

THE ADMISSIBILITY OF HEARSAY EVIDENCE WITH REFERENCE TO THE MALAYSIAN EVIDENCE ACT 1950

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Abstract

There is no uniform international definition over the word evidence. Every country legal system has their understanding over the term evidence. The Malaysian Evidence Act 1950 [Act 56] which is the prime source on law of evidence also does not provides clear definition over the term evidence besides stating or providing the composition or types of evidence. Generally, the term evidence can be defined or understood as anything that a person see, experience, read, or are told that causes such person to believe that something is true or has really happened. When evidence brought forward to the court of law in order to support or deny allegation, evidence can includes documentary evidence, oral evidence, physical evidence, and others. The submission of evidence is very important to build up a case in any judicial proceeding whether in criminal or civil proceeding. Submission of strong evidence is also important to support issues in any proceedings which is does not judicial in nature like in an inquiry or a tribunal. Hearsay evidence is one of pieces of evidence. When we talk about strong evidence, hardly it includes hearsay evidence. Hearsay evidence is an out of court statement which being offered in court in order to prove the truth of the matter asserted therein. Hearsay evidence can fall into several types and it is not strong. It is the fundamental principle of law and justice that every allegation must be supported with strong and convincing evidence. Having a good and reliable piece of evidence to support any allegation is important in order to bring justice and fairness to every parties in a dispute. The status of hearsay evidence has been known widely in the judicial community all over the world including in Malaysia as a bad piece of evidence. Due to its bad status, generally such piece of evidence cannot be used in any court proceedings unless it fall under certain exceptions and fulfill certain strict requirements. As such, it is the object of this paper to examine further on the definition of hearsay evidence and the admissibility of such evidence in court proceedings with reference to selected jurisdictions and with reference to the position taken by the Malaysian court and the Malaysian Evidence Act 1950 [Act 56].

Keywords: Hearsay, evidence, admissibility

1. INTRODUCTION

Strong evidence is needed to support any particular case in the court of law. Regardless whether it is a civil case or a criminal case, any issue or issues should be substantiated with a strong evidence. The requirement to have strong evidence to support any particular case not only arise due to ensure justice and fairness in any court proceeding, but also because of common sense and logic. (Haswira Nor Mohamad Hashim and Anida Mahmood, 2009, pp: 98 – 121). It would be unjust, unfair, and not logic for any particular case whether in civil or criminal to been substantiated with a weak or bad evidence. For ages, judges in the court proceeding would require all parties to the proceeding to submit strong piece of evidence for them to build up their cases and for judges to give favorable judgment for them at the end of the proceeding. Without having strong evidence, it would be difficult to uphold justice and fairness. Without having in place strong evidence support any particular case, it would also difficult to uphold rule of law and it would also difficult to administer the existing legal system. (A.K. Sarkar and S.K. Awasthi, 1996, pp: 160 – 161). The important of

justice and fairness has become the most important point in Islamic legal system. There have been many verses in the Holy Qur'an as well as the saying of the Holy Prophet Muhammad SAW which emphasis on the important of justice and fairness in daily aspect of life including when settling any dispute between parties. For example Allah SWT said in the Holy Qur'an "Indeed, Allah commands you to render trusts to whom they are due and when you judge between people to judge with justice. Excellent is that which Allah instructs you. Indeed, Allah is ever Hearing and Seeing" (Surah An – Nisa: 58). The Holy Prophet Muhammad SAW himself has carried out many actions in line with the principle of justice and value. There have been many cases which been reported where the Holy Prophet Muhammad SAW decided cases based on merit with justice and equity, irrespective of people color, creed, race or gender. The Holy Prophet Muhammad SAW also has instructed others and those close to him to uphold justice, fairness and to prevent violent and oppression. From a report by Abu Daud "Ali RA said: The Prophet SAW had sent me to Yemen as a judge. I said to the Prophet SAW, O Prophet, why do you send me while I'm still young and ignorant on matters of judiciary? The Prophet SAW said verily Allah will grant His guidance on your heart and will strengthen your tongue. If two men came arguing before you, do not give judgment until you have heard the argument of the second man as you have heard the argument of the first, this is more fitting for you so that the matter would be clear to you when your give your judgment". Ali RA said, since then I have never had any doubts while giving judgment". (Mahmud Saedon A. Othman, 2000, pp. 1 – 14 and Afzalur Rahman, 1995, pp: 347 – 356). In order to uphold justice and fairness especially in legal proceeding, it is very important to have strong evidence. Without strong evidence, it would hamper the administration of justice.

