THESE NOTES ARE MEANT TO BE SHARED,
SHARING THEM IS A GOOD KARMA WAITING TO HAPPEN☺

2019 POINTS TO PONDER COMMERCIAL LAWS

A Survey of the Relevant Doctrines
of the *Ponencias* of
SUPREME COURT ASSOCIATE JUSTICE

ESTELA M. PERLAS-BERNABE

Chairperson, 2019 Bar Examinations

Compiled by:

PROF. E.H. BALMES[♦]

HAND OUT NO. 1, SERIES OF 2019

No one will be able to stand against you all the days of your life.
As I was with Moses, so I will be with you;
I will never leave you nor forsake you.
(JOSHUA 1:5)

I. INTELLECTUAL PROPERTY

♦ Member, UP Law Center Committee on the Suggested Answers in Commercial Law and Legal and Judicial Ethics.
♦ MCLE and Bar Reviewer in Legal Ethics and Commercial Law - Jurists Bar Review Center, Cosmopolitan Review Center, CPRS Bar Review Center, Luminous Bar Review, Dagupan, Powerhaus Review Center, Chan Robles Internet Review, PCU Bar Review, Albano Review Center and UP LAW Center.
♦ Member, Law Faculty, University of the East, Centro Escolar University, Arellano University, De La Salle University, University of Batangas, Far Eastern University, Polytechnic University of the Philippines, Philippine Christian University, Universidad de Manila.
♦ The compiler wishes to thank ATTY. MARDANE DE CASTRO, ATTY. JANICE COLOMA, ATTY. KRISTINE BERNADETTE GUEVARRA, ATTY. JP ROXAS, ATTY. ANNA MARIELLA MARIFOSQUE, ATTY. KATHRINE TING, ATTY. ENRICO AGCAOILI, ATTY. MA. ANGELICA GALVE, ATTY. JP HABANA, and future lawyers, JOVEN JALOS, APOL SABANAL, VANESSA CARPIO, JOVELAN ESCANO, NATHAN ESPINO, LORENZO SALDANA, PATRICIA ARBOLADO, CHESCA CABRAL, ROMEO LANZARROTE, EENAH PADILLA, CRICHELLE SY and ANDREI ELINZANO for their valued contribution in researching this compilation through the years.

W Land Holdings, Inc. v. Starwood Hotels and Resorts Worldwide, Inc.
G.R. No. 222366, 4 December 2017

DOCTRINE: The use of a registered mark representing the owner's goods or services by means of an interactive website may constitute proof of actual use that is sufficient to maintain the registration of the same.

FACTS:

In 2005, Starwood filed for an application for registration of trademark "W" which was granted in 2007. However, in 2006, W Land applied for the registration of its "W" mark which was opposed by Starwood. W Land filed a Petition for Cancellation of Starwood's mark for non-use, claiming that the latter has failed to use its mark in the Philippines because it has no hotel or establishment in the Philippines. Starwood denied having abandoned the subject mark on the ground of non-use, asserting it filed a Declaration of Actual Use (DAU) and argued that it operates interactive websites for its W hotels to accommodate potential clients worldwide. These websites allow Philippine residents to make reservations and bookings which presupposes "clear and convincing use of the "W" mark in the Philippines.

The IPO ruled in favor of W Land and ordered the cancellation of Starwood's registration for the "W" mark. DAU and attachments submitted by Starwood did not prove actual use of "W" mark in the Philippines. IPO DG granted the appeal of Starwood and dismissed W Land's Petition for Cancellation. The submission shows that "W" mark still bears a "registered" status. It likewise held that absence of any hotel or establishment owned by Starwood in the Philippines bearing the "W" mark should not be equated to the absence of its use in the country. Thus, Starwood is the undisputed owner of "W" mark for use in hotel and hotel-related services. W Land filed a petition for review with the Court of Appeals(CA). The CA affirmed IPO DG.

ISSUE: Whether Starwood's "W" mark should be canceled.

HELD:

NO. The Supreme Court agreed with IPO DG and CA that the use of a registered mark representing the owner's good or services by means of an interactive website may constitute proof of actual use that is sufficient to maintain the registration of the same.

