

THE RES GESTAE RULE : A REFORMULATION

FOTOSTAT TIDAK DIBENARKAN

TABLE OF CONTENTS

page

Preface	v
Table of cases cited	vi
Table of statutes	viii
General Introduction	ix

Chapter I

HEARSAY-GENERAL RULE	1
----------------------	---

Chapter II

RES GESTAE	5
A. Doctrine of Res Gestae	5
B. History of doctrine	5

Chapter III

SCOPE	8
A. Constituent Fact	9
B. The fact in issue per se	10
C. Constituent Incidents	10
D. Cumulative and Continuous Transaction	11
E. Documentary Transaction	11
F. Accompanying Fact	11
G. Incidents other than declaration	12
H. Declaration accompanying acts	13
Scope of the principle requirements	14

PREFACE

Despite its apparent clarity in section 6 of our Malaysian Evidence Act 1950 (Revised 1971) the term *res gestae* has occasioned many vexed problems. Most of these problems arise because there is no consistent usage of this term. Difficulties still persist, as ultimately the sound exercise of court discretion in determining each issue, so a new and rational basis has to be laid to resolve an old controversy.

The aim of the study is therefore to review this area of the law of Evidence especially by reference to these different uses of the term.

In the preparation of the project paper researches were made in the MARA Institute of Technology's Perpustakaan Tun Abdul Razak, the University of Malaya Law Library and the Kuala Lumpur National Library.

The writer had derived some valuable guidance and assistance from a number of people in writing this project paper. It is his wish to acknowledge these few people without whom this project paper may not have been accomplished in its purpose. Special acknowledgement goes to the writer's supervisor, Mr. Hardial Singh, Lecturer on Law of Evidence at the MARA Institute of Technology.

The writer also wishes to express his thanks and appreciation to the officials from the libraries, mentioned above who kindly granted his access to the various relevant materials and documents.

6th. June, 1985

ROSLI BIN MOHD SIDEK

TABLE OF CASES CITED

Att. Gen. (Jersey) v. Norton (1967) 1 A.C 464.....	12
Averson v. Kinnaird 6 East 188.....	5
Babulal v. W.I. Ltd. A1957 C.709	37
Chhotka v. S. A1958 C 482	37
Com. v. Hacket (1861) 2 Allen 136 (Mass).....	19
D.P.F V. Christie (1914) A.C 545	21
Gilbert v. R (1907) 38, SCR 284 Supreme Ct. of Canada..	17
Hamza Kunju v. R. (1963) M.L.J 228	29
Kameshwar v. R 1951 A.L.J 149	37
Kanapathy v. R. (1960) M.L.J 26.....	29
Khijiruddin v. R. 1926 C 139: 92 IC 442.....	38
Krishnam v. S A1964 As 53	38
Mohamed Bin Allapitchay & Crs. v. R (1958) M.L.J 197..	33
Noor Mohd. v. Imtiaz A A1940 O 130	37
O'Hara v. Central S.M.T Co. 1941 S.C 363,381	21
Pratap Singh v. State of M.F 1970 Jab. L.J 797	37
R v. Barlow	19
R v. Barney	19,20
R v. Bedingfield (1879) 14 Cox C.C 341.....	14,32,
.....	33,34
R v. Bond (1906) 2 K.B 389	12

Chapter 1

HEARSAY - GENERAL RULE

The Hearsay rule

"Hearsay" in its legal sense is confined to that kind of evidence, which does not derive its credibility solely from the credit due to the witness himself, but rests also in part on the veracity and competency of some other person from whom the witness may have received the information.¹

The general rule is that hearsay is excluded and best evidence must always be given. It is excluded on the ground that it is always desirable in the interest of justice to get the person whose statement is relied upon, into court for its examination in the regular way in order that sources of inaccuracy can be best brought to light and exposed by the test of cross examination.

Section 60 of our Evidence Act requires that oral evidence must, in all cases whatever, be direct. This section enacts the general rule against the admission of hearsay evidence.² Section 32 constitutes further exception to the rule which excludes hearsay. The general ground of admissibility of the evidence referred to this section i.e. (s.32) is that no better evidence could be produced. In this exception, the direct oral evidence of the fact as also the opportunity for testing the truth of such evidence by cross examination is dispensed with because of the stated exception.

The exception Hearsay rule embodied in this section are with regard to statement, on declaration by person since deceased or missing etc. These declarations may be oral or written and are receivable either for or against the parties. The character of the statement and the subject to which it refers indicate that it is reasonable to expect the highest degrees of truth possible in those circumstances and the incentive or desire to falsify the statement is practically non-existence.