

Logical and Epistemological Considerations in Law*

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Evidence and Proof

The two following propositions are distinct:

- a) X murdered Y.
- b) It has been proved that X murdered Y.

How close the two will be to each other depends on the methods of proof. Proving, in law, is mediated by the *rules of evidence* that determine what testamentary or documentary evidence will be admitted as probative.

I will first attempt to show that the distinction is not peculiar to law and that for most of our purposes "X did Y" will be the same as "It has been proved that X did Y". Put in another way, the distinction is so pervasive that for most purposes it adds nothing to the way things get known.

i. *Magellan reached the Philippines in March of 1521.*

None of us in this generation was around to witness the event, but few, except incorrigible skeptics, will deny its truth. Most of us then are content that it has been proven to our satisfaction that Magellan reached in the Philippines in March of 1521. Because we accept the methods used in establishing this historical datum as reasonable and because we find no reason for doubting the assertion, that it has been

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proved that Magellan came at the time claimed means that Magellan came at the time claimed. Of course, the proviso is always operative: *provided that* there is nothing wrong with our data-gathering techniques and the evidence we have. This proviso however is operative in all historical assertions that we do not find it necessary to explicitate it. It seems moreover to be the way human knowledge works.

ii. *Juanito came to my office this morning.*

If I personally saw and dealt with Juanito, there would seem to be little reason to preface the proposition with "It has been proved that...", but the fact is that such a preface would still be justified. Russell points out that we have actually made an inference from the "data" (translated into our language: evidence) available. Some of the *presumptions* would be: (1) That my senses were not defective; (2) That I correctly associated the person I saw with the name I remembered; (3) That Juanito has no perfect look-alike with whom I could have mistaken Juanito. Thus considered, which frequently occurs in history, and do not seem to be that different. A final example will make things even clearer.

iii. *Brutus murdered Caesar.*

Prescinding from the consideration that "murder" has to be legally defined so that the presence of its elements can be verified, this proposition will demand that the eye-witness accounts are accurate, that the witnesses are trustworthy, etc. — in summary, that the evidence is sound and acceptable. I am therefore trying to make the point that statements at law such as (iii) are not considerably different from statements in other domains, such as (i) and (ii). In short, the bulk of statements we make (except, perhaps, the so-called "protocol statements," reports of immediate experience) all admit of the preface: "it has been proved that...". This being so, we do not find it necessary to point out that all that we say *depends* on the evidence we have.

The evidence acceptable at law is that which meets the stringent requirements of the *law on evidence*. The rules on the admissibility of evidence are fashioned to allow the judicial process to get at the *truth* as well as to uphold certain identified *public policies*. Take the following example: Just after a bank heist, a man caught running out of the building is brought to the police station. After some questions by the police, he confesses that his complicity. It is very well possible that he was in fact an accomplice, so that the proposition "X did Y" would be evidenced by his confession. The *exclusionary rules* however do not allow the courts to take cognizance of his testimony of his confession

was not made with the assistance of counsel of choice. Intervening then is a public policy consideration built into the law on the admissibility of evidence — the policy that confessions should be made by a person fully cognizant of his rights and guarantees. I wish to call attention to the fact that the policy-decision embodied in this exclusionary rule is itself a step in the direction of getting at the truth. With good reason, it is feared that over-zealous law enforcement officers may exercise less than friendly means of persuasion to make a suspect say what would lead to the “solution” of a crime. That the exclusionary rule has as one of its results that true statements are also rejected from consideration is the price our society is willing to pay to enforce its policy-decision.

At this point it is possible to summarize our position thus far. What is proved in court (or before any similar forum or within legal processes) is what the laws allow to be proved and in the manner the law permits. The rules that determine what evidence may be introduced, what weight is to be given the evidence and the manner it is introduced are themselves embodiments of accrued convictions as to how best to reach the truth as well as policies society seeks to uphold.