The requirement to have strong evidence is also in line with the principle of best evidence rule. Best evidence rule is the rule that said evidence should be given and admitted by the court of law provided it is the best the nature of the case will allow and, conversely, that it will be excluded, whatever its other merits, if it is shown not to be the best evidence which been offer to the court of law. In a simple term, evidence which been tender to the court of law should be or must be best evidence which can be used to substantiate any particular case. A simple example which could be given here is between primary evidence and secondary evidence. The best evidence rule dictate, primary evidence should be given first in order to support a case unless such primary evidence is not available and reasons or justifications been given to the court over its inaccessibility. In the United States of America, the best evidence rule is consider as part of Article X of the Federal Rules of Evidence (Rules 1001-1008). (Miller, Colin, February 16, 2015). The rule specifies the guidelines under which one of the parties of a court case may request that it be allowed to submit into evidence a copy of the contents of a document, recording or photograph at a trial when the "original document is not available". If the party is able to provide an acceptable reason for the absence of the original then "secondary evidence" or copies of the content in the original document can be admitted as evidence.

Under common law, the best evidence rule has its origins in the 18TH century from case of *Omychund v Barker* (1745) 1 Atk, 21, 49; 26 ER 15, 33. Wherein Lord Harwicke stated in that case that no evidence was admissible unless it was "the best that the nature of the case will allow". In the past, it would be impossible for anyone to submit evidence and to have a strong case if it been proven that such evidence which been tendered is not the best evidence. In other word, the absence of best evidence would affect the admissibility of such evidence thus would affect the entire presented case. However, such strict approach has now gone. According to Blackstone's Criminal Practice the best evidence rule in England and Wales as used in earlier centuries "is now all but defunct". (Hooper; Ormerod; Murphy; et al. (eds.), 2008, p. 2285). A reference to this regard can be made to the common law case of *Garton v Hunter* [1969] 1 All ER 451, [1969] 2 QB 37 where Lord Denning MR stated that the old rule which was mentioned in the case of *Omychund v Barker* (1745) 1 Atk, 21, 49; 26 ER 15, 33 has gone long ago. Nowadays we cannot confine ourselves to the best evidence. We admit all relevant evidence. The goodness or badness of it goes only to weight, and not to admissibility. In Malaysia, *How Chien v PP* [1936] 1 JLR 114 was one of the earliest cases in which the best evidence rule was invoked. In that case Mills J in quashing the appellant's conviction for smuggling forty packets of cigarettes, for want of the evidence of the smuggled objects themselves stated "I rule that ordinarily prosecuting officers should produce before the Court such real evidence as circumstances reasonably permit; if it is not reasonably practicable to produce the material thing itself they should produce a portion of it, or a sample of it or a photograph, or a sketch or some other evidence which may supply the Court with the best evidence reasonably obtained under the circumstances." To support his decision he cited the ruling of an English Judge in the case of *The Princess Julia* [1936] 155 1 Times Rpt. 263 that "it is clear to everybody that if justice is to be administered, the greatest precautions must be taken to see that the best evidence available is presented to the Court". The best evidence rule was again applied in the case of *Chow Siew Poh v PP* [1967] 2 MLJ 228 and *PP v Lim Kuan Hock* [1967] 2 MLJ 114. In Malaysia, under three reported Malaysian cases mentioned above, the court did not seem to have addressed its mind to diminishing influence of the best evidence rule. Only George Seah SCJ in his cogent dissenting judgment in

