity, and socioeconomic circumstances;

(4) the child’s relationship to the alleged offender;

(5) the nature and duration of the alleged neglect, physical or sexual abuse, or sexual contact;

(6) whether any other descriptions of the event by the child have been consistent with the statement;

(7) whether the child had a motive to fabricate the statement;
the identity, knowledge and experience of the person taking the statement;

whether there is a video or audio recording of the statement and, if so, the circumstances surrounding the taking of the statement; and

whether the child made the statement spontaneously or in response to suggestive or leading questions.

(c) Making a record. The court shall state on the record the circumstances that support its determination of the admissibility of the statement offered pursuant to subdivision (a).

(d) Notice. Evidence is not admissible under this rule unless the proponent gives to all adverse parties reasonable notice in advance of trial, or during trial if the court excuses pretrial notice for good cause shown, of the nature of any such evidence the proponent intends to introduce at trial.

RULE 808. RESIDUAL EXCEPTION.

(a) Exception. In exceptional circumstances a statement not covered by Rules 803, 804, or 807 but possessing equivalent, though not identical, circumstantial guarantees of trustworthiness, is not excluded by the hearsay rule if the court determines that

(1) the statement is offered as evidence of a fact of consequence;

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

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

(b) Making a record. The court shall state on the record the circumstances that support its determination of the admissibility of the statement offered pursuant to subdivision (a).

(c) Notice. A statement is not admissible under this exception unless the proponent gives to all parties reasonable notice in advance of trial, or during trial if the court excuses pretrial notice for good cause shown, of the substance of the statement and the identity of the declarant.

ARTICLE IX

AUTHENTICATION AND IDENTIFICATION

RULE 901. REQUIREMENT OF AUTHENTICATION OR IDENTIFICATION.

(a) General provision. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.
APPENDIX C—UNIFORM RULES OF EVIDENCE ACT OF THE UNITED STATES

(b) Illustrations. By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:

(1) Testimony of witness having knowledge. Testimony of a witness with knowledge that a matter is what it is claimed to be.

(2) Nonexpert opinion on handwriting. Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.

(3) Comparison by trier or expert witness. Comparison by the trier of fact or by an expert witness with a specimen that has been authenticated.

(4) Distinctive characteristics and the like. Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.

(5) Voice identification. Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice under circumstances connecting it with the alleged speaker.

(6) Telephone conversations. Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person, if:

(A) in the case of an individual, circumstances, including self-identification, which show that the individual who answered was the one called; or

(B) in the case of a person other than an individual, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.

(7) Public records or reports. Evidence that a public record or a purported public record is from the public office where items of this nature are kept.

(8) Ancient records. Evidence that a record is in such condition as to create no suspicion concerning its authenticity, was in a place where it, if authentic, would likely be, and has been in existence 20 years or more at the time it is offered.

(9) Process or system. Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.

(10) Method provided by statute or rule. Any method of authentication or identification provided by [the Supreme Court of this State or by] a statute or as provided in the constitution of this State.

RULE 902. SELF-AUTHENTICATION. Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(1) Domestic public document under seal. A document bearing a seal purporting to be that of the United States, or of any State, or of a political subdivision, department, officer, or agency of one of them, and a signature purporting to be an attestation or execution.
(2) Domestic public document not under seal. A document purporting to bear a signature in the official capacity of an officer or employee of any entity designated in paragraph (1), having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

(3) Foreign public document. A document purporting to be executed or attested in the official capacity of an individual authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position (i) of the executing or attesting individual, or (ii) of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If all parties have been given a reasonable opportunity to investigate the authenticity and accuracy of an official document, the court may for good cause shown order that it be treated as presumptively authentic without final certification or permit it to be evidenced by an attested summary with or without final certification.

(4) Certified copy of public record. A copy of a public record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, certified as correct by the custodian or other authorized person by certificate complying with paragraph (1), (2), or (3) or complying with any law of the United States or of this State.

(5) Official publication. A book, pamphlet, publication, or other publicly issued record issued by public authority, if in a form indicative of the genuineness of such a record.

(6) Newspaper or periodical. Publicly distributed material purporting to be a newspaper or periodical.

(7) Trade inscriptions and the like. Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.

(8) Acknowledged record. A record accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments.

(9) Commercial paper and related record. Commercial paper, a signature thereon, and a record relating thereto or having the same legal effect as commercial paper, to the extent provided by general commercial law.

(10) Presumption created by law. A signature, document, or other matter declared by any law of the United States or of this State to be presumptively or prima facie genuine or authentic.

(11) Certified domestic record of regularly conducted business activity. The original or a duplicate of a domestic record of regularly conducted activity, within the scope of Rule 803(6), which the custodian thereof acts, events, conditions, opinions, or diagnoses if:
appendix c—uniform rules of evidence act of the united states

(A) the document is accompanied by a written declaration under oath of the custodian of the record or other qualified individual that the record was made, at or near the time of the occurrence of the matters set forth, by, or from information transmitted by, a person having knowledge of those matters; was kept in the course of the regularly conducted business activity; and was made pursuant to the regularly conducted activity;

(B) the party intending to offer the record in evidence gives notice of that intention to all adverse parties and makes the record available for inspection sufficiently in advance of its offer to provide the adverse parties with a fair opportunity to challenge the record; and

(C) notice is not given to the proponent, sufficiently in advance of the offer to provide the proponent with a fair opportunity to meet the objection or obtain the testimony of a foundation witness, raising a genuine question as to the trustworthiness or authenticity of the record.