Although the IP Code and Trademark Regulations have not specifically defined "use," it is understood that the "use" which the law requires to maintain the registration of a mark must be genuine, and not merely token. This may be characterized as a bona fide use which results in a commercial interaction or transaction in the ordinary course of business. It must be shown that the owner has actually transacted, or intentionally targeted customers of a particular jurisdiction in order to be considered as having used the trade mark in the ordinary course of his trade in that country.

A showing of an actual commercial link to the country is therefore imperative. As the IP Code expressly requires, the use of the mark must be "within the Philippines."

In this case, Starwood has proven that it owns Philippine registered domain names, i.e. www.hotels.ph, www.wreservations.ph, www.whotel.ph, www.wreservation.ph for its website that showcase its mark. The website is readily accessible to Philippine citizens and residents, where they can avail and book amenities and other services in any of Starwood's W Hotels worldwide. Furthermore, Starwood's "W" mark is prominently displayed in the website through which consumers in the Philippines can instantaneously book and pay for their accommodations, with immediate confirmation, in any of its W Hotels. It has also presented data showing a considerably growing number of internet users in the Philippines visiting its website since 2003, which is enough to conclude that Starwood has established commercially-motivated relationships with Philippine consumers.

These facts show that Starwood's use of its "W" mark through its interactive website is intended to produce a discernable commercial activity within the Philippines, or at the very least, seeks to establish commercial interaction with local customers. Its use of the "W" mark in its reservation services through its website constitutes use of the mark sufficient to keep its registration in force.

Ecole De Cuisine Manille, Inc. v. Renaud Cointreau & CIE and Le Cordon Blue Int'l, B.V.
G.R. No. 185830, 5 June 2013
Topic: Trademarks

FACTS:

Cointreau, a partnership registered under the laws of France, filed a trademark application for the mark "LE CORDON BLEU & DEVICE". The application was filed pursuant to RA No. 166 (the old Trademark Law) on the basis of Home Registration No. 1,390,912 issued in France.

Petitioner Ecole filed an opposition to the subject application, averring that: (*a*) it is the owner of the mark "LE CORDON BLEU, ECOLE DE CUISINE MANILLE," which it has been using since 1948; and (*b*) it has earned immense and invaluable goodwill such that Cointreau's use of the subject mark will actually create confusion, mistake, and deception to the buying public as to the origin and sponsorship of the goods, and cause great and irreparable injury and damage to Ecole's business reputation and goodwill as a senior user of the same.

Cointreau filed its answer claiming to be the true and lawful owner of the subject mark. It averred that: (*a*) it has filed applications for the subject mark's registration in various jurisdictions, including the Philippines; (*b*) Le Cordon Bleu is a culinary school of worldwide acclaim which was established in Paris, France in 1895; (*c*) Le Cordon Bleu was the first cooking school to have set the standard for the teaching of classical French cuisine and pastry making; and (*d*) it has trained students from more than eighty (80) nationalities. Thus, Cointreau concluded that Ecole's claim of being the exclusive owner of the subject mark is a fraudulent misrepresentation. During the pendency of the proceedings, Cointreau was issued Certificates of Registration for the marks applied for.

ISSUE:

Whether Cointreau can be considered as the true and lawful owner of the subject mark and is thus entitled to have the same registered under its name?

HELD:

YES. Under R.A. No. 166, in order to register a trademark, one must be the owner thereof and must have actually used the mark in commerce in the Philippines for 2 months prior to the application for registration. It is clear that actual use in commerce is also the test of ownership but the provision went further by saying that the mark must not have been so appropriated by another. Additionally, it is significant to note that Section 2-A does not require that the actual use of a trademark must be within the Philippines.

Thus, one may be an owner of a mark due to its actual use but may not yet have the right to register such ownership here due to the owner's failure to use the same in the Philippines for 2 months prior to registration. Nevertheless, foreign marks which are not registered are still accorded protection against infringement and/or unfair competition.

In any case, the present law on trademarks has already dispensed with the requirement of prior actual use at the time of registration. Thus, there is more reason to allow the registration of the subject mark under the name of Cointreau as its true and lawful owner. In the instant case, it is undisputed that Cointreau has been using the subject mark in France since 1895, prior to Ecole's averred first use of the same in the Philippines in 1948, of which the latter was fully aware thereof. In fact, Ecole's present directress, Ms. Lourdes L. Dayrit (and even its foundress, Pat Limjuco Dayrit), had trained in Cointreau's Le Cordon Bleu culinary school in Paris, France. Cointreau was likewise the first registrant of the said mark under various classes, both abroad and in the Philippines, having secured Home Registration No. 1,390,912 dated November 25, 1986 from its country of origin, as well as several trademark registrations in the Philippines.

