

Session 10

Evidence and affidavit making





Session snapshot

► Session 10

- Deals with **evidence and affidavit making, the two other aspects of effectively building a case**
- Looks into the:
 - Admissibility of evidence
 - What specific documents can possibly serve as evidence in relation to labour and human rights violations
 - Parts of an affidavit
 - Tips and strategies in making a compelling affidavit



► Session 10



Estimated duration:
60 minutes



Required materials:

- Printed copies of cases as indicated in Activity M3-2
- Manila paper/cartolina
- Markers
- Usual presentation equipment and accessories





Facilitator's guide points

Facilitator's Guide Points



1. Introduce Session 10 by noting that it is a requisite follow-up to the previous session, giving a full circle for case buildup from legal interview and case analysis to evidence and affidavit making.



2. Refer to the Overview Content for further guidance. Share the session objectives to the participants.



3. Facilitate the rest of the session by using the Discussion Notes as a guide, with a view to introducing, adding or modifying certain contents as deemed necessary.

a) Evidence

b) Affidavit Making



Facilitator's Guide Points



4. After delivering the Discussion Notes, conduct Activity M3-2, a continuing exercise from the previous session during which the participants will move to identifying facts and possible types of evidence to be used in making an affidavit. *(The case studies used are the same from the previous session to ensure continuity of thought process.)*



5. Be mindful of the Key Learning Points as internal guide on messaging.



6. Conduct the recap exercise at the end of the session.





Learning objectives



Gathering Evidence

Appreciate the **importance of gaining skills in gathering evidence and writing affidavit** for an effective case buildup and even case resolution



Evidence

Determine what **constitutes an evidence in a case or a complaint**, the types or forms of evidence, and sample documents or materials that may be considered as evidence



Affidavit

Identify the **elements of an affidavit and learn some tips and strategies in effectively writing an actual affidavit document**



Key learning points



Towards building an effective and strong case for violation of FOA or related labour and human rights,

it is crucial to learn and understand what and how to gather evidence as well as writing a compelling affidavit



Not all types of evidence are admissible in court and not all admitted evidence are strong enough for a specific case to be favored affirmatively.

Trade union leaders and labour and human rights advocates need to really be equipped with the knowledge and skills on evidence and affidavit making as part of the process for case buildup.



Definition of key terms



Affiant

The person who executed an affidavit and in effect, states her/his personal knowledge about the certain event



Affidavit

A voluntary statement in writing sworn to before someone authorized to administer oaths like a notary or other officers. The affidavit is a document that states something about a certain event



Evidence

The means of ascertaining the truth about a fact that is being alleged in a judicial or administrative proceeding, as the case may be, in the manner that is allowed by the applicable rules



Judicial admission

The oral or written admissions made by a party in the course of the proceedings



Judicial notice

Discretionary for matters that are public knowledge, are capable of unquestionable demonstrations, or ought to be known to judges because of their judicial functions



Session proper

Session 10



Evidence and types of evidence



Affidavit making

Evidence



Evidence

- Evidence is the **means of ascertaining the truth about a fact that is being alleged** in a judicial or administrative proceeding.
- After the workers or paralegal analyze and determine the facts in the case, petitioners will need to collect evidence which will support the build-up of the case.



Evidence

***** As a general rule, **evidence is required when the court is asked to resolve a question of fact** because of the presumption that the court is not aware of the accuracy of the facts involved in the case. However, if no factual issue exists in a case, there is no need to present evidence.



Types of evidence



Object



**Documentary
evidence**



**Testimonial
evidence**

Object evidence



- also known as **real evidence**, **demonstrative evidence**, **physical evidence**
- covers all the human senses: **sight**, **hearing**, **taste**, **smell** and **touch**.



- must be both relevant and competent, and it should be authenticated in court.