(12) Certified foreign record of regularly conducted business activity. The original or a duplicate of a record from a foreign country of acts, events, conditions, opinions, or diagnoses if:

(A) the document is accompanied by a written declaration under oath of the custodian of the record or other qualified individual that the record was made, at or near the time of the occurrence of the matters set forth, by or from information transmitted by a person having knowledge of those matters, was kept in the course of a regularly conducted business activity, and was made pursuant to the regularly conducted activity;

(B) the party intending to offer the record in evidence gives notice of that intention to all adverse parties and makes the record available for inspection sufficiently in advance of its offer to provide the adverse parties with a fair opportunity to challenge the record; and

(C) notice is not given to the proponent, sufficiently in advance of the offer to provide the proponent with a fair opportunity to meet the objection or obtain the testimony of a foundation witness, raising a genuine question as to the trustworthiness or authenticity of the record.

rule 903. subscribing witness' testimony unnecessary. the testimony of a subscribing witness is not necessary to authenticate a record unless required by the laws of the jurisdiction whose laws govern the validity of the record.

article x
content of record, writing, recording, photograph, image, and other record

rule 1001. definitions. in this article:

(1) “duplicate” means a counterpart in the form of a record produced by the same impression as the original, from the same matrix, by means of photography, including enlargements and miniatures, by
mechanical or electronic re-recording, by chemical reproduction, or by another equivalent technique that accurately reproduces the original.

(2) “Image” means a form of a record which consists of a digitized copy or image of information.

(3) An “original” of a writing, recording, or other record means the writing, recording, or other record itself or any counterpart intended to have the same effect by a person executing or issuing it. The term, when applied to a photograph, includes the negative or any print therefrom. The term includes a printout or other perceivable output of a record of data or images stored in a computer or similar device, if shown to reflect the data or images accurately.

(4) “Photograph” means a form of a record which consists of a still photograph, stored image, X-ray film, video tape, or motion picture.

(5) “Writing” and “recording” mean letters, words, sounds, or numbers, or their equivalent, inscribed on a tangible medium or stored in an electronic or other machine and retrievable in perceivable form by handwriting, typewriting, printing, photostating, photographing, mechanical or electronic recording, or other technique.

RULE 1002. REQUIREMENT OF ORIGINAL. To prove the content of a writing, recording, photograph, or other record, the original record, writing, recording, photograph, or other record is required, except as otherwise provided in these rules or by [rules adopted by the Supreme Court of this State or by] statute.

RULE 1003. ADMISSIBILITY OF DUPLICATES. A duplicate is admissible to the same extent as an original unless a genuine question is raised as to the authenticity or continuing effectiveness of the original or in the circumstances it would be unfair to admit the duplicate in lieu of the original.

RULE 1004. ADMISSIBILITY OF OTHER EVIDENCE OF CONTENTS. The original is not required, and other evidence of the contents of a record is admissible if:

(1) all originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith;

(2) an original cannot be obtained by any available judicial process or procedure;

(3) at a time when an original was under the control of the party against whom offered, the party was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing, and the party does not produce the original at the hearing; or

(4) the record is not closely related to a controlling issue.

RULE 1005. PUBLIC RECORDS. The contents of an official record, or of a private record authorized to be recorded or filed in the public records and actually recorded or filed, if otherwise admissible, may be proved by a copy in perceivable form, certified as correct in accordance with Rule 902 or testified to be correct by a witness who has compared it with the original. If a copy complying with the foregoing cannot be obtained by the exercise of reasonable diligence, other evidence of the contents may be admitted.
RULE 1006. SUMMARIES. The contents of voluminous records which cannot conveniently be examined in court may be presented in the form of a chart, summary, calculation, or other perceivable presentation. The original, or a duplicate, must be made available for examination or copying, or both, by other parties at a reasonable time and place. The court may order that they be produced in court.

RULE 1007. TESTIMONY, OR ADMISSION IN RECORD OF PARTY. The contents of a record may be proved by the testimony or deposition of the party against whom offered or by that party’s written admission without accounting for the nonproduction of the original.

RULE 1008. FUNCTIONS OF COURT AND JURY. If the admissibility under these rules of other evidence of the contents of a record depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is ordinarily for the court to determine in accordance with Rule 104. However, if an issue is raised as to whether the asserted record ever existed, another record produced at the trial is the original, or other evidence of contents correctly reflects the contents, the issue is for the trier of fact to determine.

ARTICLE XI
MISCELLANEOUS RULES

RULE 1101. TITLE. These rules shall be known and may be cited as Uniform Rules of Evidence.
Appendix D

UNODC Model Foreign Evidence Bill
UNODC Model Foreign Evidence Bill

Bill No ....... of 2004

To be presented by the Minister of Justice

MEMORANDUM OF OBJECTS AND REASONS

The object of this bill is to provide for the admissibility in [name of State] of evidence obtained from a foreign State.

ATTORNEY-GENERAL

An Act to provide for the manner and form in which evidence obtained from outside [name of State] may be admissible in proceedings in [name of State], and for related purposes.

ENACTED by the President and Parliament of [name of State]

1. Short title, Extent and Commencement

   (a) This Act may be called the "Foreign Evidence Act, 2000".

   (b) It shall extend throughout [name of State].

   (c) It shall come into force [at once].

2. Interpretation

In this Act, unless the context otherwise requires:

   (a) "authorized officer" means:

       (i) the [Attorney-General]; or
       (ii) a person appointed by the [Attorney-General], by notice published in [the Gazette], as an authorized officer for the purposes of this Act;

   (b) "civil proceeding" means a proceeding other than a criminal proceeding;

   (c) "criminal proceeding" includes:

       (i) a prosecution for an offence;

       (ii) a proceeding for the sentencing of a person convicted of an offence;

   (d) "foreign law" means a law (whether written or unwritten) of, or in force in a foreign State;
(e) "foreign material" means:

(i) the testimony of a person that:

(A) was obtained as a result of a request of a kind referred to in section 4 of the [Mutual Assistance in Criminal Matters Act, 2000];

(B) complies with the requirements of section 4 of this Act;

(ii) any exhibit annexed to any such testimony;

(iii) any part of any such testimony or exhibit;

(f) “foreign State” means:

(i) any country other than [name of State]; and

(ii) every constituent part of such country, including a territory, dependency or protectorate, which administers its own laws relating to evidence;