SAHAR INTERNATIONAL TRADING, INC. *v*. **WARNER LAMBERT LLC and PFIZER, (Philippines), CO., INC.**
G.R. No. 194872, 9 June 2014

FACTS:

Warner Lambert is the registered owner of the pharmaceutical substance Atorvastatin, Atorvastatin Calcium and Atorvastatin Calcium in crystalline form. It sells this product worldwide under the brand name Lipitor. PFIZER is its exclusive licensee in the Philippines. Sometime thereafter, Pfizer discovered that SAHAR also applied for and was issued Certificates of Product Registration (CPR) by the FDA for Atorvastatin Calcium under the brand name Atopitar, which also sells its product in the Philippines. Sahar's marketing ads showed that Atopitar is neither manufactured by Warner Lambert nor any Pfizer company, but by Geofman Pharmaceuticals of Pakistan. Sahar said that the patent over Atorvastatin Calcium had already expired in Pakistan and, therefore, it believed the same can already be freely distributed and marketed in the Philippines by any entity.

Consequently, respondents filed a Complaint for Patent Infringement, Damages, and Injunction, with applications for the issuance of TRO and/or Writs of Preliminary Injunction against Sahar before the Regional Trial Court (RTC), but the RTC denied respondents' application for the issuance of a writ of preliminary injunction against the alleged patent infringement of Sahar.

ISSUE:

Whether Sahar infringes on the patent of the respondents.

HELD:

YES. In this case, the Court of Appeals (CA) set aside the RTC's decision. The CA held that from the evidence presented, respondents have established their right to preliminary injunctive relief against Sahar's acts of selling and distributing Atorvastatin Calcium under the brand name Atopitar, considering that: (a) Warner Lambert is the registered owner of the subject patents which are still existing and effective; (b) Sahar does not deny that it has been selling and distributing products using Atorvastatin and Atorvastatin

Calcium in crystalline form; and (c) respondents' witnesses testified that the presence of Atopitaris cause confusion among medical practitioners as to the availability of Lipitor and validity of the subject patents registered under the name of Warner Lambert.

The issue raised in the petition for certiorari is the propriety of the issuance by the CA of the writ of preliminary injunction, which is only but an incident to the patent infringement case which has already been resolved by the CA. Hence, the SC held that the present case is already moot and academic.

BIRKENSTOCK ORTHOPAEDIE GMBH AND CO. KG v. PHILIPPINE SHOE EXPO MARKETING CORPORATION
GR No. 194307, Nov. 20, 2013

DOCTRINE:

A trademark is an industrial property over which its owner is entitled to property rights which cannot be appropriated by unscrupulous entities that, in one way or another, happen to register such trademark ahead of its true and lawful owner.

FACTS:

Petitioner Birkenstock (Birkenstock), a corporation organized and existing under the laws of Germany, applied for various trademark registrations before the IPO for –

a. BIRKENSTOCK
b. BIRKENSTOCK BAD HONNEF-RHEIN & DEVICE COMPRISING OF ROUND COMPANY SEAL AND REPRESENTATION OF A FOOT, CROSS AND SUNBEAM
c. BIRKENSTOCK BAD HONNEF-RHEIN & DEVICE COMPRISING OF ROUND COMPANY SEAL AND REPRESENTATION OF A FOOT, CROSS AND SUNBEAM.

Registration proceedings of the subject applications were suspended, however, because of an existing registration of the mark "BIRKENSTOCK

AND DEVICE" under Shoe Town International, the predecessor-in-interest of Resp. Phil. Shoe Expo (PSE).

Birkenstock filed a Petition for Cancellation of the Registration on the ground that it is the lawful and rightful owner of the Birkenstock marks.

During the pendency of the Cancellation Case, however, PSE failed to file the required 10th Year Declaration of Actual Use (10th Yr DAU), thereby resulting in the cancellation of the mark. The Cancellation Case was dismissed for being moot and academic.