I used the term “truth” above. I am bound to give an account of it in this present context. To say that “It is true that X did Y” is to say that “X did Y.” Tarski then points out that the proposition “Brutus killed Caesar” is true if Brutus did kill Caesar. It seems then that in this context, we land four-square on a *correspondence theory* of truth. The only difficulty, though, is that in many cases, what statements are purported to correspond to will be some past event: that X did Y, that X sold Z to A, that X negotiated B to C, that X wrote F to G. We have developed some procedures for determining the veracity of historical or past assertions. We rely on memory and have developed certain tests to determine whether memory is reliable or not. In this regard, it will not be irrelevant to point out that the *Statute of Frauds* as it applies to transactions in real property, for example, takes account precisely of the vulnerability of recollection, hence the requirement for a written, public document. The forensic sciences have sufficiently developed to enable us to say when a pistol was last fired. We count on the mass of testimony available: we would be very careful about reaching a conclusion on the basis of only one witnesses’ account, while we are more easily persuaded when several witnesses tell a consistent story. As is evident, ignoring the solemn prohibition against a lawyer’s tampering with the evidence, be it through coaching a witness to narrate what in fact never took place or the blatant destruction of evidence, frustrates the very ends of evidence-taking. In the end, public

distrust of the legal profession and frustration over the judicial process boomerang against the lawyer himself! There is a direct relation between the canons of judicial ethics and the ends of investigation and litigation.

Let us take as our example the *hearsay rule*. I will use some leads from Allen and Kuhns to explain my point. (*Allen and Kuhns: An Analytical Approach to Evidence*, 298, 299). It will be well however to remember that a full discussion of the rule belongs to an *Evidence* class.

Non-hearsay:

Maria sees Jimmy
run away from the store. —————> Maria declares: "Jimmy ran away
from the store."



Event: Jimmy ran away from the store.

Hearsay:

Maria sees Jimmy run
away from the store. —————> Maria declares: "Jimmy ran
away from the store."



Juan believes he understood Maria
correctly when she said she saw
Jimmy run away from the store.



Juan declares: "Maria said that she
saw Jimmy run away from the
store." —————> EVENT (?)

There is no denying the fact that the result of the rather circuitous path of hearsay testimony is true (there are in fact celebrated exceptions to the hearsay rule), but the rule against the acceptance of the hearsay testimony illustrated above embodies society's decision that it would not like to take the risks involved in going by such a route (e.g., vague recollections, inaccurately transmitted information, misperceptions, etc.).

Some operative rules rest on assumptions about human nature that bear critical examination. Under certain limited circumstances, a witness may be impeached by eliciting from her, at cross-examination, for example, an admission of former conviction of dishonesty, perjury

or crimes of moral turpitude. The assumption is that a witness who has proved untrustworthy in the past to warrant the conviction meted against her cannot be relied on in the present cast at which she testifies. Is this a good assumption? Logically, there is no necessity that falsehood in the past should lead to falsehood in the present. But rationality is more than the rules of logic, and we seem to be persuaded that there is some consistency about human behavior that makes us wary of those who have proved untrustworthy in the past. The many safeguards against the misuse of the rule make it clear though that the law itself has reservations about its use, for there are so many circumstances that may adequately explain prevarication in the past without justifying a presumption that the witness is once more lying.

This is not the only instance that the evaluation of evidence involves some assumption about human nature and behavior.

Moreover, the story of the witnesses for the defense as to how Bernardino Macambra was wounded, namely, that Sabasido accidentally hit him while he was pursuing the appellant after the latter had wounded him twice is *unbelievable*. No man with two bolo wounds through his body, one through the abdominal region and the other through the thorax, could possibly run in pursuit of another. Those wounds were necessarily so fatal as to cause instantaneous death. (*People v. Balotol*, 84 Phil. 289).

The Court found it unbelievable that a man mortally wounded should run in pursuit of another. The point I am illustrating is that in the appreciation of evidence, beliefs as to what constitute *normal* human conduct come to bear in the evaluation. While there is no doubt that many of these beliefs are well-founded, they do stand in need of critical examination, for it is a truism that in more than just rare cases, "truth is stranger than fiction," and the very problem is that it is not always easy to say that what we have at bar is one of the instances so rare as to be more easily consigned to fiction, and yet true. We tend to be careless about the use of the modifier "normal." Underlying our notion of "normalcy" is the uncritical belief that there is some identifiable "human nature" with fixed properties, qualities and propensities against which allegations are checked. The trouble though with this assumption is that what is established as "normal" or "natural" is not the result of some privileged insight into human nature as it is a *statistical pronouncement* about frequencies. In other words, to say that behavior *z* is normal is to say that in the normal-distribution curve, it will be the behavior of the population found at the center and around

the center of the curve. Witness how the Court, in the following case, not only calls on its supposed familiarity with human nature but on sociological observations as well.