(g) “international criminal tribunal” means any court or tribunal listed in the Schedule to the Mutual Assistance in Criminal Matters Act, 2000;

(h) “international criminal tribunal offence” means any offence for which an international criminal tribunal has power to prosecute a person;

(i) "related civil proceedings", in relation to a criminal proceeding, means any civil proceedings arising from the same subject matter from which the criminal proceeding arose;

(j) "[name of State] court" means:

(i) the [Court of Appeal];

(ii) the [High Court];

(iii) a magistrates court; or

(iv) a person or body authorized by a [name of State] law, or by consent of parties, to hear, receive and examine evidence;

(k) "[name of State] law" means a law (whether written or unwritten) of or in force in [name of State].
3. **Application of this Act**

This Act applies to:

(a) a proceeding before a [name of State] court that is:

   (i) a criminal proceeding in relation to [name of State] law of; or

   (ii) a related civil proceeding;

(b) testimony obtained as a result of a request made by or on behalf of the [Attorney-General] to a foreign State or international criminal tribunal for the testimony of a person pursuant to the [Mutual Assistance in Criminal Matters Act, 2000]; and

(c) any exhibit annexed to any such testimony.

4. **Requirements for testimony**

   (1) The testimony must be taken before a court or international criminal tribunal:

      (a) on oath or affirmation; or

      (b) under such caution or admonition as would be accepted by the court or international criminal tribunal concerned, for the purposes of giving testimony in proceedings before it.

   (2) The testimony may be taken in camera.

5. **Form of testimony**

   (1) The testimony may be recorded:

      (a) in writing;

      (b) on audio tape;

      (c) on video tape; or

      (d) by any other electronic or mechanical means,

   or may be taken by means of technology that permits the virtual presence of the person in [name of State].

   (2) The writing need not:

      (a) be in the form of an affidavit; or
(b) constitute a transcript of a proceeding in a foreign court or international criminal tribunal.

(3) Where the testimony has been made by means of video or other means which permits the virtual presence of the person in [name of State], that testimony shall be deemed to have been given in [name of State].

(4) The testimony must be endorsed with, or accompanied by, a certificate to the effect that:

(a) it is an accurate record of the evidence given; and

(b) it was taken in a manner specified in section 4.

(5) The certificate must purport to:

(a) be signed or certified by a judge, magistrate or court officer of the foreign State or international criminal tribunal to which the request was made; and

(b) bear an official or public seal of;

   (i) the foreign State or international criminal tribunal; or

   (ii) an authority of the foreign State responsible for matters relating to justice, being a Minister of State, a Ministry or Department of Government, or an officer in or of the Government.

6. **Foreign material may be adduced as evidence**

   (1) Subject to subsection (2), foreign material may be adduced as evidence in a proceeding to which this Act applies.

   (2) The foreign material will be excluded from evidence if:

      (a) it appears to the court's satisfaction, at the hearing of the proceeding, that the person who gave the testimony concerned is present in [name of State] and is able to testify at the hearing;

      (b) the evidence would not have been admissible had it been adduced from the person at the hearing; or

      (c) it appears to the court that the interests of justice would not be served by admitting the evidence.

   (3) In reaching a decision pursuant to subsection (2) (c), the court shall take into account:
(a) the extent to which the foreign material provides evidence that would not otherwise be available;

(b) the probative value of the foreign material with respect to any issue that is likely to be determined in the proceeding;

(c) the extent to which statements contained in the material could, at the time they were made, be challenged by questioning the persons who made them;

(d) whether exclusion of the material would cause undue expense or delay; and

(e) whether exclusion of the foreign evidence would prejudice:

   (i) the defence in criminal proceeding; or

   (ii) any party to related civil proceedings.

7. **Proof of service of documents abroad**

   The service of documents in a foreign State may be proved by affidavit of the person who served it.

8. **Certificates relating to foreign material**

   (1) An authorized officer may certify that specified foreign material was obtained as a result of a request made to a foreign State or international criminal tribunal by or on behalf of the Minister.

   (2) It is presumed (unless evidence sufficient to raise reasonable doubt is adduced to the contrary) that the foreign material specified in the certificate was obtained as a result of that request.

9. **Operation of other laws**

   This Act does not limit the ways in which a matter may be proved, or evidence may be adduced under any other [name of State] law.
Appendix E

Rules of Evidence of the Republic of the Philippines
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. (2a)

Sec. 3. Admissibility of evidence. — Evidence is admissible when it is relevant to the issue and is not excluded by the law of 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. (4a)

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, the official acts of legislative, executive and judicial departments 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 to unquestionable demonstration, or ought to be known to judges because of their judicial functions. (1a)

Sec. 3. Judicial notice, when hearing necessary. — During the trial, the court, on its own initiative, or on request of a party, may announce its intention to take judicial notice of any matter and allow the parties to be heard thereon.

After the trial, and before judgment or on appeal, the proper court, on its own initiative or on request of a party, may take judicial notice of any matter and allow the parties to be heard thereon if such matter is decisive of a material issue in the case. (n)

Sec. 4. Judicial admissions. — An admission, verbal 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 no such admission was made. (2a)

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. (1a)

B. DOCUMENTARY EVIDENCE

Sec. 2. Documentary evidence. — Documents as evidence consist of writing or any material containing letters, words, numbers, figures, symbols or other modes of written expression offered as proof of their contents. (n)

1. BEST EVIDENCE RULE

Sec. 3. Original document must be produced; exceptions. — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

(a) When the original has been 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;

(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; and

(d) When the original is a public record in the custody of a public officer or is recorded in a public office. (2a)

Sec. 4. Original of document. —

(a) The original of the document is one the contents of which are the subject of inquiry.

(b) 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.

