

Review of the Last Class

- ❖ We have discussed an introductory points about evidence law
 - Evidence & and Evidence law
 - Evidence in civil and common law countries and
 - Themes of evidence law such as relevancy & admissibility of evidence
- ❖ Facts that need no proof
 - I. Admission
 - Admission is to concede to the fact alleged by an adversary
 - Admission can be formal or informal
 - A formal admission can further be classified as judicial and extra-judicial
 - Specific judicial admissions in civil cases is conclusive
 - Specific judicial admission without reservation in criminal cases is conclusive as a rule, but the court may reject if it deems that the confession is made due to other reasons other than guiltiness.

II. Presumptions

- ❖ The second type of facts on which the alleging parties are relieved of the burden of proof are presumptions.
 - There are presumptions that depend upon proof of basic facts;
 - There are also presumptions that do not depend on basic facts, which are initial allocation of burden of proof.
 - Ex: presumption of innocence
 - When parties must go half way proving basic facts before presumption of fact or law operates.
- ❖ There are two kinds of presumptions
 1. Presumptions of fact (permissive inferences)
 2. Presumptions of law (mandatory presumptions)

I. Presumption of Fact (Permissive Inferences)

- ❖ These are inferences the court deduces from facts that are proved as basic facts which lead to the presumed fact following the natural course of things (cause and effect relationships).
- ❖ Such kind of presumptions are always rebuttable; the other adversary can produce a contrary evidence .
 - The presumption will have the effect of shifting the burden proof to the other party.
- ❖ Permissive presumptions may be indicated by law or the court, with out such an indication, may presume facts the existence of which can be deduced from other basic facts
- ❖ It is to be noted that the mere fact that a court has taken a presumption and it does not mean it always reaches to a conclusion and final verdict on the basis of the presumed fact.

2. Presumption of Law

- ❖ These are presumptions which the law requires the court to make as a matter of obligation.
- ❖ Why the law obliges the court to take presumptions? Natural course of things which necessarily result in the fact meant to be presumed is the strongest of reasons for presumptions of law.
 - In other words, probabilistic/logical relationship between the basic fact and the presumed fact the main reason for legal presumptions.
- ❖ The presumption of the law can be dependent upon the proof of the basic fact; or it may be made to be presumed without the need for proof of the premise fact. (Ex: the presumption of innocence).
 - Presumptions without proof of basic fact are predominantly aimed at achieving the public policy besides its probabilistic aspect.

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❖ Presumptions of law are of two types:

- Rebuttable presumption
 - Once a certain fact is presumed, either upon the proof of the basic fact or not, the other party is allowed to produce evidentiary facts to the contrary of the presumed fact.
 - Rebuttable presumptions have the effect of the shifting the burden of proof the other party.
- Irrebuttable presumption
 - Irrebuttable presumption is conclusive against which a contrary evidence may not be adduced; hence it does not shift the burden of production to the other party.
 - If basic facts to the irrebuttable presumption are proved, the case may come to an end, given that the presumption is so decisive in disposal of the case.

III. Judicial Notice

- ❖ Judicial notice refers to circumstances in which the judicial system assumes a factual proposition to be true even without proof.
- ❖ It is a judicial discretion given that if the matter is notorious that it is known or can be by the trial judge, judicial notice has to be taken.
- ❖ The purpose, as other facts that do not need proof, is that it saves the time and resource of the court and prevents unnecessary delay of justice.
- ❖ Judicial notice can be exercised both in respect of laws and facts.
 - **Judicial notice of law:** courts are obliged to take notice of laws that are made accessible through publication.
 - **Judicial notice of facts:** it is a well founded principle of evidence law that if a certain fact is part of common knowledge; and it can independently be verified by the court, a presumption must be taken and proof of the same shall not be required from the alleging party.
- ❖ Further explanation each point is made as follows.

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❖ Judicial Notice of Adjudicative Facts

- 'adjudicative' to refer to facts that relevant and decisive for the disposition of the case.
- A fact which is part of common knowledge or a fact that can be ascertained from the undisputable sources are subject to judicial notice.
- Facts of common knowledge
 - These are facts that are known by an ordinary intelligent people without academic background. So the yardstick here is not the personal knowledge of the judge, rather the generality and commonality of the fact in question.
 - It is sufficient for a certain fact to be known in the locality where the court has jurisdiction; as the same time, what is commonly known in other areas may not be a subject of judicial notice to the courts of other localities; so the degree of notoriety is a decisive factor.
 - Ex: custom of the society where the court is situated

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- Verifiable Facts

- Facts that can be ascertained by referring to authoritative and indisputable sources, even if they not part of common knowledge, are verifiable facts on which a judicial notice can be taken.
- These facts are mostly from science, history, art etc... that are firmly established.
- Note that the mere presence of different ideas does not make the facts presented unauthoritative; that which is acceptable by overwhelming majority shall be referred and be noticed.
- But if there is a doubt on the part of the court as to the indisputability of the fact, the court shall not take notice thereof, hence shall require the production of evidence in support of it.