The attitude of utter indifference shown by Nunez in connection with the matter of the alleged kidnapping of his daughter is so *unnatural, so contrary to the well-known strength and closeness of the family ties of the Filipinos* that we hardly believe the accuracy of this story of the kidnapping, and that appellant voluntarily left her home for the City of Cavite to join the Japanese. (*People v. Nunez*, 85 Phil. 448).

Is this reliance on supposed familiarity with sociological facts and with "human nature" a short-coming of law? Not quite, for we do know some things about the way we, Filipinos, live, as well as about being human. At the same time, however, there must be sensitivity and openness to the possibility that the person whose actuations seem to be at variance with sociological patterns or conceptions of human nature does not in fact fall within the range of the statistical average. Needless to say, an attitude of uncritical confidence in one's perceptions of nature and of normal behavior are incompatible with judicial diligence in the search of truth. We do recognize legal procedure in regard to the presentation, admission and evaluation of evidence as a *rational procedure*:

- a) we can give an account of why we accept one piece of evidence and reject the other;
- b) we have reasons for giving weight to one testimony and discounting another;
- c) there are some policies we seek to uphold which are enshrined in our rules on evidence, and
- d) we allow criticism of our processes, for this is what the appeal process is all about.

It will serve no purpose to insist that the current state of the law is such as to rule out all error. On the whole, however, the restrictions such as are found in the exclusionary rules serve to protect the party who stands to suffer from mistakes of the legal process. There is, for one thing, the requirement that for conviction to issue in a criminal case, the guilt of the accused must be established *beyond reasonable doubt*.

This brings our discussion to "standards of proof." There are generally three standards: (a) preponderance of evidence; (b) clear and convincing proof; (c) proof beyond reasonable doubt.

The first standard is that used in most civil actions. *McCormick on Evidence* says of it that it is "proof which leads the jury [the trier of fact] to find that the existence of the contested fact is more probable than its nonexistence." (Cleary: 1984). Since it is suggested that the proof depends on the "probability" the trier of fact finds, it would seem to rest on a subjective evaluation about which we can say hardly anything. Using Popper's formula for "verisimilitude," I propose that we be less cabalistic about "preponderance," and conceive it thus:

$$P(h) = E(a) - E(n)$$

which simply means that the preponderance (P) of any legal hypothesis (h) is to the difference between affirming evidence (Ea) and negating evidence (En). I would be the first to reject a purely quantitative treatment of preponderance, but I likewise reject as unnecessary an inquiry into the recesses of the mind of the trier of fact to determine when and under what circumstances there is preponderance. Obviously 0 preponderance is no preponderance at all, and the acceptance of evidence as affirming as well as negating will depend on a number of qualitative and probative considerations, the general principles of which I have already discussed above.

Where charges of fraud and undue influence are leveled and in certain actions related to wills as well as in suits for the specific performance of oral contracts, it "clear and convincing" evidence that has been required, at least under American jurisprudence. Jurisprudence yields a variety of adjectives by which the courts have sought to render more intelligible this standard: "clear, convincing and satisfactory; clear, cogent and convincing; clear, unequivocal, satisfactory and convincing." It is suggested that the trier of fact bear in mind that to meet this standard, he must be persuaded that the truth of the contention is "highly probable." One will observe that this attempt at imposing a more stringent requirement is in proportion to the gravity of the matters litigated by such a standard. If the plaintiff then should advance a hypothesis, A, and the defendant, her own, B, "clear and convincing" evidence would, for me, meet the following requirements:

- a) a hypothesis incorporates and explains all the facts admitted into evidence;
- b) it is able to explain also the facts that its rival hypothesis explains;
- c) it is able to answer the questions unanswered by its rival hypothesis.

It does not seek to answer all questions that may be reasonably raised, for then it would be tantamount to "proof beyond reasonable doubt". *What it does though is explain all that is to be explained and all that a rival hypothesis cannot explain.* It is my hope that putting the matter this way will take the standard farther away from the vagaries of subjective feelings of security!