the case of *PP v Lim Kuan Hock* [1967] 2 MLJ 114 had much merit, it seems that except in the case of documentary evidence, in other cases there is much to say for relaxing the application of the best evidence rule. It should at best be a counsel of prudence, merely inviting the Judge's adverse comment for not adhering to it. (Prof. Dr. Hj. Mohd Akram Shair Mohd Akram, 1987). However reference should also be made to the case of *Gnanasegaran a/l Pararajasingam v PP* [1997] 3 MLJ 1, where the best evidence rule was considered in the light of computer technology. The issue concern in this particular case was pertaining to the admissibility of a document produced by a computer. For such document to be admissible, Section 90A (1) of the Evidence Act 1950 [Act 56] would have to be fulfilled and one of the conditions need to be fulfill is that the printout must have been produced by the computer in the course of its ordinary use. By virtues of Section 90A (2) of the Evidence Act 1950 [Act 56], a certificate signed by the person responsible for the management and operation of the computer may be tendered. However in this particular case, the certificate was not tendered, instead an officer was being called in to give evidence about the issue raised in this particular case. The court still accepted his evidence as proof that the printout was produced by the computer in the course of its ordinary use. The judge in that particular case stated that Section 90A of Evidence Act 1950 [Act 56] was enacted to bring the "best evidence rule" up to date with the realities of the electronic age. Section 62 Explanation 3 clearly states "A document produced by a computer is primary evidence" The effect of Section 90A (1) of the Evidence Act 1950 [Act 56] in the present scenario is that it is no longer necessary to call the actual teller or bank clerk who keyed in the data to come to Court provided he did so in the course of the ordinary use of the computer. As such, the oral testimony given by the bank officer in this particular case may not have been the best evidence, but subject to the weight of such evidence, it was nevertheless admissible by the court. A reference can also be made to Section 136 (1) of the Evidence Act 1950 [Act 56] where the court only concern on the relevancy of the evidence tendered, not whether the evidence is the best evidence or not. That particular section states "When either party proposes to give evidence of any fact, the court may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the court shall admit the evidence if it thinks that the fact, if proved, would be relevant, and not otherwise". In the context of hearsay evidence however, evidence other than the best is subject to specific rules provided under the Evidence Act 1950 [Act 56]. (Mariette Peters, 2013, pp: 16 – 20).

2. DEFINITION OF HEARSAY EVIDENCE AND STATUS OF ITS ADMISSIBILITY

Before going further to determine the admissibility of hearsay evidence it is very important for us to know the definition of hearsay evidence. Hearsay evidence in a legal forum, is been define as a testimony from a witness under oath who is reciting an out of court statement, content of which is being offered in order to prove the truth of the matter asserted. Hearsay evidence fall into many types like oral hearsay, written or documentary hearsay or implied hearsay or hearsay through gesture. (Prof. Dr. Hj. Mohd Akram Shair Mohd Akram, 1990, Mariette Peters, 2013, pp: 152 – 154, and Hamid Ibrahim and Maimoonah Hamid, 1993, p. 9). In many jurisdiction, such hearsay evidence is inadmissible except when exception to hearsay rule been applies. For example, in order to prove Ali was in one particular location, the lawyer asks a witness, what did Ahmad tell you about Ali being in town? Since the witness's answer will rely on an out of court statement that Ahmad had made to the witness, if Ahmad is unavailable for cross – examination process, the answers given by such witness is consider as hearsay. A justification for the objection is that the person who made the statement is not in court and thus is cut off from cross – examination process. However, if the lawyer asking the same question is not trying to prove the truth of the assertion about Ali being in town but the fact that Ahmad said the specific words, it may be acceptable as an evidence.

Further understanding whether or not a statement can amount to hearsay can done by reference to one local court case of *Subramaniam v PP* [1956] MLJ 220. This case is an appeal by special leave from a judgment of the Supreme Court of the Federation of Malaya (Mathew C.J., Wilson and Abbott JJ.) dismissing an appeal against a conviction in the High Court of Johore Bahru (Storr J., sitting with two assessors) whereby the appellant was found guilty of being in possession on the 29th April, 1955, of 20 rounds of ammunition contrary to Regulation 4(1) (b) of the Emergency Regulations, 1951, and sentenced to death. It was common ground that on the 29th April, 1955, at a place in the Rengam District in the State of Johore, the appellant was found in a wounded condition by certain members of the security forces; that when he was searched there was found around his waist a leather belt with 3 pouches containing 20 live rounds of ammunition; no weapon of any description was found upon him or in the immediate vicinity. The defence put forward on behalf of the appellant was that he had been captured by terrorists, that at material times he was acting under duress, and that at the time of his capture by the security forces he had formed the intention to surrender with which intention he had come to the place where he was found. The appellant described his capture thus:- " ... when I was just walking down a small hill, where there was lalang at the sides, a Chinese

