

THE RULE OF EVIDENCE/THE LAW OF EVIDENCE

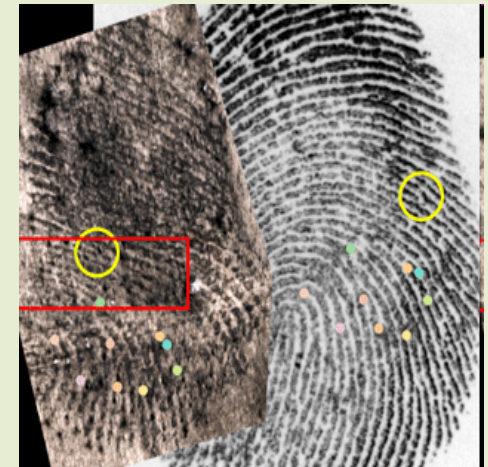


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The Rule of Evidence/ The Law of Evidence

In Cambodia, there is no law on the rule of evidence or any codification on the rule of evidence. There are some laws separately stated on the rule of evidence.

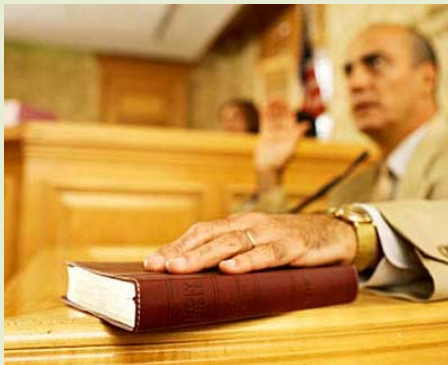
Based on article 158 of constitution, we will use all the old laws in the absence of new laws provided they are not contrary to the constitution and in conformity of the national interest.

WHAT IS EVIDENCE?

The Rule of Evidence/ The Law of Evidence

Evidence is any matter of fact that a party to a lawsuit offers to prove or disprove an issue in the case. Evidence can be classified as:

- Testimonial Evidence;
- Documentary Evidence;
- Real/ Physical Evidence.



Evidence can be direct evidence or indirect evidence.

- **Direct Evidence.**

when the testimony directly relates to the fact in issue. a witness testifies as to something he or she observed such as “I saw that man shoot the gun”.

- **Indirect/circumstance Evidence.**

when the testimony relates to some other fact rather than the fact in issue (surrounding circumstances from which the principal fact may be inferred). E.g. “I heard a sound of a gun being fired and then saw that man run past me”

THE ADMISSIBILITY OF THE EVIDENCE

The admissibility of the evidences

The conditions to determine whether to be allowed evidence to be observed by the judge making factual conclusions in a trial. The evidences are subject to the discretionary power of the judge.



There are two systems of the admissibility of the evidence.

- Admissibility of evidence determined by law;
- Free admissibility of evidence.

Cambodia adopts both of the two above for the admissibility of evidence.

For admissibility of the evidence, it must:

- Exist and material (not spiritual);
- Relevance or probative value;
- Legal value & authentication.

* **Note:** Evidence must be obtained in good faith and respect all the good value of human.

- **Exist and material (not spiritual)**

The evidence exists for itself without the creation of the human; it is only collected by person. Evidence can be intangible but not spiritual.

For example, someone died because of witch, something intangible just like witch, spell, magic power, superstition cannot be the evidence in the court of law.

- **Relevance or probative value**

Evidence must be relevant to the issue at hand. Relevancy must be shown at two levels before evidence is admitted: the evidence must be LOGICALLY relevant and LEGALLY relevant.

The Rule of Evidence/ The Law of Evidence

Evidence is logically relevant if it relates to the issues being argued in the trial and tends to prove the contentions of the party offering the evidence.

Probative value is a tendency to make the existence of any material fact more or less probable.

- **Legal & authentication**

The evidence must be collected, searched, maintained in accordance with procedure of the existing law.

In criminal case, the evidence must be obtained as stated in the law and legal procedure.

Authentication: some evidentiary items are self-authenticating and need no additional authentication before being admitted.