We now come to the most demanding of standards, that required in order to convict: proof beyond reasonable doubt. Justice Moreno has done us service by compiling some of the more explicit formulations of our Supreme Court in his *Philippine Law Dictionary*.

It simply means such proof, to the satisfaction of the court, keeping in mind the presumption of innocence, as precludes every reasonable hypothesis except that which it is given to support. It is not sufficient for the proof to establish a probability, even though strong, that the fact charged is more likely to be true than the contrary. It must establish the truth of the fact to a reasonable and moral certainty — a certainty that convinces and satisfies the reason and the conscience of those who are to act upon it. (*U.S. v. Reyes*, 3 Phil. 6).

What the citation points to is the relation between the standard and the presumption of the innocence of the accused. The "undefinable" element appears to be "reasonable" for it does recur in the definition or in the description itself. To say that doubt is reasonable when an alternate hypothesis can be entertained is not to be very helpful, for the question can very well be asked as to which hypotheses can be "reasonably" entertained. In the widely-publicized "Aquino-Galman double murder trial", the conclusion of the Fact-Finding Commission through its General Counsel, now Chief Justice Andres Narvasa, was given great consideration that the trajectory of the bullet that ended Senator Aquino's life could be reasonably explained only by a shot fired from behind him while he was on the way down the service stairs — effectively identifying the murderer as one of the soldiers who had escorted him. So many hypotheses can, of course, be advanced, and a cartoonist suggested that Galman fired at Aquino from a parachute. This is the kind of hypothesis that would be unreasonable. But our problem returns: Why unreasonable? One answer will be that there is absolutely no evidence to support such a hypothesis.

Since the courts have used the terms of traditional philosophy, it will be good to review traditional definitions. *Doubt* was often defined as a state of mind resulting from the apparently equal weight of

arguments for and against a proposition, resulting in a suspension of judgment. *Certitude* for its part was characterized by a firm assent based on grounds known to be true. "Moral certitude" dealt with the normal course of events, and it seems to be this kind of certitude that has been associated with the standard of proof under consideration. A child is morally certain, for example, that his mother will keep her promise. Errant mothers are of course a possibility, but they normally are not. This is what the Supreme Court reiterated in *People v. Peralta* (G.R. No.-25831).

That degree of proof which produces in the mind of an unprejudiced person moral certainty or moral conviction that the accused did commit the offense charged.

It does not mean such degree of proof as excluding the possibility of error or mistake. It is sufficient if it produces absolute or moral certainty required by law. Moral certainty springs from such proof as will satisfy the judgment and conscience of the trial judge, as a reasonable man, that the defendant is guilty of the crime charged.

Of "moral certainty," Sanguinetti says:

Moral certitude: corresponds to the free conduct of man that is not accessible to direct experience and is known on the basis of certain generalizations that regard human custom...It is less firm than the preceding forms of certitude (metaphysical, physical and mathematical) because it admits of exceptions, but is at the same time one of the foundations of human co-existence. (*Sanguinetti*: 1983, translation from the Italian mine)

Proof beyond reasonable doubt must therefore deal with the following:

- a) our expectations about how people act;
- b) our generalizations based on familiarity, our conceptions of the regular, the customary, the usual;
- c) the rejection of "ad hoc" hypotheses, i.e., explanations conjured to meet a particular objection but oblivious of other factors and unsupported by evidence;
- d) the presumption of innocence in favor the of the accused.

Negatively, "proof beyond reasonable doubt" requires that where some explanation is advanced that competes with that of the prosecution, in favor of the accused, and is supported by evidence (that is, more than "ad hoc") that is not effectively rebutted, conviction must not follow. It

should be remembered that since society has maintained as its policy a presumption of innocence in favor of the accused, the strength of the prosecution's hypothesis is not to be gauged by the weakness of the accused's defense!

The Concept of Mind and Law

Art. 1305 of the *Civil Code* defines a contract.

A contract is a *meeting of minds* between two persons whereby one binds himself, with respect to the other, to give something or to render some service.