came out and asked me to halt; I did not know then that he was a communist; he came from behind me. I asked him why are you stopping me? I want to return home. He spoke in Malay and I replied in Malay. He then asked me: Do you know who I am? and so saying he drew out a revolver from behind him; to all appearance he was a civilian; he pointed that pistol at me and said 'I am a communist' and it was then I knew that he was one. He asked me to produce my Identity Card; when he looked at my Identity Card he spoke something in his own language and 2 others came out; the 3 then surrounded me; of the other 2 one had a pistol and the other had a rifle about a yard long; they told me I could not return home; two of them had knives like sickles". He then described how he was forced to accompany the terrorists, one of whom walked in front and two behind, who told him he was being taken to their leader. At this stage an intervention by the trial Judge is recorded thus:-- "Court: I tell Murugason hearsay evidence is not admissible and all the conversation with bandits is not admissible unless they are called". On appeal, Mr LMD de Silva said "In ruling out peremptorily the evidence of conversation between the terrorists and the appellant the trial Judge was in error. Evidence of a statement made to a witness by a person who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement, but the fact that it was made. The fact that the statement was made, quite apart from its truth, is frequently relevant in considering the mental state and conduct thereafter of the witness or of some other person in whose presence the statement was made. In the case before their Lordships statements could have been made to the appellant by the terrorists, which, whether true or not, if they had been believed by the appellant, might reasonably have induced in him an apprehension of instant death if he failed to conform to their wishes".

Many jurisdictions that generally disallow hearsay evidence in courts permit the more widespread use of hearsay in non – judicial hearings. A reference can be made to the statement made by the country Human Rights Commission of Malaysia (Suhakam) commissioner Dato' Mah Weng Kwai, who chaired the commission's inquiry into the disappearances of Raymond Koh and Amri Che Mat stated that unlike a criminal or court case, a public inquiry held by Suhakam is allowed to accept hearsay evidence. He further added that under Section 14 of the Human Rights Commission of Malaysia Act 1999 [Act 597], the inquiry panel is not limited or constrained by the Evidence Act 1950 [Act 56]. (Annabelle Lee and Fion Yap, April, 4 2019). He stated "Hearsay becomes admissible ... we were mindful of this because a lot of things said was hearsay evidence. The next important thing is how we evaluate evidence. How much weight do we attach to such evidence? That's where the evaluation took place". (The Star Online, April 5, 2019). Section 14 of the Human Rights Commission of Malaysia Act 1999 [Act 597] provides for powers relating to inquiries. It states "(1) The Commission shall, for the purposes of an inquiry under this Act, have the power (a) to procure and receive all such evidence, written or oral, and to examine all such persons as witnesses, as the Commission thinks necessary or desirable to procure or examine; (b) to require that the evidence, whether written or oral, of any witness be given on oath or affirmation, such oath or affirmation being that which could be required of the witness if he were giving evidence in a court of law, and to administer or cause to be administered by an officer authorised in that behalf by the Commission an oath or affirmation to every such witness; (c) to summon any person residing in Malaysia to attend any meeting of the Commission to give evidence or produce any document or other thing in his possession, and to examine him as a witness or require him to produce any document or other thing in his possession; (d) to admit notwithstanding any of the provisions of the Evidence Act 1950 [Act 56], any evidence, whether written or oral, which may be inadmissible in civil or criminal proceedings; and (e) to admit or exclude the public from such inquiry or any part thereof.

Regarding the admissibility of hearsay evidence itself, the approach taken by court varies according to countries. In United States of America for instance, the Sixth Amendment to the United States Constitution clearly provides that "In all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him". Meaning, strong evidence must be tender in order support cases. The Sixth Amendment to the United States Constitution sets forth rights related to criminal prosecutions. It was ratified in 1791 as part of the United States Bill of Rights. The Supreme Court has applied most of the protections of this amendment to the states through the Due Process Clause of the Fourteenth Amendment. There are however several exceptions to the rule against hearsay in the United States of America. The country Federal Rule of Evidence 803 lists down the following exceptions namely, statement against interest, present sense impressions and excited utterances, then existing mental, emotional, or physical condition' medical diagnosis or treatment, recorded recollection, records of regularly conducted activity, public records and reports, as well as absence of entry in records, records of vital statistics, absence of public record or entry, records of religious organizations, marriage, baptismal, and similar certificates, and family and property records, statements in documents affecting an interest in property, statements in ancient documents the authenticity of which can be established, market reports, commercial publications, learned treatises, reputation

concerning personal or family history, boundaries, or general history, or as to character, and judgment of previous conviction, and as to personal, family or general history, or boundaries. (Legal information institute, 2019).