THE METHOD OF EVIDENCE

Method of evidence

Evidence can be:

- Written documents;
- Witness testimony;
- Presumption;
- Confession;
- Oath/swear;
- Assessment or examination by expert.

Written documents

- Civil code 1920 from article 939 – 989.
- Decree-law no. 38 of 1988 – contract that has value more than 5,000 Riels must be made in writing.
- Writing is the validity of the contract, not the admissibility of the evidence. The land law 2001 suggests that the contract must be in form of authentication formula.
- The other law suggest in the form of general writing. Thus, meaning that not all the documents are made in authentication formula, it can be by any general forms.

The Rule of Evidence/ The Law of Evidence

- There are two type of documents:
 - Authenticated documents;
 - Private documents;
 - Other documents such as business records, correspondence note, letter, digital documents, etc.

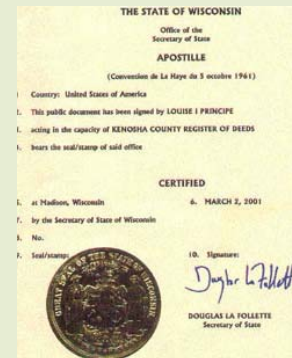


■ Authenticated documents

(Article 944-968 of civil code 1920)

The conditions for the authenticate documents are made by public authority who is in competence both for the function and territory.

For example, birth certificate must be made by civil status official as stated by civil status law: chief of commune or chief of district (Sangkat), not by notary, and in the place of the parent's resident, not in any other place.



This includes certified documents and notary documents. They can be birth certificate, marriage certificate, or title deed on the real estate.

The authenticated documents are stronger weight than the private documents.

The judge will accept the authenticate documents until there is a claim on the falsity/forgery of the public documents stated by article 49 of UNTAC law 1992.

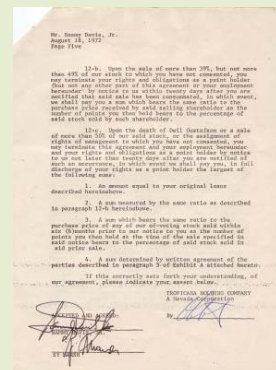
If found that there is no falsity of the documents, the plaintiff will be penalized by article 965 of civil code of 1920 which refer to 514 of criminal code.

■ Private documents (Article 969-987 of civil code 1920)

Private document is a document made by private party and there is no acknowledgement of the public authority (Article. 969 of old civil code), there is only signature of the party to the document.

The private documents can be admissible evidence in the two cases:

- The party is literate;
- The party is illiterate.



■ Other documents

(Article 963 of civil code 1920, Article 24 of UNTAC Law 1992)

Nowadays both plaintiff and defendant submit all as many as possible the evidences to the court of law for the court consideration.

They can be correspondence note, letter, copies of the documents, business records, minute of the police, facsimile, email, invoice, photo, voice recording and other documents, etc.

- **Business Records**
(Article 983 of civil code 1920)
- **Minute/record of police**
(Article 39, Law on Criminal Procedure 08 March 1993 and article 24 of UNTAC law)
- **Other correspondence, letter, copies, digital documents, etc.**
(Article 936, 939 of civil code 1920, article 24 of UNTAC Law)

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COMBINED CHARITABLE CAMPAIGN

ACCOUNTING REPORT FORM

Contributor Name _____
Department Name _____ Department Code _____
Address _____ City _____ Zip _____
Telephone (____) _____

Please complete all information requested below. Thank You!

CATEGORY	AMOUNT COLLECTED
CASH COLLECTED	\$ _____
CHECKS COLLECTED	\$ _____
CASH/CHECK TOTAL:	\$ _____

TOTAL NUMBER OF PAYROLL CARROLL FORMS INCLUDED: _____

ONE FREE DONATIONS ARE NOT PAYROLL DEDUCTIONS.
THEY MUST BE CASH OR CHECK DONATIONS.
DO NOT DETACH ANY PORTION OF THE PAYROLL GIVING FORM.

Please deliver this report form with ALL Payroll Giving Forms, their payroll deductions, special designations, and one-time gifts and checks to the Lead Department.