The term "intention of the parties" frequently occurs in contract law considerations. In discussing the development of English tort law, Fleming observes that a remarkable contribution of the nineteenth century was the incorporation of the doctrine "no liability without fault" in the determination of tort culpability with the consequent erosion of the prevailing notion of "strict liability" (liability even without fault). Fleming then opines:

This image of loss adjudication under the aegis of the law of torts was therefore critically balanced on two central assumptions, first an identification in large measure of legal responsibility with moral blameworthiness...

The *Revised Penal Code* of the Philippines commences with a definition of felonies. It provides:

Art. 3: Acts and omissions punishable by law are felonies.

Felonies are committed not only by means of deceit but also by means of fault.

There is *deceit* when the act is performed with deliberate intent; and there is *fault* when the wrongful acts result from imprudence, negligence, lack of foresight or lack of skill.

Commentators remark that essential to a felony is a "voluntary act or omission" (1 Aquino: *The Revised Penal Code* 33). A decision penned by Mr. Justice Jackson contains important passages for our purposes that bear citation.

Crime, as a compound concept, generally constituted only from concurrence of an evil-meaning mind with an evil-doing hand, was congenial to an intense individualism and took deep and early root in American soil...The unanimity with which courts have adhered to the central thought that wrongdoing must be conscious

to be criminal is emphasized by the variety, disparity and confusion of their definitions of the requisite but elusive mental element. (*Morrisette v. United States*, 342 U.S. 246, 72 S.Ct. 240 (1952), cited in *Robinson, Fundamentals of Criminal Law*: 1988).

Justice Aquino, in his commentary on the Revised Penal Code admits: "Nothing is so difficult to discover than intent as a mental act." Of course, I do not intend to "de-criminalize" thereby what law students are taught to be "*mala prohibita*" — criminal, because prohibited, lack of criminal intent notwithstanding, but the awkwardness of such provisions of special laws supported only by some overriding social or political concern indicates that criminal intent is still the "*conditio sine qua non*" for crime, in the primary sense.

It then becomes obvious that a discussion on the concept of "mind" is indispensable towards an intelligent grasp of the law. In contemporary times, Wittgenstein, in his *Philosophical Investigations* (and in his *Blue and Brown Books*, all published posthumously) and Ryle, with *The Concept of Mind* have significantly contributed towards a philosophical clarification of what we mean by "mind." Both are convinced that the search for occult processes taking place in some unseen, empirically unreachable component of human personality is misleading and mislead. The belief that the "mind" is something parallel to the body but, unlike the latter, intangible, is a vestige of Cartesian dualism and ultimately a misunderstanding of the whole concept of "mind." Both find in the quality of performances or acts that which is called "mind." I shall explain.

- A. 1. A parrot squawks: "Good morning."
 2. Peter says: "Good morning."
- B. 1. Karpov moves his "bishop" diagonally.
 2. A child mimics his move and moves the bishop diagonally.

What entitles us to say that the difference in both sets of cases is a difference of intelligence, a difference of being "mindful"? What allows us to deny "mind" of the parrot or affirm it of Peter? On what basis do we say that Karpov's move is intelligent and that the child's move is mindless? If "mind" is what we commonly take it to be — a substance parallel to the body, yet immaterial, and therefore empirically unverifiable — then it seems we have made some very bold claims that we truly cannot substantiate. What must go though is this archaic, quasi-mythical notion of mind, not the rather useful concept of "mind" itself! To both Ryle and Wittgenstein, to say that Peter has a "mind" is

to be able to say that he is able to perform in some manner certain activities the parrot would be unable to perform. Peter, for one thing, would be able to withhold greeting when encountering persons he takes no pleasure in greeting. He would also be able to elaborate, to say something more to persons he is congenial with. He is capable of greeting in varied ways. All this, the parrot would not be able to do. Similarly, in 2 of B, the child would not be able to do some of the things Karpov would be able to do: criticize stupid moves, applaud good ones, teach chess to others, execute the directions of a chess manual, etc. For this reason, we say Karpov plays "mindfully" while the child moves the pieces by chance. "Mind" then, by this account, is the ability to fulfill certain hypothetical requirements such as the demands we made on Peter and on Karpov. Obviously, we are duty-bound to spell out the requirements we would like to see fulfilled (or least capable of being fulfilled) so that we feel it proper to speak of "mind." In this light, too, the whole debate that used to rage over whether animals had minds or not can be very simply settled. If by "mind" we mean the abilities and performances even of four year olds, then it should be obvious that some animals do have minds, that they are intelligent. On the other hand, if we become more stringent about our requirements for "mind," requiring, for example, the ability to arrive at absolutely novel plans and to solve complex logical and mathematical problems, then practically all the animals will be excluded — but unfortunately also some human beings! There is no need to bemoan our inability to "check the mind" — for there is nothing inside to check. Whatever is to be checked is susceptible of being checked, and "mind" becomes a matter of logical definition.