Due to the cancellation of the registration, the publication of the subject trademarks then proceeded, which PSE opposed.

The BUREAU OF LEGAL AFFAIRS (BLA) sustained PSE's opposition and ordered the rejection of the trademark applications. It ruled that the competing marks of the parties are confusingly similar since they contained the word BIRKENSTOCK which was used on the same and related goods. It also found PSE to be the prior user and adopter of BIRKENSTOCK.

The **IPO DIRECTOR GENERAL** (IPO Director) reversed the BLA and allowed the registration of the subject applications. The IPO Director held that with the cancellation of PSE's registration for failure to file the 10 Yr DAU, there is no more reason to reject the subject application.

The **Court of Appeals (CA)** reversed the IPO Director's ruling, stating that the applications are confusingly similar with the subject mark of PSE.

ISSUE:

Whether Birkenstock should be granted the subject mark.

RULING:

YES, Republic Act No. 166, requires the filing of DAU on specific periods.

That registrations under the provisions of this Act shall be cancelled by the Director, unless within one year following the fifth, tenth and fifteenth anniversaries of the date of issue of the certificate of registration, the registrant shall file in the Patent Office an affidavit showing that the mark or tradename is still in use or showing that its non-use is due to special circumstance which excuse such non-use and is not due to any intention to abandon the same, and pay the required fee.

The provision clearly reveals that the failure to file the DAU within the requisite period results in the automatic cancellation of registration of a trademark. In turn, such failure is tantamount to the abandonment or withdrawal of any right or interest the registrant has over his trademark.

In this case, respondent admitted that it failed to file the 10th Yr DAU within the requisite period. As a consequence, it was deemed to have abandoned or withdrawn any right or interest over the mark "BIRKENSTOCK".

It is not the application or registration of a trademark that vests ownership thereof, but it is the ownership of a trademark that confers the right to register the same.

The presumption of ownership accorded to a registrant must then necessarily yield to superior evidence of actual and real ownership of a trademark.

GREAT WHITE SHARK ENTERPRISES v. DANILO CARALDE JR.
GR 192294, Nov. 21, 2012

FACTS:

Great White Shark Enterprises is a foreign corporation. It has a pending trademark application to be used for its clothing apparel, since February 2002. Sometime in July 2002, Caralde applied for trademark registration of "SHARK & LOGO" to be used for its goods such as slippers, shoes and sandals.

Caralde's application was opposed by Great White allegedly because there would be confusing similarity between their marks given that Great

White's mark is a representation of shark in color known as "GREG NORMAN LOGO".

In 2006, Great White's application was granted. Consequently, BLA denied the application of Caralde due to the dominant features of the 2 marks (shape of the shark) that will likely cause confusion of goods. On appeal, the IPO Director General affirmed BLA's decision adopting the same ratio. However on petition for review with the Court of Appeals (CA), the latter reversed and set aside the ruling. The CA reasoned that there would be no confusing similarity between the 2 marks because Caralde's shark is more fanciful and colorful and contains elements distinguishable from that of Great White's. Hence this petition.

ISSUE: Whether the marks are confusingly similar

HELD:

NO. Trademark device is susceptible to registration if it is crafted fancifully or arbitrarily and is capable of distinguishing goods of one from another. In determining similarity and likelihood of the marks, two tests were developed, the Dominancy and the Totality or Holistic. The Dominancy Test focuses on similarity of dominant features that might make confusion, mistake, and deception in the mind of ordinary purchaser and gives more consideration on aural and visual impressions on the buyers of good.

The Holistic Test considers the entirety of the marks as applied to products including labels and packaging and considers also other features so as to mislead an ordinary purchaser. Ordinary purchaser is one who is accustomed to buy and to some extent familiar with the goods in question.

In this case the court finds no confusing similarity between the 2 marks. The shape of the Shark is the only similar feature but there are other visual and aural differences between the two.

As for Great White, its mark used green, yello, blue, and red lines/strokes; while Caralde's mark used colors blue with some parts red, yellow, green, and white. Also the illustration of Great White's mark is a plain drawing of shark while Caralde used letter S,H,A,R,K to form the shape itself. Also, Caralde's mark has other visual illustrations that are absent in that of Great White's.