(c) When an entry is repeated in the regular course of business, one being copied from another at or near the time of the transaction, all the entries are likewise equally regarded as originals. (3a)

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 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. (4a)
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 adverse party, he must have reasonable notice to produce it. If after such notice and after satisfactory proof of its existence, he fails to produce the document, secondary evidence may be presented as in the case of its loss. (5a)

Sec. 7. *Evidence admissible when original document is a public record.* — When the original of document is in the custody of 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. (2a)

Sec. 8. *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. (6a)

3. PAROL EVIDENCE RULE

Sec. 9. *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, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.

However, a party may present evidence to modify, explain or add to the terms of written agreement if he puts in issue in his 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. (7a)

4. INTERPRETATION OF DOCUMENTS

Sec. 10. *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. (8)

Sec. 11. *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. (9)

Sec. 12. *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. (10)

Sec. 13. *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 who language he is to interpret. (11)

Sec. 14. 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. (12)

Sec. 15. 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. (13)

Sec. 16. 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. (14)

Sec. 17. 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 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. (15)

Sec. 18. 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. (16)

Sec. 19. Interpretation according to usage. — An instrument may be construed according to usage, in order to determine its true character. (17)

C. TESTIMONIAL EVIDENCE

1. QUALIFICATION OF WITNESSES

Sec. 20. Witnesses; their qualifications. — Except as provided in the next succeeding section, all persons who can perceive, and perceiving, can make their known perception to others, may be witnesses.

Religious or political belief, interest in the outcome of the case, or conviction of a crime unless otherwise provided by law, shall not be ground for disqualification. (18a)

Sec. 21. Disqualification by reason of mental incapacity or immaturity. — The following persons cannot be witnesses:

(a) Those whose mental condition, at the time of their production for examination, is such that they are incapable of intelligently making known their perception to others;

(b) Children whose mental maturity is such as to render them incapable of perceiving the facts respecting which they are examined and of relating them truthfully. (19a)
Sec. 22. Disqualification by reason of marriage. — During their marriage, neither the husband nor the wife may testify for or 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. (20a)

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

Sec. 24. Disqualification by reason of privileged communication. — 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 cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of, or with a view to, professional employment, nor can an attorney's secretary, stenographer, or clerk be examined, without the consent of the client and his employer, concerning any fact the knowledge of which has been acquired in such capacity;

(c) A person authorized to practice medicine, surgery or obstetrics cannot in a civil case, without the consent of the patient, be examined as to any advice or treatment given by him or any information which he may have acquired in attending such patient in a professional capacity, which information was necessary to enable him to act in capacity, and which would blacken the reputation of the patient;

(d) A minister or priest cannot, without the consent of the person making the confession, be examined as to any confession made to or any advice given by him in his 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 his term of office or afterwards, as to communications made to him in official confidence, when the court finds that the public interest would suffer by the disclosure. (21a)

2. TESTIMONIAL PRIVILEGE

Sec. 25. Parental and filial privilege. — No person may be compelled to testify against his parents, other direct ascendants, children or other direct descendants. (20a)

3. ADMISSIONS AND CONFESSIONS
Sec. 26. Admission of a party. — The act, declaration or omission of a party as to a relevant fact may be given in evidence against him. (22)

Sec. 27. 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.

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

A plea of guilty later withdrawn, or an unaccepted offer of a plea of guilty to lesser offense, is not admissible in evidence against the accused who made the plea or offer.

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. (24a)

Sec. 28. Admission by third party. — The rights of a party cannot be prejudiced by an act, declaration, or omission of another, except as hereinafter provided. (25a)

Sec. 29. Admission by co-partner or agent. — The act or declaration of a partner or agent of the party within the scope of his 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. (26a)

Sec. 30. Admission by conspirator. — The act or declaration of a conspirator relating to the conspiracy and during its existence, may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act of declaration. (27)

Sec. 31. Admission by privies. — Where one derives title to property from another, the act, declaration, or omission of the latter, while holding the title, in relation to the property, is evidence against the former. (28)

Sec. 32. 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 to do so, may be given in evidence against him. (23a)

Sec. 33. Confession. — The declaration of an accused acknowledging his guilt of the offense charged, or of any offense necessarily included therein, may be given in evidence against him. (29a)

4. PREVIOUS CONDUCT AS EVIDENCE

Sec. 34. 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 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. (48a)

Sec. 35. 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. (49a)

5. TESTIMONIAL KNOWLEDGE

Sec. 36. Testimony generally confined to personal knowledge; hearsay excluded. — A witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception, except as otherwise provided in these rules. (30a)

6. EXCEPTIONS TO THE HEARSAY RULE

Sec. 37. Dying declaration. — The declaration of a dying person, made under the consciousness of an impending death, may be received in any case wherein his death is the subject of inquiry, as evidence of the cause and surrounding circumstances of such death. (31a)

Sec. 38. Declaration against interest. — The declaration made by a person deceased, or unable to testify, against the interest of the declarant, if the fact is asserted in the declaration was at the time it was made so far contrary to declarant's own interest, that a reasonable man in his position would not have made the declaration unless he believed it to be true, may be received in evidence against himself or his successors in interest and against third persons. (32a)

Sec. 39. 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 by birth or marriage, may be received in evidence where it occurred before the controversy, and the relationship between the two persons is shown by evidence other than such act or declaration. The word "pedigree" includes relationship, family genealogy, birth, marriage, death, the dates when and the places where these fast occurred, and the names of the relatives. It embraces also facts of family history intimately connected with pedigree. (33a)

Sec. 40. Family reputation or tradition regarding pedigree. — The reputation or tradition existing in a family previous to the controversy, in respect to the pedigree of any one of its members, may be received in evidence if the witness testifying thereon be also a member of the family, either by consanguinity or affinity. Entries in family bibles or other family books or charts, engravings on rings, family portraits and the like, may be received as evidence of pedigree. (34a)

Sec. 41. Common reputation. — Common reputation existing previous to the controversy, respecting facts of public or general interest more than thirty years old, or respecting marriage or moral character, may be given in evidence. Monuments and inscriptions in public places may be received as evidence of common reputation. (35)

Sec. 42. Part of res gestae. — Statements made by a person while a starting occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as part of 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. (36a)