Documentary evidence



- documents that **may be presented in court to offer proof** of their contents
- includes **electronic and digitally-signed documents**

Testimonial evidence



- All persons who can perceive, and having perceived, can make known their perception to others may be witnesses

Sample evidence

In cases of individual workers against their employers:

- Employment contract which may come in the form of an appointment, letter, offer, notice, or memorandum
- Employment certificate
- Notice of promotion
- Merit increase
- Notice of temporary designation, transfer, or assignment
- Job description
- Work assignment slip
- Approval or grant of leave of absence, sick leave, or vacation leave
- Reminder on specific duties
- Warning on lapses from particular standards
- Wage, salary, or compensation record which may come in the form of a pay slip, wage or salary voucher, or pay envelope
- Daily time records (DTR)
- Work report submitted and marked received
- Performance rating

Sample evidence

In cases of individual workers against their employers:

- Special commendation, award, or prize
- Company announcement
- Company memorandum
- Employees' handbook or manual
- Notice to explain or notice of change
- Explanation or reply to notice to explain or notice of change
- Notice of disciplinary action, dismissal, termination, or decision
- Order or decision
- Transcript or hearing
- Affidavit of witness
- Supervisor's report
- Past rulings of the company in similar disciplinary cases

Sample evidence

In cases of unions against companies:

- Collective bargaining agreement (CBA)
- Letter of intent (for CBA)
- CBA registration certificate
- Articles of Incorporation and By-laws
- Articles of Partnership
- General Information Sheet (GIS)
- Annual financial statements
- Annual stakeholders' report
- Organizational chart of the company
- Press release or news story
- Company statement
- Newsletter or bulletin
- Souvenir program or anniversary brochure
- Payroll list
- Government license or application from government license
- Certificate of registration or charter certificate of the union
- Minutes of organizational meeting of the union
- Minutes of election of union officers
- Grievance machinery minutes of the meeting
- Union financial records such as books of account

Affidavit Making

Sample of Affidavit of Complaint

Republic of the Philippines
() ss.
x-----x

AFFIDAVIT OF COMPLAINT

THE UNDERSIGNED, _____, accuses
_____ of _____, committed as follows,
to wit:

That on or about _____ at about _____ in the
_____, Philippines the said accused did then and
upon the undersigned directly by overt acts to wit (state the details how the
crime was committed)

The undersigned executed this affidavit to attest the truthfulness of the
foregoing facts and to support the filing of Criminal Cases against _____
for violations of _____

_____, this _____ day of _____.

Offended Party

SUBSCRIBED AND SWORN to before me this _____ day of _____ at _____
_____, I **HEREBY CERTIFY** that I have personally examined the
herein offended party and I am satisfied that they voluntarily executed and
understood their given affidavit.

Judge

WITNESSES:

Affidavit

- An **affidavit** is a basic document that is frequently used in cases and other legal issues. It is a **voluntary statement in writing sworn to** before someone authorized to administer oaths like a notary or other officers. It is a document that states something about a certain event.

An affidavit is executed by a person called the “**affiant**,” who, in effect, states her/his personal knowledge about the certain event. The statement made by the affiant is sworn to in order to verify that what is written in the document is true and correct and is based on her/his personal knowledge.



Sample Affidavit

Sample of Affidavit of Complaint

Republic of the Philippines
() ss.
x-----x

AFFIDAVIT OF COMPLAINT

THE UNDERSIGNED, _____, accuses
_____, of _____, committed as follows,
to wit:

That on or about _____, at about _____ in the
_____, Philippines the said accused did then and _____
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foregoing facts and to support the filing of Criminal Cases against _____
for violations of _____

_____, this _____ day of _____.

Offended Party

SUBSCRIBED AND SWORN to before me this ____ day of ____ at ____
_____, **I HEREBY CERTIFY** that I have personally examined the
herein offended party and I am satisfied that they voluntarily executed and
understood their given affidavit.