Clearly, no confusing similarity existed between the two marks.

**SHANG PROPERTIES REALTY CORPORATION AND SHANG PROPERTIES INC v.
ST. FRANCIS DEV'T CORP
GR 190706, July 21, 2014**

FACTS:

St. Francis Development Corporation filed 3 separate complaints before the IPO against Shang Properties.

The first complaint is a case of unfair competition and damages against Shang Properties for using and seeking registration of the trademark "St. Francis Towers" and "St. Francis Shangri-la Place".

The Second and the Third cases are oppositions to Shang Properties' trademark application of the said marks.

St. Francis Dev't alleged that it has gained substantial goodwill with the mark "St. Francis" because they have used that mark for their establishments – St. Francis Square and St. Francis Commercial Center. Thus, the public identifies that mark to them and so Shang Properties cannot use them.

Shang Properties, on the other hand, argued that the mark "St. Francis" is geographically descriptive which is incapable of ownership and exclusive use.

The IPP ruled that St. Francis Development has attained goodwill and reputation for its mark which entitles it to protection but not award of damages. Nonetheless, "St. Francis" is not a geographically descriptive mark nor exclusive mark of St. Franic Development because such mark has been used elsewhere. That being the case, "St. Francis Towers" should be denied registration for it will cause unfair competition. While “St. Franics Snagri-la” is allowed because it is an arbitrary mark.

Both parties appealed to IPO Dir. General which affirmed the ruling.

Upon appeal to the Court of Appeals, it ruled that St. Francis Development has obtained exclusive use of “St. Francis” and has thus attained secondary meaning.

ISSUE:

Whether using the marks “St. Francis” will result to unfair competition between the two corporations

HELD:

NO. Unfair competition is the passing off or attempting to pass off upon the public the goods or business of one person as the goods or business of another, with the end and probable effect of deceiving the public. Passing off occurs when defendant misleads prospective purchasers into buying the merchandise under the impression that they are buying that of his competitors.

The true test of unfair competition is “whether the acts of defendant have the intent of deceiving or are calculated to deceive ordinary buyer under ordinary conditions”.

In this case, the element of intent to deceive or fraud is wanting and thus there can be no unfair competition. Also, St. Francis Development has no cause to sue for unfair competition because it has not attained exclusivity over the mark. Truly the mark is geographic and so incapable of exclusive appropriation and only when it has attained secondary meaning can the mark be appropriated.

In this case however, St. Francis Dev’t has not satisfied all the elements to attain secondary meaning (a. substantial commercial use of the mark in the Philippines, b. use must result in distinctiveness, c. exclusive and continuous use for 5 years before the date on whch the claim of distinctiveness is made).

As a final note, the parties are business competitors engaged in real estate or property development, providing goods and services directly connected thereto. The "goods" or "products" or "services" are real estate and the goods and the services attached to it or directly related to it, like sale or lease of condominium units, offices, and commercial spaces, such as restaurants, and other businesses. For these kinds of goods or services there can be no description of its geographical origin as precise and accurate as that of the name of the place where they are situated.

ROBERTO CO VS. KENG HUAN JERRY YEUNG AND EMMA YEUNG
G.R. No. 212705, 10 September 2014

FACTS:

Sps. Yeung filed a civil complaint for trademark infringement and unfair competition before the Regional Trial Court against Ling Na Lau, her sister Pinky Lau, and Co, for allegedly conspiring in the sale of counterfeit Greenstone products.

In the complaint, Sps. Yeung averred that Emma's brother, Jose Ruivivar III, bought a bottle of Greenstone from Royal Chinese Drug Store (Royal) in Binondo, Manila, owned by Ling Na Lau. However, when he used the product, Ruivivar doubted its authenticity considering that it had a different smell, and the heat it produced was not as strong as the original Greenstone he frequently used.

Having been informed by Ruivivar of the same, Yeung, together with his son, John Philip, went to Royal to investigate the matter and found seven (7) bottles of counterfeit Greenstone on display for sale. He was then told by Pinky Lau – the store's proprietor – that the items came from Roberto Co of Kiao An Chinese Drug Store. Co allegedly offered the products as "Tienchi Fong Sap Oil Greenstone" which she eventually availed from him. Upon Yeung's prodding, Pinky wrote a note stating these events.