Attention: **DIANA WILLIAMS**
Board of Public Works
City Hall - Group 2000 - Room 361
Los Angeles, CA 90012
Phone: (213) 875-2256
Fax: (213) 875-2270

Please turn in all forms **NO LATER THAN MONDAY, NOVEMBER 17, 2008**

THE NIGERIA POLICE FORCE
STATION DUTY EXTRACT

INVESTIGATION REPORT

Today being the 21st day of July 2008 at about 17:00hrs, One Mercedes Truck with registration number: KJA 528 LA was reported to have collided with a Nissan SUV bearing registration number LAS 207 KR carrying mostly foreigner at New Igbo-Ora Express way.

The Divisional Police Officer assigned has been on duty to the scene of the accident.

ACTION:
The bodies of the victims comprising the Truck Driver, Mr. Kenneth Momo, company identified by the conductor, along with a family of 3 Europeans identified by officers from identification cards carried in the Harrison family, namely Mr. James Harrison, Mrs. Jonathan Harrison, Michelle Harrison, Stewart Harrison and Eric Harrison were taken to the General Hospital Lagos for further attention.

419.bittenus.com



Fax

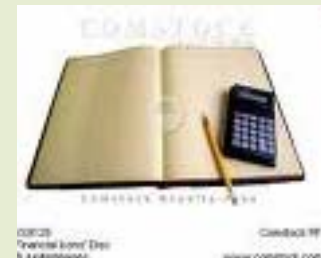
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■ Business Records

(Article 983 of civil code 1920)

The business records have the same effect as the private documents if it is maintained properly in conformity to law required.

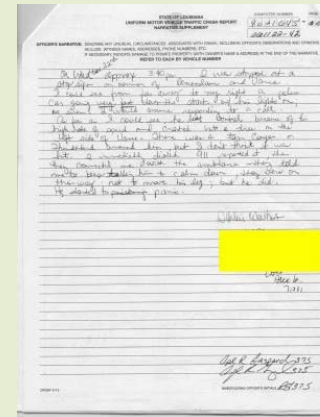
In the old civil code and commercial code the business records can be used as evidence against the businessman but not against the non-businessman.



■ Minute/record of police/police report

(Article 39, Law on Criminal Procedure 08 March 1993 and article 24 of UNTAC law)

The report of the police can be evidence in the court of law.



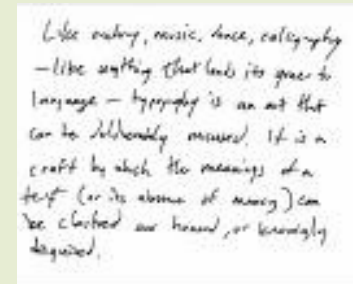
- **Other correspondence, letter, copies**
(Article 940 of civil code 1920, article 24 of UNTAC Law)
- Correspondence is a document that is sent to the other for information. The weight of this kind of evidence can vary dependant on the case.

It can have the same effect as the private document in case there is a signature of the party.

The correspondence can be used against the author of letter only. It is secondary evidence and it needs more other evidence to support it.

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- Other letter such as simple letter, and daily book... are all secondary evidence and they can be against the author of those. The judge will decide based on other evidences to support it.



- The copies involving two cases.

The original document exist, the copies will not be valid provided that there is an accuracy of the copies to the original.

In case the original is lost, destroyed, not obtainable, damaged by force major or whatever cause, the copies or any other simple documents that created by a person intended other purpose rather than evidence reflecting and paralleling to issue in question can be regarded as evidence.

- For example, the debtor sent notice/sms to the creditor that “Regarding the money I owe you I will pay back to you in five day”. It reflects the fact of agreement of the parties on the money borrowing/loan contract.

■ The digital documents and voice recording

All the digital documents can be evidence such as documents imaging, email, sms, voice recording provided it must be produced in written form when it is wished to present in the court of law and these are subject to the further investigation of the judge whether it is parallel and be logical to the fact such as author or date of making it.