Judge

WITNESSES:

Parts of an Affidavit

Venue

Title of the document

Oath of affirmation

Sample of Affidavit of Complaint

Republic of the Philippines
() ss.
x-----x

AFFIDAVIT OF COMPLAINT

THE UNDERSIGNED, _____, accuses
_____, of _____, committed as follows,
to wit:

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Philippines the said accused did then and
upon the undersigned directly by overt acts to wit (state the details how the
crime was committed)

The undersigned executed this affidavit to attest the truthfulness of the
foregoing facts and to support the filling of Criminal Cases against _____
for violations of _____
_____, this _____ day of _____,

Offended Party

SUBSCRIBED AND SWORN to before me this _____ day of _____ at _____
_____, **I HEREBY CERTIFY** that I have personally examined the
herein offended party and I am satisfied that they voluntary executed and
understood their given affidavit.

Judge

WITNESSES:

Personal
circumstances

Recital of
facts

Signature

Jurat

Tips on Writing an Affidavit

Sample of Affidavit of Complaint

Republic of the Philippines
() ss.
X-----X

AFFIDAVIT OF COMPLAINT

THE UNDERSIGNED, _____, accuses
_____, of _____, committed as follows,
to wit:

That on or about _____, at about _____ in the
_____, Philippines the said accused did then and _____
upon the undersigned directly by overt acts to wit (state the details how the
crime was committed)

The undersigned executed this affidavit to attest the truthfulness of the
foregoing facts and to support the filing of Criminal Cases against _____
for violations of _____

_____, this _____ day of _____, _____.

Offended Party

Venue

- the place where the affidavit was executed, or where it was sworn to;
- The venue is found in the **uppermost left corner of the document**;
- From reading the place of execution, the reader will be able to **check if the notary public was within her jurisdiction** when she administered the oath-taking of the affiant.

Tips on Writing an Affidavit

Sample of Affidavit of Complaint

Republic of the Philippines
(_____, _____) ss.
X-----X

AFFIDAVIT OF COMPLAINT

THE UNDERSIGNED, _____, accuses
_____, of _____, committed as follows,
to wit:

That on or about _____, at about _____ in the
_____, Philippines the said accused did then and _____
upon the undersigned directly by overt acts to wit (state the details how the
crime was committed)

The undersigned executed this affidavit to attest the truthfulness of the
foregoing facts and to support the filing of Criminal Cases against _____
for violations of _____

_____, this _____ day of _____, _____.

Offended Party

On the title of the document

- The title is written on the center after the space where the place of execution is written.
- It is important to place the title so that at first glance, the reader will be advised that the document she is holding is an affidavit.

Tips on Writing an Affidavit

Sample of Affidavit of Complaint

Republic of the Philippines
(_____, _____) ss.
X-----X

AFFIDAVIT OF COMPLAINT

THE UNDERSIGNED, _____, accuses
_____, of _____, committed as follows,
to wit:

That on or about _____, at about _____ in the
_____, Philippines the said accused did then and _____
upon the undersigned directly by overt acts to wit (state the details how the
crime was committed)

The undersigned executed this affidavit to attest the truthfulness of the
foregoing facts and to support the filling of Criminal Cases against _____
_____ for violations of _____

_____, this _____ day of _____, _____.

Offended Party

On personal circumstances

- The personal circumstances of the affidavit are written on the first part of the affidavit.
- The name of the affiant, her/his age (or the fact that she/he is or is not of legal age), her/his civil status, and her/his residence are all written on this part of the affidavit.
- The second part of the paragraph states that the affiant voluntarily and freely executed the affidavit.