Co denied having supplied counterfeit items to Royal and maintained that the stocks of Greenstone came only from Taka Trading. Meanwhile, the Laus denied selling Greenstone and claimed that the seven (7) items of Tienchi were left by an unidentified male person at the counter of their drug store and that when Yeung came and threatened to report the matter to the authorities, the items were surrendered to him. As to Pinky's note, it was claimed that she was merely forced by Yeung to sign the same.

Subsequently the RTC ruled in favor of Sps. Yeung, and accordingly ordered Co and the Laus to pay Sps. Yeung: (a) ₱300,000.00 as temperate damages; (b) ₱200,000.00 as moral damages; (c) ₱100,000.00 as exemplary damages; (d) ₱100,000.00 as attorney's fees; and (e) costs of suit.

It found that the Sps. Yeung had proven by preponderance of evidence that the Laus and Co committed unfair competition through their conspiracy to sell counterfeit Greenstone products that resulted in confusion and deception not only to the ordinary purchaser, like Ruivivar, but also to the public. It did not find the Laus and Co liable for trademark infringement as there was no showing that the trademark "Greenstone" was registered at the time the acts complained of occurred.

On appeal, the Court of Appeals affirmed the RTC Decision, pointing out that in the matter of credibility of witnesses, the findings of the trial court are given great weight and the highest degree of respect. Accordingly, it sustained the RTC's finding of unfair competition, considering that Sps. Yeung's evidence preponderated over that of the Laus and Co which was observed to be shifty and contradictory. Resultantly, all awards of damages in favor of Sps. Yeung were upheld.

ISSUE:

Whether the Co and the Laus are liable for trademark infringement?

HELD:

NO. Defendants here cannot be liable for trademark infringement. However, the case for unfair competition shall prosper.

Although liable for unfair competition, Co was properly exculpated from the charge of trademark infringement considering that the registration of “Greenstone” was not proven to have existed DURING THE TIME the acts complained of were committed.

Distinction Between Unfair Competition and Trademark Infringement

(*a*) the former is the unauthorized use of a trademark, whereas the latter is th e passing off of one’s goods as those of another;
(*b*) fraudulent intent is unnecessary in the former, while it is essential in the la tter; and
(c) in the former, prior registration of the trademark is a prerequisite to the act ion, while it is not necessary in the latter.

UNFAIR COMPETITION

Unfair competition is defined as the passing off or attempting to pass off upon the public of the goods or business of one person as the goods or business of another with the end and probable effect of deceiving the public.

This takes place where the defendant gives his goods the general appearance of the goods of his competitors with the intention of deceiving the public that the goods are those of his competitor.

It has been established here that Co conspired with the Laus in the sale and distribution of counterfeit Greenstone products to the public which were even packed in bottles identical to the original which gave rise to the presumption of fraudulent intent.

II. CORPORATION LAW

F&S Velasco Company et al v. Dr. Rommel Madrid et al
G.R. No. 208844, 10 November 2015
Topic: Transfer of Shares

FACTS:

FSVCI was duly organized and registered as a corporation with Francisco, Simona, Angela, herein respondent Madrid, and petitioner Saturnino as its incorporators. When Simona and Francisco died, their daughter, Angela, inherited their shares, thereby giving her control of 70.82% of FSVCI's total shares of stock. Angela died intestate and without issue. Then Madrid, as Angela's spouse, executed an Affidavit of Self-Adjudication covering the latter's estate which includes her 70.82% ownership of FSVCI's shares of stock. Believing that he is already the controlling stockholder of FSVCI by virtue of such self-adjudication, Madrid called for a Special Stockholders' and Re-Organizational Meeting. Madrid executed separate deeds of assignment transferring one share each to respondents. Meanwhile, as Madrid was performing the aforesaid acts, the FSVCI corporate secretary sent a Notice of an Emergency Meeting to FSVCI's remaining stockholders for the purpose of electing a new president and vice president, as well as the opening of a bank account. Saturnino was elected FSVCI President, while Scribner was elected FSVCI Vice President. Despite the election, Madrid's group proceeded with the Special Stockholders' and Re-Organizational Meeting.