Sec. 43. Entries in the course of business. — Entries made at, or near the time of transactions to which they refer, by a person deceased, or unable to testify, who was in a position to know the facts therein stated, may be received as prima facie evidence, if such person made the entries in his professional capacity or in the performance of duty and in the ordinary or regular course of business or duty. (37a)
Sec. 44. **Entries in official records.** — Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are *prima facie* evidence of the facts therein stated. (38)

Sec. 45. **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. (39)

Sec. 46. **Learned treatises.** — A published treatise, periodical or pamphlet on a subject of history, law, science, or art is admissible as tending to prove the truth of a matter stated therein if the court takes judicial notice, or a witness expert in the subject testifies, that the writer of the statement in the treatise, periodical or pamphlet is recognized in his profession or calling as expert in the subject. (40a)

Sec. 47. **Testimony or deposition at a former proceeding.** — The testimony or deposition of a witness deceased or unable to testify, given in a former case or proceeding, judicial or administrative, involving the same parties and subject matter, may be given in evidence against the adverse party who had the opportunity to cross-examine him. (41a)

7. **OPINION RULE**

Sec. 48. **General rule.** — The opinion of witness is not admissible, except as indicated in the following sections. (42)

Sec. 49. **Opinion of expert witness.** — The opinion of a witness on a matter requiring special knowledge, skill, experience or training which he shown to posses, may be received in evidence. (43a)

Sec. 50. **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 has adequate knowledge;

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

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

The witness may also testify on his impressions of the emotion, behavior, condition or appearance of a person. (44a)

8. **CHARACTER EVIDENCE**

Sec. 51. **Character evidence not generally admissible; exceptions:** —

(a) In Criminal Cases:

(1) The accused may prove his good moral character which is pertinent to the moral trait involved in the offense charged.
(2) Unless in rebuttal, the prosecution may not prove his bad moral character which is pertinent to the moral trait involved in the offense charged.

(3) The good or bad moral 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.

(b) In Civil Cases:

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

(c) In the case provided for in Rule 132, Section 14, (46a, 47a)

RULE 131

Burden of Proof and Presumptions

SECTION 1. Burden of proof. — Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law. (1a, 2a)

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

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

(b) The tenant is not permitted to deny the title of his landlord at the time of commencement of the relation of landlord and tenant between them. (3a)

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 voluntary act;

(d) That a person takes ordinary care of his 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 possess, or exercises acts of ownership over, are owned by him;

(k) That a person in possession of an order on himself 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 endorsement of 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 is considered dead for all purposes, except for those of succession.

The absentee shall not be considered dead for the purpose of opening his succession till after an absence of ten years. If he disappeared after the age of seventy-five years, an absence of five years shall be sufficient in order that his 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 with 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;

(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 well-founded belief that the absent spouse is already death. 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 a 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 copartnership;

(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 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 acquire properly 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 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.

(2) A child born after one hundred eighty 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 the 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 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 when such presumption is necessary to perfect the title of such person or his 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 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;

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. (5a)

Sec. 4. No presumption of legitimacy or illegitimacy. — There is no presumption of legitimacy 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 allegation. (6)

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 questions calls for a different mode of answer, the answers of the witness shall be given orally. (1a)

Sec. 2. Proceedings to be recorded. — The entire proceedings of a trial or hearing, including the questions propounded to a witness and his answers thereto, 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 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 answer may tend to establish a claim against him. 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 to a penalty for an offense unless otherwise provided by law; or

(5) Not to give an answer which will tend to degrade his reputation, unless it to be 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 previous final conviction for an offense. (3a, 19a)

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

(a) Direct examination by the proponent;

(b) Cross-examination by the opponent;

(c) Re-direct examination by the proponent;

(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 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 as to many matters stated in the direct examination, or connected therewith, with sufficient fullness and freedom to test his accuracy and truthfulness and freedom from interest or bias, or the reverse, and to elicit all important facts bearing upon the issue. (8a)
Sec. 7. *Re-direct examination; its purpose and extent.* — After the cross-examination of the witness has been concluded, he may be re-examined by the party calling him, to explain or supplement his 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. (12)

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 re-direct examination, and also on such other matters as may be allowed by the court in its discretion. (13)

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. (14)

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 a difficulty is getting direct and intelligible answers from a witness who is ignorant, or a child of tender years, or 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 has previously stated. It is not allowed. (5a, 6a, and 8a)

Sec. 11. *Impeachment of adverse party’s witness.* — A witness may be impeached by the party against whom he was called, by contradictory evidence, by evidence that his general reputation for truth, honestly, or integrity is bad, or by evidence that he has made at other times statements inconsistent with his present, testimony, but not by evidence of particular wrongful acts, except that it may be shown by the examination of the witness, or the record of the judgment, that he has been convicted of an offense. (15)

Sec. 12. *Party may not impeach his own witness.* — Except with respect to witnesses referred to in paragraphs (d) and (e) of Section 10, the party producing a witness is not allowed to impeach his credibility.

A witness may be considered as unwilling or hostile only if so declared by the court upon adequate showing of his adverse interest, unjustified reluctance to testify, or his having misled the party into calling him 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 in all respects as if he had been called by the adverse party,
except by evidence of his bad character. He may also be impeached and cross-examined by the adverse party, but such cross-examination must only be on the subject matter of his examination-in-chief. (6a, 7a)

Sec. 13. **How witness impeached by evidence of inconsistent statements.** — Before a witness can be impeached by evidence that he has made at other times statements inconsistent with his present testimony, the statements must be related to him, with the circumstances of the times and places and the persons present, and he must be asked whether he 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 concerning them. (16)

Sec. 14. **Evidence of good character of witness.** — Evidence of the good character of a witness is not admissible until such character has been impeached. (17)

Sec. 15. **Exclusion and separation of witnesses.** — On any trial or hearing, the judge may exclude from the court any witness not at the time under examination, so that he may not hear the testimony of other witnesses. The judge may also cause witnesses to be kept separate and to be prevented from conversing with one another until all shall have been examined. (18)