Tips on Writing an Affidavit

AFFIDAVIT OF COMPLAINT

THE UNDERSIGNED, _____, accuses
_____, of _____, committed as follows,
to wit:

That on or about _____, at about _____ in the
_____, Philippines the said accused did then and _____,
upon the undersigned directly by overt acts to wit (state the details how the
crime was committed)

The undersigned executed this affidavit to attest the truthfulness of the
foregoing facts and to support the filling of Criminal Cases against _____
_____ for violations of _____

_____, this _____ day of _____, _____.

Offended Party

SUBSCRIBED AND SWORN to before me this ____ day of ____ at ____
_____, **I HEREBY CERTIFY** that I have personally examined the
herein offended party and I am satisfied that they voluntarily executed and

On Recital of Facts

- This part forms the meat of the affidavit, which enumerates the **Who, What, Where, When, Why, and How** a particular event happened, or the act complained of.

Tips on writing an affidavit

On recital of facts

Quick Facts	
Who	Who are involved?
What	What happened?
Where	Where did it happen?
When	When did it happen?
Why	Why did it happen?
How	How did it happen?

- After writing the personal circumstances of the affiant, the affiant then states the allegations that are related to the particular event which is being related. These allegations must be of the affiant's personal knowledge.
- It is better if the body is written in such a way that there are numbers to the paragraphs and the events are chronologically arranged.

Tips on Writing an Affidavit

AFFIDAVIT OF COMPLAINT

THE UNDERSIGNED, _____, accuses
_____, of _____, committed as follows,
to wit:

That on or about _____, at about _____ in the
_____, Philippines the said accused did then and _____,
upon the undersigned directly by overt acts to wit (state the details how the
crime was committed)

The undersigned executed this affidavit to attest the truthfulness of the
foregoing facts and to support the filling of Criminal Cases against _____
_____ for violations of _____

_____, this _____ day of _____, _____.

Offended Party

SUBSCRIBED AND SWORN to before me this ____ day of ____ at ____
_____, **I HEREBY CERTIFY** that I have personally examined the
herein offended party and I am satisfied that they voluntarily executed and

On Recital of Facts

- In order to have a clearer statement of facts, it is suggested that each paragraph should only contain one idea or point.
- In the last paragraph of the statement, the affiant must state the reason(s) why she/he is executing the affidavit.

Tips on Writing an Affidavit

crime was committed)

The undersigned executed this affidavit to attest the truthfulness of the foregoing facts and to support the filling of Criminal Cases against _____ for violations of _____

_____, this _____ day of _____


Offended Party

SUBSCRIBED AND SWORN to before me this _____ day of _____ at _____, **I HEREBY CERTIFY** that I have personally examined the herein offended party and I am satisfied that they voluntarily executed and understood their given affidavit.

Judge

WITNESSES:

Signature

- It can be any actual signature or symbol commonly used by the affiant, or a thumb mark if he or she is illiterate or cannot write.

Tips on Writing an Affidavit

crime was committed)

The undersigned executed this affidavit to attest the truthfulness of the foregoing facts and to support the filing of Criminal Cases against _____ for violations of _____

_____, this _____ day of _____.

Offended Party

SUBSCRIBED AND SWORN to before me this ____ day of ____ at _____, I **HEREBY CERTIFY** that I have personally examined the herein offended party and I am satisfied that they voluntarily executed and understood their given affidavit.

Judge

WITNESSES:

Jurat

- The part after the affidavit in which a notary public or officer authorized to administer oaths certifies that the instrument was sworn to before him.
- Jurat is used in documents that are declaratory in nature like affidavits, showing when, where, and before whom the actual oath was sworn.
- It gives the document a legal character.



Activity

Instructions

Activity M3-2. Case Study: Identifying Facts for Affidavit Making and Possible Types of Evidence



Methodology

Case study is a method allowing training participants to analyze a specific case, event or topic that reflects actual or hypothetical situations or a mix of both and utilizes a specific framework or perspective for analysis. It is an exercise that enables the immediate and nuanced application of lessons from a certain topic discussion while providing the participants a platform to generate their own lessons and realizations relative to the given case

Activity M3-2. Case Study: Identifying Facts for Affidavit Making and Possible Types of Evidence



Timing

The exercise should be introduced right after discussing the evidence and affidavit making aspects of case buildup, and why it is critical to acquire and improve skills on them. It precedes the recap exercise that is a shorter activity to generally gauge the extent of learning among the participants.