In England and Wales, hearsay evidence is generally admissible in civil proceedings. A reference can be made to their Civil Evidence Act 1995. Section 1 of the Civil Evidence Act 1995 highlights the admissibility of hearsay evidence. It's clearly states that (1) In civil proceedings evidence shall not be excluded on the ground that it is hearsay. (2) In this Act (a) "hearsay" means a statement made otherwise than by a person while giving oral evidence in the proceedings which is tendered as evidence of the matters stated; and (b) references to hearsay include hearsay of whatever degree.(3) Nothing in this Act affects the admissibility of evidence admissible apart from this section. Hearsay evidence may be admissible in criminal proceedings if it falls within a statutory or a preserved common law exception, all of the parties to the proceedings agree, or the court is satisfied that it is in the interests of justice that the evidence is admissible. Section 114 of the Criminal Justice Act 2003 highlights admissibility of hearsay evidence. It's clearly states (1)In criminal proceedings a statement not made in oral evidence in the proceedings is admissible as evidence of any matter stated if, but only if (a) any provision of this Chapter or any other statutory provision makes it admissible, (b) any rule of law preserved by section 118 makes it admissible, (c) all parties to the proceedings agree to it being admissible, or (d) the court is satisfied that it is in the interests of justice for it to be admissible. (2) In deciding whether a statement not made in oral evidence should be admitted under subsection (1) (d), the court must have regard to the following factors (and to any others it considers relevant) (a) how much probative value the statement has (assuming it to be true) in relation to a matter in issue in the proceedings, or how valuable it is for the understanding of other evidence in the case; (b) what other evidence has been, or can be, given on the matter or evidence mentioned in paragraph (a); (c) how important the matter or evidence mentioned in paragraph (a) is in the context of the case as a whole; (d) the circumstances in which the statement was made; (e) how reliable the maker of the statement appears to be; (f) how reliable the evidence of the making of the statement appears to be; (g) whether oral evidence of the matter stated can be given and, if not, why it cannot; (h) the amount of difficulty involved in challenging the statement; (i) the extent to which that difficulty would be likely to prejudice the party facing it. (3) Nothing in this Chapter affects the exclusion of evidence of a statement on grounds other than the fact that it is a statement not made in oral evidence in the proceedings. Section 116 of the Criminal Justice Act 2003 also provides that, where a witness is unavailable, hearsay is admissible where a) the relevant person is dead; b) the relevant person is unfit to be a witness because of his bodily or mental condition; c) the relevant person is outside the UK and it is not reasonably practicable to secure his attendance; d) the relevant person cannot be found; e) through fear, the relevant person does not give oral evidence in the proceedings and the court gives leave for the statement to be given in evidence.

In Malaysia, matters relating the submission of evidence has been heavily regulated under the Evidence Act 1950 [Act 56]. Though the Malaysian Evidence Act 1950 [Act 56] is not comprehensive enough to embodied every aspect relating to evidence in the country, the Malaysian Evidence Act 1950 [Act 56] is the main source of the law of evidence in the country. The Malaysian Evidence Act 1950 [Act 56] is modeled and based on the Indian Evidence Act of 1872 [Act No. 1 of 1872] drafted by Sir James Stephen. The Malaysian Evidence Act 1950 is modeled on the Indian Evidence Act which is a codified form of English Law. Per Thomson CJ (as he then was) in *Looi Wooi Saik v PP* [1962] MLJ 337, 339 (CA) stated "In this country the question is governed by the terms of the Evidence Ordinance which is the same as the Indian Evidence Act...It is generally accepted that the Indian Act was drafted by Sir James Stephen in 1872 with the intention of stating in a codified form of English law relating to evidence as it stood at that date". The Indian Evidence Act 1872 [Act No. 1 of 1872] which also is based on the English law of evidence in the late 19TH century with certain modifications, which were made to suit the local circumstances in India. As result of several amendments, the local Malaysian Evidence Act 1950 [Act 56] has certain provisions which are not found in the Indian Evidence Act 1872 [Act No. 1 of 1872].