Obviously, much of jurisprudence still labors under the spell of the Cartesian shadow, treating "intent" and "awareness" and "knowledge" as the proceedings of some occult substance with the consequent difficulty of determining whether these were present. It now becomes the task of law to lay down the requirements that must be met that allow for a finding of "intent" or "agreement". In the realm of contract law, some very important strides have been made. The debate in this area usually goes under the rubric of "the subjective versus the objective theories of assent." It is said that the subjectivists looked to the actual or subjective intentions of the parties (the mental affirmations). The objectivists, on the other hand, looked to the external or objective appearance of the parties' intentions as manifested by their actions. (*1 Farnsworth on Contracts* 168 et seq.) It will be noted that even the objectivist position is stated in terms of the "mental act"

theory. What is actually being proposed by the theory though is that rather than embark on the futile task of finding out what transpired in the mental recesses of the parties, it is far more profitable to find out whether certain pre-determined requirements have been met. Examples provided by Farnsworth as well as by other noted authors in contract law are enlightening. Whether one intends to be legally bound or not is to be determined, among other ways, by investigating whether one has signed a writing or not. Similarly, even where a party may have signed a writing, if he states explicitly with the approval of the other party that he does not intend to be bound by it, the courts will not hold him bound. In this case the law has decided that "intention to be bound" will be affirmed where: (i) a party has signed a writing and (ii) he has not made any declaration about not being bound by it.

The task is certainly challenging, but the re-orientation holds more promise than the unpromising challenge of having to investigate "occult proceedings." Our courts, have in fact, moved in the direction of laying down the "requirements" that must be met for a finding of "intent." Words, coupled with subsequent behavior of a determined kind, are most frequently employed. Let us make use of one decision of our Supreme Court to illustrate the point. In *People v. Samonte*, the issue was whether Samonte's conviction for murder should stand or should be modified into a conviction for homicide. The Court called attention to the two requirements for a finding of murder:

(1) "the employment of means, method or manner of execution which would insure the offender's safety from any defensive or retaliatory act on the part of the offended party, which means that no opportunity is given the latter to defend himself or to retaliate."

Note that the requirement points to a certain mode of behavior: executing the act in such a way as to block retaliation from or defense by the victim.

(2) "that such means, method or manner of execution was deliberately or consciously chosen."

The Court seems to have lapsed here into the language of Cartesian dualism. Forced by the exigencies of the judicial process, however, it identifies what must be present for a finding of "deliberate or conscious choice." The Court itself said:

As in the case at bar, such deliberate and conscious choice was held non-existent where the attack was the product of an impulse of the moment. [...] The records of the case contain no evidence

showing that the accused had, prior to the killing, resolved to commit the same, nor is there proof that the shooting of the victim was the result of meditation, calculation or resolution. He did not know the deceased before the incident. (64 SCRA 319)

Actually the court succeeds in some measure in spelling out what behavior will be called "intentional", "deliberate", "calculated". It will take some time before judge, lawyers and litigants alike cast off the Cartesian spell, but as the jurisprudence develops, we will see the movement towards an "objective theory," a theory of mind, or intention, that sees this *in* (not "through") the actions or omissions themselves.

Legal Reasoning

The neatness of the Aristotelian syllogism does not seem to do justice to the reasoning process involved in the law, particularly in adjudication. I find more helpful for our purposes the scheme, now well-known, proposed by Stephen Toulmin. There are four principal terms we must be familiar with: (a) Claims; (b) Grounds; (c) Warrant; (d) Backing. (*Toulmin, et. al.*: 1984)

Broadly, a *claim* is an assertion put forward publicly for general acceptance. Making a claim is presenting a well-defined position which another or others are supposed to consider. Note that in a civil case, the plaintiff advances a *claim* that rests on a cause of action. Should the court agree with the plaintiff's position, the claim, supported by a recital of facts and the arguments of law in its behalf becomes a "verdict" or a "judgment", expressed in a decision or a resolution of the court. To argue a claim then is to do whatever is needed to convert the bare demand of one party into a binding resolution or decision, and the process may include producing documentary evidence as well as oral testimony.