Activity M3-2. Case Study: Identifying Facts for Affidavit Making and Possible Types of Evidence



Mechanics

1. Instruct the participants to go again to their groups formed from the last activity under Session 9.
2. Assign the same case previously given to each group so that they can build on their initial case analyses (*see the cases on the succeeding page*).
3. In their groups, ask the participants to discuss and answer the following questions in the next 15-20 minutes, preferably written on Manila paper or cartolina:
 - a. What are the types of evidence present or can be further explored in the case/incident?

Activity M3-2. Case Study: Identifying Facts for Affidavit Making and Possible Types of Evidence



Mechanics

Quick Facts

Who	Who are involved?
What	What happened?
Where	Where did it happen?
When	When did it happen?
Why	Why did it happen?
How	How did it happen?

Activity M3-2. Case Study: Identifying Facts for Affidavit Making and Possible Types of Evidence



Mechanics

4. After the group discussions, request a volunteer from each group to briefly share the highlights of their group's discussion. Ask them to deliver the plenary report in 5-7 minutes only.
5. Provide a short synthesis based on the discussion points. Insert additional perspectives or insights as the facilitator as necessary.

Activity M3-2. Case Study: Identifying Facts for Affidavit Making and Possible Types of Evidence



Materials

- Printed copies of the cases
- Manila paper/cartolina
- Markers

Notes on transition to online session

Breakout rooms in platforms like Zoom can be utilized in case of the need to conduct the activity online. The simulation or role play will happen in the plenary room, immediately following the breakout discussions as provided in the mechanics of this activity.



Activity

Case studies

Case No. 1



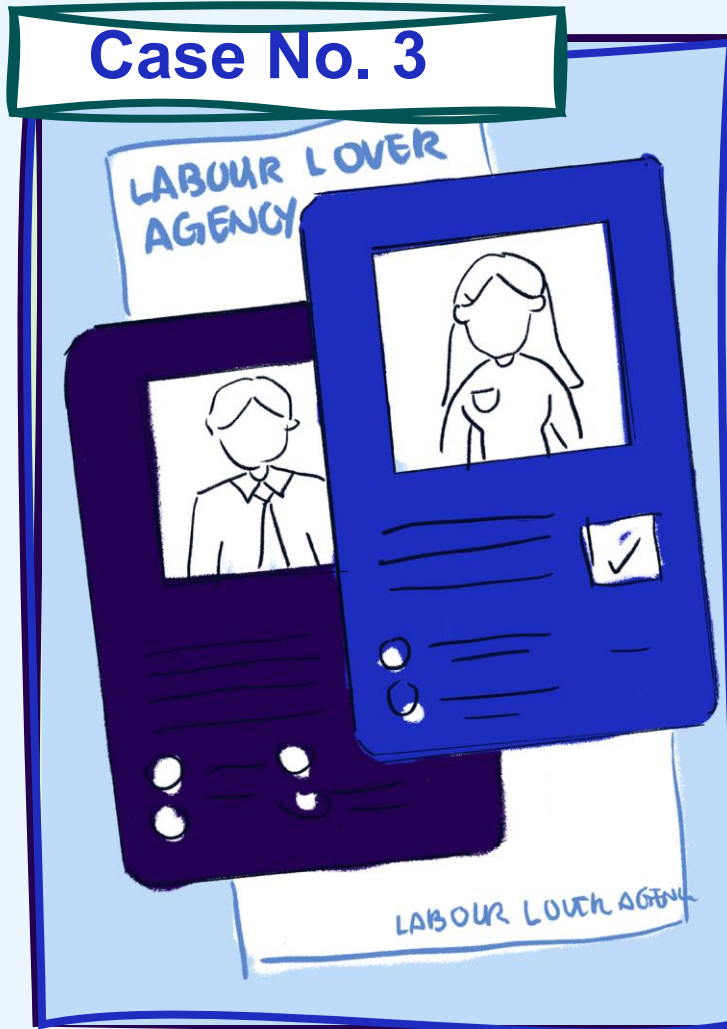
On May 1, workers across the country made history by conducting the biggest labour day rally. They are calling for, among others, the passage of Security of Tenure law, and the increase in minimum wage. While they were marching from Welcome Rotonda to Malacañang Palace, members of the AFP entered their ranks and “picked up” three rallyists who were holding the megaphones and leading the chants. The three were immediately taken into a government vehicle and they drove away from the streets. The rest of the rallyists were not able to go after them. They have been missing for four days now.