Sec. 16. **When witness may refer to memorandum.** — A witness may be allowed to refresh his memory respecting a fact, by anything written or recorded by himself or under his direction at the time when the fact occurred, or immediately thereafter, or at any other time when the fact was fresh in his memory and 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 chooses, cross examine the witness upon it, and may read it in evidence. So, also, a witness may testify from such writing or record, though he retain no recollection of the particular facts, if he is able to swear that the writing or record correctly stated the transaction when made; but such evidence must be received with caution. (10a)

Sec. 17. **When part of transaction, writing or record given in evidence, the remainder, 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. (11a)

Sec. 18. **Right to respect writing shown to witness.** — Whenever a writing is shown to a witness, it may be inspected by the adverse party. (9a)

### B. AUTHENTICATION AND PROOF OF DOCUMENTS

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

Public documents are:

(a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;
(b) Documents acknowledge before a notary public except last wills and testaments; and

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

All other writings are private. (20a)

Sec. 20. Proof of private document. — Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:

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

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

Any other private document need only be identified as that which it is claimed to be. (21a)

Sec. 21. When evidence of authenticity of private document not necessary. — Where a private document is more than thirty years old, is produced from the 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. (22a)

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 has seen the person write, or has seen writing purporting to be his 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. (23a)

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. (24a)

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 deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office. (25a)

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 be the clerk of a court having a seal, under the seal of such court. (26a)
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. (27a)

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. (28a)

Sec. 28. Proof of lack of record. — A written statement signed by an officer having the custody of an official record or by his deputy that after diligent search no record or entry of a specified tenor is found to exist in the records of his office, accompanied by a certificate as above provided, is admissible as evidence that the records of his office contain no such record or entry. (29)

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. (30a)

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. (31a)

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 may show that the alteration was made by another, without his concurrence, or was made with the consent of the parties affected by it, or was otherwise properly or innocent made, or that the alteration did not change the meaning or language of the instrument. If he fails to do that, the document shall not be admissible in evidence. (32a)

Sec. 32. Seal. — There shall be no difference between sealed and unsealed private documents insofar as their admissibility as evidence is concerned. (33a)

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. (34a)

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. (35)

Sec. 35. When to make offer. — As regards the testimony of a witness, the offer must be made at the time the witness is called to testify.

Documentary and object evidence shall be offered after the presentation of a party’s testimonial evidence. Such offer shall be done orally unless allowed by the court to be done in writing. (n)
Sec. 36. Objection. — Objection to evidence offered orally must be made immediately after the offer is made.

Objection to a question propounded in the course of the oral examination of a witness shall be made as soon as the grounds therefore shall become reasonably apparent.

An offer of evidence in writing shall be objected to within three (3) days after notice of the unless a different period is allowed by the court.

In any case, 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 question 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 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. (38a)

Sec. 39. Striking out answer. — Should a witness answer the question before the adverse party had the opportunity to voice fully its objection to the same, and such objection is found to be meritorious, the court shall sustain the objection and order the answer given to be stricken off the record.

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

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. (n)

RULE 133

Weight and Sufficiency of Evidence

SECTION 1. Preponderance of evidence, how determined. — In civil cases, the party having burden of proof must establish his 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 there 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 guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof, excluding possibility of error, produces absolute certainly. Moral certainly 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 circumstances;

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

(c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. (5)

Sec. 5. 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. (n)

Sec. 6. 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. But this power should be exercised with caution. (6)

Sec. 7. 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)

**RULE 134**

[NOTE: This rule will be transposed to Part 1 of the Rules of Court on Deposition and Discovery]

Perpetuation of Testimony

**SECTION 1. Petition.** — A person who desires to perpetuate his own testimony or that of another person regarding any matter that may be cognizable in any court of the Philippines, any file a verified petition in the court of the province of the residence of any expected adverse party.

Sec. 2. Contents of petition. — The petition shall be entitled in the name of the petitioner and shall show: (a) that the petitioner expects to be a party to an action in a court of the Philippines by is presently unable to bring it or cause it to be brought; (b) the subject matter of the expected action and his interest therein; (c) the facts which he desires to establish by the proposed testimony and his
reasons for desiring to perpetuate it; (d) the names of a description of the persons he expects will be adverse parties and their addresses so far as known; and (e) the names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition for the purpose of perpetuating their testimony.

Sec. 3. Notice and service. — The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of a petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least twenty (20) days before the date of hearing the notice shall be served in the manner provided for service of summons.

Sec. 4. Order of examination. — If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose deposition may be taken and specifying the subject matter of the examination, and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken in accordance with Rule 24 before the hearing.

Sec. 5. Reference to court. — For the purpose of applying Rule 24 to depositions for perpetuating testimony, each reference therein to the court in which the action is pending shall be deemed to refer to the court in which the petition for such deposition was filed.

Sec. 6. Use of deposition. — If a deposition to perpetuate testimony is taken under this rule, or if, although not so taken, it would be admissible in evidence, it may be used in any action involving the same subject matter subsequently brought in accordance with the provisions of Sections 4 and 5 of Rule 24.

Sec. 7. Depositions pending appeal. — If an appeal has been taken from a judgment of the Regional Trial Court or before the taking of an appeal if the time therefor has not expired, the Regional Trial Court in which the judgment was rendered may allow the taking of depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the said court. In such case the party who desires to perpetuate the testimony may make a motion in the said Regional Trial Court for leave to take the depositions, upon the same notice and service thereof as if the action was pending therein. The motion shall show (a) the name and the addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each; and (b) the reason for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in actions pending in the Regional Trial Court. (7a)
Appendix F

Rules of Electronic Evidence of the Republic of the Philippines
RULE 1
COVERAGE

SECTION 1. Scope. - Unless otherwise provided herein, these Rules shall apply whenever an electronic data message, as defined in Rule 2 hereof, is offered or used in evidence.