By *grounds*, we refer to the detailed assemblage of facts, observations data and previous conclusions as well as other specific information a "claimant" relies on as the immediate support of his specific claim.

Ground: -----> *Prosecutor's claim:*

The police caught Juanito and his companions loading carabaos into a truck that had been parked at the middle of the field. Juanito could not produce documents of title over the carabaos.

Juanito and company have committed cattle rustling.

Judges as well as lawyers will be eager to find out how much common ground is shared: how much both sides accept as true. These will go under the title of “uncontroverted facts” in a decision. There are cases where the facts will hardly be in dispute. Put in another way, the common ground will be rather considerable. What may remain in dispute though will be the law or laws applicable.

That stage of trial then at which the plaintiff in a civil case, or the State, in a criminal case, presents its evidence is logically the stage of laying the ground. Should the defense find that the evidence presented, when conceded or accepted, do not really support a claim, they file what is known as a *Demurrer to Evidence* — which is merely a formalized manner of exclaiming: “Even granting all that you have introduced into evidence, there is no case!”. The *Ballentine's Law Dictionary* gives us the definition of a *Demurrer to Evidence* (which, for simplicity, has been abolished in U.S. jurisdictions as a matter of terminology, the fact being that a demurrer is now treated as a motion for a directed verdict, asking the court to direct the jury to return a verdict in favor of the defendant).

demurrer to evidence. A method of taking a case from the jury, being an objection made by the defendant to the plaintiff's evidence as a whole, which concedes the truth of all that the evidence tends to establish in favor of the plaintiff, but that the facts thus conceded do not establish in law a right to recover.

Where “G” from henceforth shall stand for Ground, “C” for Claim, “W” for Warranty and “B” for Backing, please note the following scheme:

F1, F2...Fn-1, Fn.

all of which constitute G1. —————→ C1.

F1, F2....Fn-1, Fn

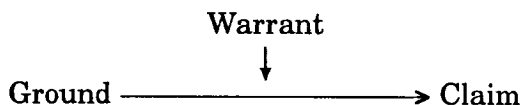
which were used to establish C1

that is now accepted in turn serve as G2 —————→ C2.

This is a process advocates will often use to advance implausible claims. They will attack the matter by breaking the process up into steps, establish claims singly and use claims that are established as grounds for further claims. The alert judge however will want to examine the grounds that give rise to claims and how much the claims, even if accepted, actually support further claims.

A *warrant* is a statement, or a set of statements indicating how the facts on which parties agree are connected to the claim or conclusion

being offered. The applicable "rule of law" serves as the warrant in legal arguments. A warrant then is what allows me to make use of the Grounds in support of the Claim. The structure then so far is:



In an example:

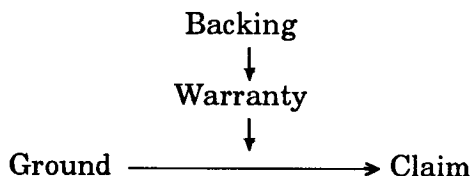
Ground: Juana and Julita did not reduce the sale of the piece of land owned by Juana to Julita.

Claim: The courts will be unwilling to enforce the contract.

Warrant: The Statute of Frauds requires that all transactions having to do with real property be reduced to writing in a public document...

How well a lawyer makes out his case depends not only on the factual evidence he can introduce (the grounds) but also on the appropriate law he can argue to be applicable to his case (the warrant). The choice of evidence to introduce, moreover, must be guided by the warrant. It so often happens that lawyers labor at presenting evidence, both oral and written, that have no place in the light of the rule of law invoked. The claim, to be sustained in the verdict, must indeed be warranted.