Case No. 2



Annie Batungbakal is employed by Bakya Supermart as a cashier in its Davao City branch. Bakya Supermart is a huge company with over 100 branches across the country. Annie is also a labour organizer. As such, she is set to organize the workers of Bakya Supermart to form a union and eventually enter into CBA with the company. Before the conduct of Certification Election, Annie received a notice from the company that because of her good performance, she is being transferred to its newly-opened Naga City branch as head cashier. Annie did not want the transfer because she is from Davao City and her family is there. Because of her refusal to follow the order, she was dismissed.

Case No. 3



Ibong Adarna is a five-star hotel in Cebu City. Because business was booming, it built another hotel in Bohol. However, instead of directly hiring employees, it entered into a service agreement with Labour Lover Agency wherein the latter will provide personnel on all matters pertaining to maintaining the rooms and attending to the needs of the guests. Not long after, other personnel services were outsourced. As a result, many regular employees lost their jobs on the ground of redundancy.

Case No. 4



Fifteen full-time instructors of the Pamantasan ng Pilipinas (PNP), a state university, were hired under temporary contracts of employment renewable on a yearly basis. The 15 instructors, after being in service for an average of four years, with their contracts being yearly renewed due to outstanding performance, formed the Pamantasan ng Pilipinas Faculty Organization. Their contracts were not renewed at the same time the union secured its public sector union registration. The PNP management also refused to produce the results of their evaluation which, they said, was the basis for the non-renewal of their contracts.

Case No. 5



An employee was charged with non-payment of union dues and was meted the penalty of suspension by the Union's Executive Board. The said employee was again charged with non-payment of union dues and was expelled on third occasion. On each finding, the employee demanded that the General Membership Assembly be convened to allow him to appeal under the Union's Constitution and By-Laws, but these were denied.

Case No. 6



Rey Lima is a labour union president and a member of the Regional Tripartite Industry Peace Council (RTIPC). He joined the inspection conducted by DOLE in manufacturing companies in Laguna and Cavite. He noticed that most of these companies have employed contractual workers and are unorganized. Soon thereafter, he met with the employees of Tralala Company with the aim of organizing them.

Case No. 6



They are in the process of registering their union, when suddenly, Rey Lima was not allowed to visit the premises of Tralala. One day, while he was meeting four employees outside of the company's premises, an armed man approached them and warned Rey that something bad would happen if he did not stop what he was doing. Mark Ayala, one of the employees Rey was meeting, witnessed the incident. Rey also disclosed to Mark and the other companions that he often receives threats from unknown numbers.

Case No. 6



Shortly thereafter, while he was walking to the bus station after meeting with the employees, he was gunned down by a riding-in-tandem. The incident was caught on closed-circuit television (CCTV), but the men were unidentified. While the case was being investigated, the Mayor had a press conference wherein he presented a matrix of Rey's illicit relationships with women, some of them are employees of the company. In the press conference, the police investigator said that they are exclusively looking at these relationships as the motive for the killing.