SEC. 2. Cases covered. - These Rules shall apply to all civil actions and proceedings, as well as quasi-judicial and administrative cases.

SEC. 3. Application of the other rules on evidence. - In all matters not specifically covered by these Rules, the Rules of Court and pertinent provisions of statues containing rules on evidence shall apply.

RULE 2
DEFINITION OF TERMS AND CONSTRUCTION

SECTION 1. Definition of Terms. - For purposes of these Rules, the following terms are defined, as follows:

(a) “Asymmetric or public cryptosystem” means a system capable of generating a secure key pair, consisting of a private key for creating a digital signature, and a public key for verifying the digital signature.

(b) “Business records” include records of any business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit, or for legitimate purposes.

(c) “Certificate” means an electronic document issued to support a digital signature which purports to confirm the identity or other significant characteristics of the person who holds a particular key pair.

(d) “Computer” refers to any single or interconnected device or apparatus, which, by electronic, electro-mechanical or magnetic impulse, or by other means with the same function, can receive, record, transmit, store, process, correlate, analyze, project, retrieve and/or produce information, data, text, graphics, figures, voice, video, symbols or other modes of expression or perform any one or more of these functions.

(e) “Digital Signature” refers to an electronic signature consisting of a transformation of an electronic document or an electronic data message using an asymmetric or public cryptosystem such that a person having the initial untransformed electronic document and the signer’s public key can accurately determine:

(i) whether the transformation was created using the private key that corresponds to the signer’s public key; and

(ii) whether the initial electronic document had been altered after the transformation was made.
(f) “Digitally signed” refers to an electronic document or electronic data message bearing a digital signature verified by the public key listed in a certificate.

(g) “Electronic data message” refers to information generated, sent, received or stored by electronic, optical or similar means.

(h) “Electronic document” refers to information or the representation of information, data, figures, symbols or other modes of written expression, described or however represented, by which a right is established or an obligation extinguished, or by which a fact may be proved and affirmed, which is received, recorded, transmitted, stored processed, retrieved or produced electronically. It includes digitally signed documents and any print-out or output, readable by sight or other means, which accurately reflects the electronic data message or electronic document. For purposes of these Rules, the term “electronic document” may be used interchangeably with electronic data message”.

(i) “Electronic key” refers to a secret code which secures and defends sensitive information that crosses over public channels into a form decipherable only with a matching electronic key.

(j) “Electronic signature” refers to any distinctive mark, characteristics and/or sound in electronic form. Representing the identity of a person and attached to or logically associated with the electronic data message or electronic document or any methodology or procedure employed or adopted by a person and executed or adopted by such person with the intention of authenticating, signing or approving an electronic data message or electronic document. For purposes of these Rules, an electronic signature includes digital signatures.

(k) “Ephemeral electronic communication” refers to telephone conversations, text messages, chatroom sessions, streaming audio, streaming video, and other electronic forms of communication the evidence of which is not recorded or retained.

(l) “Information and Communication System” refers to a system for generating, sending, receiving, storing or otherwise processing electronic data messages or electronic documents and includes the computer system or other similar devices by or in which data are recorded or stored and any procedure related to the recording or storage of electronic data message or electronic document.

(m) “Key Pair” in an asymmetric cryptosystem refers to the private key and its mathematically related public key such that the latter can verify the digital signature that the former creates.

(n) “Private Key” refers to the key of a key pair used to create a digital signature.

(o) “Public Key” refers to the key of a key pair used to verify a digital signature.

SEC. 2. Construction. – These Rules shall be liberally construed to assist the parties in obtaining a just, expeditious, and inexpensive determination of cases. The Interpretation of these Rules shall also take into consideration the international origin of Republic Act No. 8792, otherwise known as the Electronic Commerce Act.
RULE 3
ELECTRONIC DOCUMENTS

SECTION 1. Electronic documents as functional equivalent of paper-based documents. – Whenever a rule of evidence refers to the term of writing, document, record, instrument, memorandum or any other form of writing, such term shall be deemed to include an electronic document as defined in these Rules.

SEC. 2. Admissibility. – An electronic document is admissible in evidence if it complies with the rules on admissibility prescribed by the Rules of Court and related laws and is authenticated in the manner prescribed by these Rules.

SEC. 3. Privileged communication. – The confidential character of a privileged communications is not solely on the ground that it is in the form of an electronic document.

RULE 4
BEST EVIDENCE RULE

SECTION 1. Original of an electronic document. – An electronic document shall be regarded as the equivalent of an original document under the Best Evidence Rule if it is a printout or output readable by sight or other means, shown to reflect the data accurately.

SEC. 2. Copies as equivalent of the originals. – When a document is in two or more copies executed at or about the same time with identical contents, or is a counterpart produced by the same impression as the original, or from the same matrix, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which is accurately reproduces the original, such copies or duplicates shall be regarded as the equivalent of the original.

Notwithstanding the foregoing, copies or duplicates shall not be admissible to the same extent as the original if:

(a) a genuine question is raised as to the authenticity of the original; or

(b) in the circumstances it would be unjust or inequitable to admit a copy in lieu of the original.

RULE 5
AUTHENTICATION OF ELECTRONIC DOCUMENTS

SECTION 1. Burden of proving authenticity. – The person seeking to introduce an electronic document in any legal proceeding has the burden of proving its authenticity in the manner provided in this Rule.

SEC. 2. Manner of authentication. – Before any private electronic document offered as authentic is received in evidence, its authenticity must be proved by any of the following means:

(a) by evidence that it had been digitally signed by the person purported to have signed the same;

(b) by evidence that other appropriate security procedures or devices as may be authorized by the Supreme Court or by law for authentication of electronic documents were applied to
the document; or

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

SEC. 3. Proof of electronically notarized document. - A document electronically notarized in accordance with the rules promulgated by the Supreme Court shall be considered as a public document and proved as a notarial document under the Rules of Court.