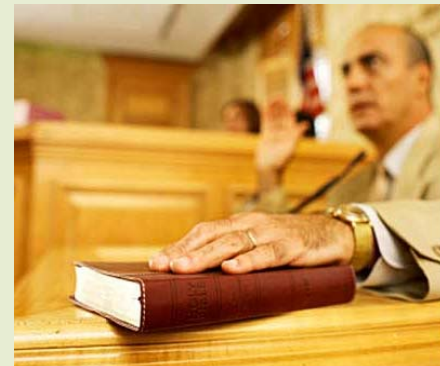
Digital evidence/electronic evidence (digital documents/documents imaging – microfilm, scanning, facsimile, photocopy) can be evidence provided that it has establishes the comprehensive foundation:

- reliability of the computer equipment
- the manner in which basic data was initially entered
- the measures of taken to insure the accuracy of the data as entered
- the method of storing the data and the precautions taken to prevent its loss
- the reliability of the computer programs used to process the data
- the measures taken to verify the accuracy of the program.
- circumstance of the fact, date, author of the documents...

■ **Witness**

There are provisions in:

- UNTAC law
- Old civil code 1920
- Old commercial code
- Criminal procedure law 1993
- Decree-law no. 38 1988
- Law on the aggravated circumstances of criminal offence 2002.



- To be allowed to testify, the witness generally must take an oath, must be personally present at the trial, and must be subjected to cross-examination.
- The oath or affirmation serves as a ground for perjury (Article 56 of UNTAC law) if the witness does not testify truthfully.
- There are three kinds of witness:
 - Plaintiff witness;
 - Defendant witness;
 - Witness by the discretionary power of the judge.

- Witness can be:
 - Lay witness – must not express the opinion on the matter
 - Expert witness (technical questions such as physician) may state an opinion.
- Competency of the witness:
 - Must not mentally ill or incompetent
 - Minor can be witness in civil case but not in criminal case.
- Grounds for incompetence such as mental incapacity, immaturity, religious beliefs and criminal convictions (the witness was in jail).

■ Privileges

(Civil code 12 December 2007, article 992 of civil code 1920)

Some evidence must be excluded because the information it presents is privileged. Privileged information is that which is considered so private that it is inappropriate to allow it to be generally released.

Examples of privileged information include private communications between spouses, doctor-patient communications (including psychiatrists), attorney-client communications, trade secrets, states secrets and the identity of informant.

■ Hearsay

(Article 24 of UNTAC Law 1992)

Testimony concerning a statement made out of court by a person not now before the court – usually are excluded on the grounds that the person who made the statement is not available for cross-examination or for evaluation by the judge.

Only when the circumstances of the statement afford a high probability of its truth may be admitted.

■ **Presumption**

(Judgment of Supreme Court 03 June 1997)

A logical conclusion made as to the existence or nonexistence of a fact that must be drawn from other evidence that is admitted and proven to be true.

- There are two Presumptions:
 - Presumption by law (the child was born in the time of legal marriage period is the child of that spouse);
 - Presumption by judge (the judge makes the presumption).

The judge will make the presumption based on the weight of the evidences.

■ **Confession**

- Article 998 to 1002 of old civil code
 - Article 24 – Evidence of UNTAC Law
 - Article 125 of Law on Criminal Procedure 1993
-
- Confession can be made in the open court or out of court. The confession in the court is stronger than the confession out of court. The confession of the accused will not be basis for the prosecution if it does not parallel to the fact, be logical to the fact or corroborated by other evidence.
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- A confession obtained under duress, of whatever form, shall be considered null and void.

■ Oath/Swear

(Article 1003 to 1009 of old civil code 1920)

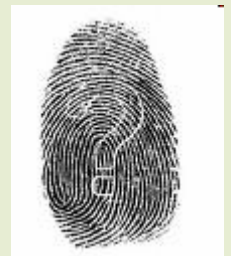
It is the last method of the evidence. This case happens when the judge found no evidence to prove the case.

If one party dares not to swear, he will lose the case.



- **Assessment or examination by expert**
 - Article 1008 - 1016 of civil code 1920
 - Article 88 of Law on Criminal Procedure 1993

Examination can be made by judge (got to the place directly) or by expert. The Assessment or examination can be made on the request of the party to lawsuit or by the judge himself when he deems necessary to do so.