Generally, the Malaysian Evidence Act 1950 [Act 56] embodied many aspect over the definition as well as types of evidence as well as the method of authenticity of such evidence. Important to know that, the law of evidence applies in both civil and criminal cases and regulates the proving facts in judicial proceedings. (See the case of *Re Loh Kah Kheng* (1990) 2 MLJ 126). Section 2 of the Evidence Act 1950 clearly provides on the extent of applicability of the Act. The wording of the Section 2 of the Evidence Act 1950 clearly states: "This Act shall apply to all judicial proceedings in or before any court, but not to affidavits presented to any court or officer nor to proceedings before an arbitrator". (Augustine Paul, 2000, pp. 1 – 13). Though the Evidence Act 1950 [Act 56] consist varieties of evidence which can be submitted and accepted to the court of law, it is important to note that it does not include the submission of hearsay evidence. Several court cases in

the court has regarded as bad evidence because the probative value of such evidence may be very slight only, the admission of such evidence may open the door of fraud and concoctions, the admission will allow weaker evidence to replace the stronger evidence, there always a danger of exaggeration, misrepresentation, and suppression of truth in using such evidence, there is an obvious danger of inaccuracy mistake by reason of repetition in accepting hearsay evidence, and hearsay evidence is also regarded as vulnerable particular because the increased danger of impair perception, bad memory, ambiguity, and insincerity. (Habibah Omar, Siva Barathi Marimuthu and Mazlina Mahali, 2018, p. 28). The submission of hearsay evidence is also against the best evidence rule concept which has been mentioned earlier in this paper. Though the best evidence rule might not been followed strictly like it used to be in the past, still the submission of strong evidence is still needed especially when it's come to submission of documentary evidence. (See the case of *Leong Hong Khie v PP* and *Tan Gong Wai v PP* [1986] 2 MLJ 206, 208, Public Prosecutor v *Ng Lai Huat & Ors* [1990] 2 MLJ 427 and *Subramaniam v PP* [1956] MLJ 220).

It is also very important to know that a witness is not allowed to testify to facts in issue or relevant facts which are based on the perception of another person. Since such evidence is not directly been given, it will become inadmissible. A witness must give their testimony based on the facts or information's which they have received direct through their five senses. This can be visibly found under Section 60 (1) of the Evidence Act 1950 [Act 56]. That particular section provide that oral evidence shall in all cases whatever be direct, that is to say (a) if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it; (b) if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it; (c) if it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner; and (d) if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds. (Rafiah Salim, 1989, p. 243). Section 60 of the Evidence Act 1950 [Act 56] is said to have codified or embodied the idea over the rule against hearsay in the country. (See the case of *Lim Ah Oh & Anor v R* [1950] 1 MLJ 269). However having said so, hearsay evidence may be tender in as an evidence if it fall under the exceptions provided by the statute. Example of the exceptions which been provided includes *res gestae* evidence (Section 6 of Evidence Act 1950), dying declaration (Section 32 of the Evidence Act 1950), admission and confession (Sections 17 until 31 of the Evidence Act 1950), and others. (Mariette Peters, 2013, pp: 156 – 206 and Hamid Sultan Abu Backer, 2014, p. 131). As stated earlier in this paper, there is also possibility for hearsay evidence to be used in matter which does not involve legal proceeding like in an inquiry. This is because Evidence Act 1950 [Act 56] normally does not apply in such situation.

3. CONCLUSION

Hearsay evidence has always and will always been regarded as bad piece of evidence. The rejection over hearsay evidence is highly understood due to the characteristics and nature of such evidence in the eyes of the society and in the eyes of the court of law. Hardly such evidence will be tender in or used in any judicial proceeding. As stated earlier in this paper that it is very important for all parties in a judicial proceeding to respect the existing legal position over law of evidence and the country statute on Evidence Act 1950 [Act 56] to bring strong evidence. The present of a strong evidence is very important so that the court can derive to its decision and bring justice and fairness to all parties in the judicial proceeding. The present of a strong evidence is also important in order the judge can believe over all the argument put forward by the parties to the judicial proceeding. However, interesting also for us to know that there are some countries which allow the submission of such evidence in the judicial proceedings. Due to difficulties in locating and getting strong evidence to support any particular case, a total rejection of hearsay evidence can also be seen as an obstacle to the principle of justice. As such, law allow exception to be created in order to allow such evidence to be tender in and be admitted as evidence provided it fulfil strict requirements. All parties regardless whether they are judges or arbitrator that will decide any issues must always remember the reasons why hearsay evidence been rejected by many in the first place and take extra caution in considering or accepting such evidence to settle any disputes or issues which been presented to them.

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