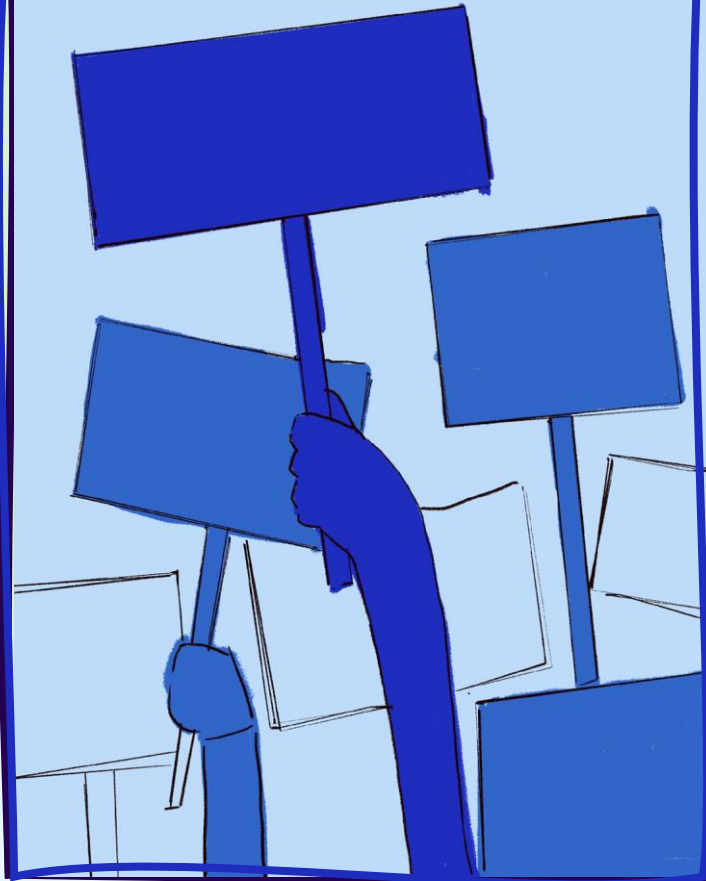
Case No. 7



(Public/Private Sector)

Last month, the DOJ filed with the Court a Petition to declare 600 organizations as terrorist groups. Four of those organizations are large labour union federations in the Philippines, including one in the public sector. The list was given to the media and the international community.

Case No. 8



Case No. 8

Union Nice is a labour organization in Tag Hiras Clothing Company located inside a PEZA. Because of a CBA deadlock, members of the Union Nice staged a strike. On the second day of the strike, members of the private security unit of the Company, started breaking the strike, alleging that they were blocking the entrance gate to the company. The PEZA security personnel negotiated with the strikers, upon request of the company.



Recap exercises

1. This refers to the question of whether the pieces of evidence presented are to be considered by the court at all.

- a) Validity
- b) Admissibility
- c) Acceptability

2. This is also known as real evidence, demonstrative evidence or physical evidence. It covers all the human senses: sight, hearing, taste, smell and touch.

- a) Objective evidence
- b) Testimonial evidence
- c) Documentary evidence

3. The main character of an affidavit is called a defendant.

TRUE OR FALSE

4. Which part of the affidavit enumerates the Who, Where, When, Why and How a particular event happened or the act complained of, and narrates the personal information known to the affiant in relation to the violation of law complained of?

- a) Oath of affirmation
- b) Jurat
- c) Recital of facts

5. Which part of the affidavit informs the office or the officer where it presented to the nature of the document?

- a) Jurat
- b) Title of the document
- c) Personal circumstances



Recap exercises

Answer keys

1. This refers to the question of whether the pieces of evidence presented are to be considered by the court at all.

a) Validity

b) Admissibility

c) Acceptability

2. This is also known as real evidence, demonstrative evidence or physical evidence. It covers all the human senses: sight, hearing, taste, smell and touch.

a) Objective evidence

- b) Testimonial evidence
- c) Documentary evidence

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TRUE OR

FALSE

4. Which part of the affidavit enumerates the Who, Where, When, Why and How a particular event happened or the act complained of, and narrates the personal information known to the affiant in relation to the violation of law complained of?

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