RULE 6

ELECTRONIC SIGNATURES

SECTION 1. Electronic signature. – An electronic signature or a digital signature authenticated in the manner prescribed hereunder is admissible in evidence as the functional equivalent of the signature of a person on a written document.

SEC. 2. Authentication of electronic signatures. – An electronic signature may be authenticate in any of the following manner:

(a) By evidence that a method or process was utilized to establish a digital signature and verify the same;
(b) By any other means provided by law; or
(c) By any other means satisfactory to the judge as establishing the genuineness of the electronic signature.

SEC. 3. Disputable presumptions relation to electronic signature. – Upon the authentication of an electronic signature, it shall be presumed that:

(a) The electronic signature is that of the person to whom it correlates;
(b) The electronic signature was affixed by that person with the intention of authenticating or approving the electronic document to which it is related or to indicate such person’s consent to the transaction embodied therein; and
(c) The methods or processes utilized to affix or verify the electronic signature operated without error or fault.

SEC. 4. Disputable presumptions relating to digital signatures. – Upon the authentication of a digital signature, it shall be presumed, in addition to those mentioned in the immediately preceding section, that:

(a) The information contained in a certificate is correct;
(b) The digital signature was created during the operational period of a certificate;
(c) The message associated with a digital signature has not been altered from the time it was signed; and
(d) A certificate had been issued by the certification authority indicated therein
RULE 7
EVIDENTIARY WEIGHT OF ELECTRONIC DOCUMENTS

SECTION 1. Factors for assessing evidentiary weight. - In assessing the evidentiary weight of an electronic document, the following factors may be considered:

(a) The reliability of the manner or method in which it was generated, stored or communicated, including but not limited to input and output procedures, controls, tests and checks for accuracy and reliability of the electronic data message or document, in the light of all the circumstances as well as any relevant agreement;

(b) The reliability of the manner in which its originator was identified;

(c) The integrity of the information and communication system in which it is recorded or stored, including but not limited to the hardware and computer programs or software used as well as programming errors;

(d) The familiarity of the witness or the person who made the entry with the communication and information system;

(e) The nature and quality of the information which went into the communication and information system upon which the electronic data message or electronic document was based; or

(f) Other factors which the court may consider as affecting the accuracy or integrity of the electronic document or electronic data message.

SEC. 2. Integrity of an information and communication system. – In any dispute involving the integrity of the information and communication system in which an electronic document or electronic data message is recorded or stored, the court may consider, among others, the following factors:

(a) Whether the information and communication system or other similar device was operated in a manner that did not affect the integrity of the electronic document, and there are no other reasonable grounds to doubt the integrity of the information and communication system;

(b) Whether the electronic document was recorded or stored by a party to the proceedings with interest adverse to that of the party using it; or

(c) Whether the electronic document was recorded or stored in the usual and ordinary course of business by a person who is not a party to the proceedings and who did not act under the control of the party using it.

RULE 8
BUSINESS RECORDS AS EXCEPTION TO THE HEARSAY RULE

SECTION 1. Inapplicability of the hearsay rule. – A memorandum, report, record or data compilation of acts, events, conditions, opinions, or diagnoses, made by electronic, optical or other similar means at or near the time of or from transmission or supply of information by a person with knowledge thereof, and kept in the regular course or conduct of a business activity, and such was the regular practice to make the memorandum, report, record, or data compilation by electronic, optical or similar means, all of which are shown by the testimony of the custodian or other qualified
witnesses, is excepted from the rule or hearsay evidence.

SEC. 2. *Overcoming the presumption.* – The presumption provided for in Section 1 of this Rule may be overcome by evidence of the untrustworthiness of the source of information or the method or circumstances of the preparation, transmission or storage thereof.

**RULE 9**

**METHOD OF PROOF**

**SECTION 1. Affidavit of evidence.** – All matters relating to the admissibility and evidentiary weight of an electronic document may be established by an affidavit stating facts of direct personal knowledge of the affiant or based on authentic records. The affidavit must affirmatively show the competence of the affiant to testify on the matters contained therein.

SEC. 2. *Cross-examination of deponent.* – The affiant shall be made to affirm the contents of the affidavit in open court and may be cross-examined as a matter of right by the adverse party.

**RULE 10**

**EXAMINATION OF WITNESSES**

**SECTION 1. Electronic testimony.** – After summarily hearing the parties pursuant to Rule 9 of these Rules, the court may authorize the presentation of testimonial evidence by electronic means. Before so authorizing, the court shall determine the necessity for such presentation and prescribe terms and conditions as may be necessary under the circumstance, including the protection of the rights of the parties and witnesses concerned.

SEC. 2. *Transcript of electronic testimony.* – When examination of a witness is done electronically, the entire proceedings, including the questions and answers, shall be transcribed by a stenographer, stenotypes or other recorder authorized for the purpose, who shall certify as correct the transcript done by him. The transcript should reflect the fact that the proceedings, either in whole or in part, had been electronically recorded.

SEC. 3. *Storage of electronic evidence.* – The electronic evidence and recording thereof as well as the stenographic notes shall form part of the record of the case. Such transcript and recording shall be deemed prima facie evidence of such proceedings.

**RULE 11**

**AUDIO, PHOTOGRAPHIC. VIDEO AND EPHEMERAL EVIDENCE**

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

SEC. 2. *Ephemeral electronic communication.* – Ephemeral electronic communications shall be proven by the testimony of a person who was a party to the same or has personal knowledge thereof. In the absence or unavailability of such witnesses, other competent evidence may be admitted.
A recording of the telephone conversation or ephemeral electronic communication shall be covered by the immediately preceding section.

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

**RULE 12**
**EFFECTIVITY**

**SECTION 1. Applicability to pending case.** – These Rules shall apply to cases pending after their effectivity.

SEC. 2. Effectivity. – These Rules shall take effect on the first day of August 2001 following their publication before the 20th day of July 2001 in two newspapers of general circulation in the Philippines.