By *backing* is meant the set of generalizations making explicit the body of experience relied on to establish the trustworthiness of the ways of arguing applied in the particular case. What the "backing" responds to is the demand for certainty that the warrant can be relied on to establish the connection between the grounds and the claim. There is need then for backing because warrants are not self-validating. Now, this statement may pose a problem for those in the study of law, for is not a statute that has withstood constitutional tests, not sufficient backing for itself? I propose then to consider *backing* the assurance that the warrant does warrant passing from the grounds to the claims. [Note that different backings in support of the applicability of the warrant may be introduced].



Backing: In the *Barcelona Traction Case*, decided in 1970 by the International Court of Justice, Belgium was denied standing to represent its nationals-shareholders of a Canadian corporation.

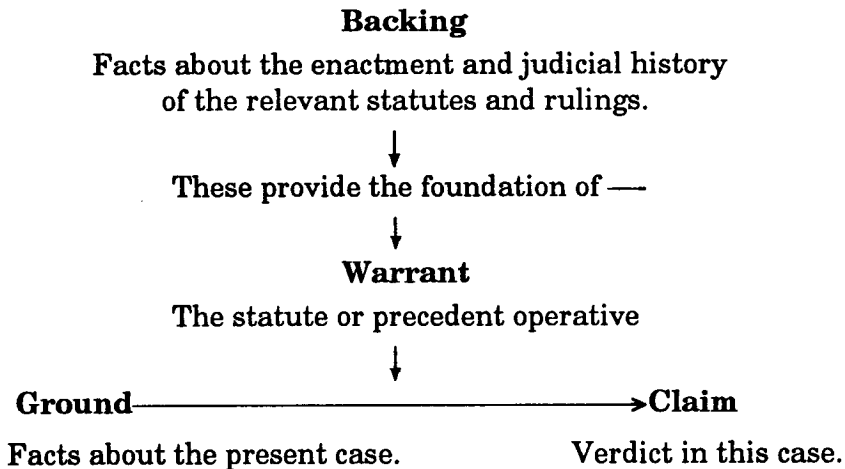
Warranty: Under general principles of corporate law the nationality of a corporation is with the state of its incorporation, and under the doctrine of espousal, only the state of an aggrieved party may espouse his claims internationally.

Ground: Although most of the shareholders of Company F are Filipinos, it is of Panamanian registry. It is the company that was defrauded by syndicate Z.

Claim: The Republic of the Philippines will not prosper in its bid to bring the claims of Company F for adjudication before the I.C.J.

The backing "backs-up" the warranty, i.e., it shows the validity or applicability of the warranty. This can be clearly done in more ways than be merely by citing precedent.

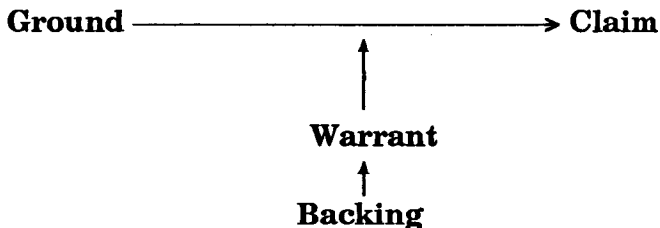
Toulmin offers a model of the usual workings of Claim, Ground, Warrant and Backing in cases at law.



To state a *cause of action*, for example, is to show the appropriate facts which, in the light of the warrant, grounded in or evidenced by the backing, entitle the plaintiff to the relief he seeks. To decide a case is to be settled about the facts which are then examined in the light of the relevant laws and principles, the applicability of which is supported and demonstrated by precedent or research into legislative history and

intent and either supporting a claim advanced by one of the parties or denying or modifying it.

Observe how the same logical process is at work in what is usually called "circumstantial evidence."



Ground: P's relatives and friends testified that he never left his house all day, and that therefore never met with Q prior to the fatal shooting.

Claim: Q's claim to self-defense must be rejected.

Warrant: For self-defense to be admissible as defense, it must be shown that there was unlawful aggression.

Backing: In *People v. Bunsol*, 63 SCRA 248, the Court rejected accused's claim of self-defense since it noted that the victim was shot in the back of the leg, indicating that the victim was shot from behind, rendering improbable the claim that the victim was the aggressor.

While the precedent may not seem to be directly related it does indicate how the courts will treat "aggression."