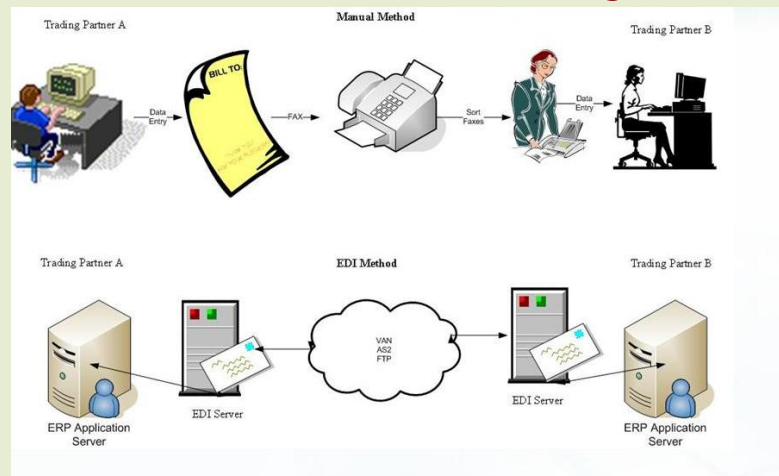


EVIDENCE & EDI

What is EDI?

Electronic Data Interchange is the exchange of information from one company to another using a computer network, such as the Internet.

In short, EDI is an electronic communication of business transactions, such as orders, confirmations and invoices, accessible mechanism to buy, sell, and trade information between organizations.



Is agreement made via EDI valid contract before law?

Agreement made through EDI is a valid agreement like the other contract provided it has all the elements of a valid contract. According to article 3 of Decree-Law no.38 1988, a contract is valid provided that it:

- arises out of a real and free agreement - offer and acceptance
- is made by parties who have capacity to enter into a contract – capacity to contract
- has a subject matter that is certain, possible to perform, lawful, and consistent with public order and good customs.

As for the English law, there are two more essentials element for the formation of a valid contract:

- there must be consideration;
- there must be the intention to create legal relations.

For instance, Mr. A, age 24, needs to buy auto insurance for his vehicle and he emails to insurance company XYZ to issue him a quotation on his vehicle. Insurance company issue quotation based on his vehicle's condition and email it to him seeking the approval (Offer). Upon the receipt, he emails back the approval (acceptance).

From this a valid contract is legally formed mainly due to article 3 of Decree-Law no. 38:

- There is an offer and acceptance met;
- The parties have the legal capacity to enter into contract;
- The subject-matter of the contract, vehicle, is legal and performable;

- Further, both parties have the intention to create a legal relationship whereby the consideration is Mr. A pays the premium to insurance company and insurance company provides cover on his vehicle.
- Based on article 4 of Decree-law no. 38, the contract worth than 5,000 Riels (US\$ 1.25) must be made in writing. The question is whether this contract is made in writing?
- This contract, at a quick look, is not made in physical written form it is made via the electronic/digital document. However, it is actually made in written form but on a writeable and readable electronic system.
- Note that the signature is not a required element of the contract; it is a sign of willful agreement and identity mark of the parties.

Can EDI be admissible evidence?

- As a rule of evidence discussed above, we realize that EDI falls under the Private Document or other documents which depends on the form of communication of EDI. If it is a contract between private party, it is regarded as private documents. However, if it is just a simple information sending, it would be a correspondence note or simple letter. It varies dependant on the case itself.
- Most remarkably, it would in no way be an authenticated document which is made by the public official.
- To sum up, EDI can play a crucial role to be admissible evidence in the court of law in this Hi-tech 21st century.

Here again, to obtain the admissibility of the evidence, EDI should provide the following criteria:

- Exist and material (not spiritual).
- Relevance or probative value.
- Legal & authentication.

The EDI has to have a basis foundation to prove to the court as follows:

- reliability of the computer equipment
- the manner in which basic data was initially entered
- the measures of taken to insure the accuracy of the data as entered
- the method of storing the data and the precautions to prevent its loss
- the reliability of the computer programs used to process the data
- the measures taken to verify the accuracy of the program.
- circumstance of the fact, date, author of the documents...

Thank you for your kind attention!