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❖ Judicial Notice of Law

- If one of the parties raise an issue of law which is known by the court, the other party is not required to adduce a legal proof; the court takes notice of the relevant law.
- Judicial notice in civil law countries is easy because of the tradition of legal codification where judges are supposed to know the legal principles and rules arranged and codified across various code of laws; whereas in common law system, it is judge made law where judges are bound to follow the decisions of higher courts on similar cases; but the problem lies where there are two different decisions on the same precedent case in which case the parties have to persuade and prove to the court which decision shall be chosen as the governing law. The judges shall also take the interest of the public in determining and choosing the applicable legislative facts.

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❖ Which laws are subject to judicial notice?

- As per the Federal Negarit Gazeta Establishment Proclamation No. 3/1005, all federal or **state** government organs, natural or juridical persons are bound to take judicial notice of laws of the country that are published in Federal Negarit *Gazeta*.
- There is an issue with the obligation imposed by the federal proclamation on state courts to take notice of federal laws published in Negarit *Gazeta*. Do you think this is in line with the constitutional division power and the principle of non intervention?
- What if the law which is the integral law of the land is not published in the official gazette such as international treaties ratified by Ethiopia, administrative directives and decisions of the cassation bench of the Federal Supreme Court? It is not necessary for the litigants to prove issues subject to those laws that are not published in Negarit Gazette if they are recognized and known by the entertaining court.; if not, the alleging party has to prove.

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- ❖ Besides law, courts may also take notice of facts that are part of the common knowledge; and that can be verified (verifiable facts).
 - Requiring the production of evidence for such facts would be an error in terms of saving the time and resources of the court and the parties; resulting in delay of justice.
- ❖ But judicial notice of facts is dependent upon the knowledge of the trial judge; thus even though the matter is of public knowledge. Hence, judicial notice of facts is discretionary.
- ❖ Is the presumption of fact or law by the judiciary rebuttable?
 - Since presumption is a type of ordinary evidence, unless stated otherwise by the relevant law, a contrary evidence can be adduced; thus the trial judge has to consider evidences produced against what has been recorded as judicial notice of law or fact.

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- **Facts Which May Be Proved
Other Than By Evidence**

Facts That Need No Proof

- ❖ As a general rule, every claim of the parties in the litigation must be supported by evidence. Exceptionally, however, there are three types of facts that do not necessarily need proof; these are:
 1. Admitted facts
 2. Presumptions & inferences
 3. Judicial notice
- ❖ Lets discuss each of these exceptions one by one

I. Admissions

- ❖ Admission is to concede to the fact asserted by the opponent.
- ❖ If a fact alleged by the one is admitted to be true by the other party, it doesn't have to be proved by the claiming party; because a party is not expected to make himself liable through admission; he is expected to know better about himself than anybody else.

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❖ Admission can either be formal or informal

- Formal admissions are those that are made before a body authorize to receive admission such as courts, investigating officer, commissioner delegated to conduct trial proceedings.
- Informal admissions refer to those admissions that are made in civil dealings and everyday relationships.
 - Ex: an admission made to a friend orally, in a letter or email.
- It is obvious that the ones that are given before the authorized organ have high evidentiary weight (probative value) than informal admissions.

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- ❖ Again, formal admissions may further be classified as judicial and extra-judicial (out of court) admissions.
 - Judicial admissions: are those admissions made before a court entertaining a case or a commissioner delegated for by a court having a jurisdiction on the case.
 - Regarding the conclusiveness of judicial admissions, they are conclusive for civil cases unless the admission is vague and doubtful in which case the court may require the other party to substantiate his claim with evidence.
 - Admission in civil cases can be made in pleadings, during hearing. Or through mutual agreement of the parties.
 - Evasive (general) denial of the a claim constitutes admission by necessary implication.

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❖ Judicial admissions in criminal cases

- As a rule, a plea of guilty before court is conclusive and the court shall give verdict forthwith.
- But if a court believe that the confession is made for other reasons such as to cover someone's crimes or for fame, he may require the prosecutor to continue producing evidences in accordance with the elements of the charge.
- The law clearly provides that if the confession is made with reservation, a plea of not guilty shall be entered.

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❖ Extra-judicial admissions

- These are out of court formal admissions made before an authority.
- In criminal cases, confessions made before a police officer is not conclusive, and in most cases it is subject to rejection by criminal benches, taking the brutality and illegal method police investigation.



END OF SESSION