ISSUE:

Whether the meeting organized by Madrid was valid and legal

HELD:

NO. Settled is the rule that all transfers of shares of stock must be registered in the corporate books in order to be binding on the corporation. Specifically, this refers to the Stock and Transfer Book, which is described in Section 74 of the same Code. The case of *Batangas Laguna Tayabas Bus Co., Inc. v. Bitanga* instructs that an owner of shares of stock cannot be accorded the rights pertaining to a stockholder — such as the right to call for a meeting and the right to vote, or be voted for — if his ownership of such shares is not recorded in the Stock and Transfer Book.

In light of the foregoing, Madrid could not have made a valid call of the November 18, 2009 Meeting as his stock ownership of FSVCI as registered in the Stock and Transfer Book is only 4.16% in view of the nonregistration of Angela's shares of stock in the FSVCI Stock and Transfer Book in his favor. As there was no showing that he was able to remedy the situation by the time the meeting was held, the conduct of such meeting, as well as the matters resolved therein, including the reorganization of the FSVCI Board of Directors and the election of new corporate officers, should all be declared null and void.

Bank of the Philippine Islands (BPI) v. Carlito Lee (Lee)
G.R. 190144, 1 August 2012
Topic: Merger and Consolidation

FACTS:

Lee filed a complaint for sum of money with damages and application for a writ of attachment against Trendline and Buelva before the Regional Trial Court (RTC). He alleged that he was enticed to invest his money with Trendline upon Buelva's misrepresentation that she was its duly licensed investment consultant or commodity saleswoman. His investments were lost without any explanation from Trendline and Buelva. The RTC issued a writ of attachment whereby the savings accounts of Trendline with Citytrust Bank were garnished. Meanwhile, Citytrust and BPI merged, with the latter as the surviving corporation. The Articles of Merger provide that all liabilities and obligations of Citytrust shall be transferred to BPI. Thereafter, Lee moved for the execution and enforcement of the garnishment of Trendline's Citytrust deposits. This was denied by the RTC because BPI already took over the said deposits from Citytrust and the fact that BPI was not a party to the case.

ISSUE:

Whether BPI is a party-in-interest in the case filed by Lee upon the approval of its Merger with Citytrust?

HELD:

YES. Citytrust, upon service of the notice of garnishment, became a “virtual party” to or a “forced intervenor” in the case. As such, it became bound by the orders and processes issued by the trial court despite not having been properly impleaded therein. Consequently, by virtue of its merger with BPI. BPI, as the surviving corporation, effectively became the garnishee, thus the “virtual party” to the civil case.

Although Citytrust was dissolved, no winding up of its affairs or liquidation of its assets, privileges, powers and liabilities took place. As the surviving corporation, BPI simply continued the combined businesses of the two banks and absorbed all the rights, privileges, assets, liabilities and obligations of Citytrust, including the latter’s obligation over the garnished deposits of the defendants.

MANUEL LUIS GONZALES AND FRANCIS MARTIN GONZALES v GJH LAND, CHANG HWAN A.K.A. STEVE JANG, SANG RAK KIM, MARIECHU YAP, AND ATTY. ROBERTO MALLARI II
G.R. No. 202664, November 20, 2015

FACTS:

Manuel Luis C. Gonzales and Francis Martin D. Gonzales filed a Complaint for "Injunction with prayer for Issuance of *Status Quo* Order, Three Temporary Restraining Orders, and Writ of Preliminary Injunction with Damages" against respondents GJH Land, Inc. (Chang Hwan Jang, Sang Rak Kim, Mariechu N. Yap, and Atty. Roberto P. Mallari II (respondents) before the RTC of Muntinlupa City.

This is in line with the sale of S.J. Land, Inc.'s shares which they purportedly bought from S.J. Global, Inc. Petitioners alleged that the subscriptions for the said shares were **already paid by them in full in the books of S.J. Land, Inc.** but were nonetheless offered for sale to the corporation's stockholders, hence, their plea for injunction.

It was docketed as a civil case before a regular trial court, not a special commercial court. The said court likewise granted the relief sought.

Respondents filed a motion to dismiss on the ground of **lack of jurisdiction over the subject matter**, pointing out that the case involves an **intra-corporate dispute and should, thus, be heard by the designated Special Commercial Court** of Muntinlupa City.

Branch 276 granted the motion to dismiss filed by respondents. It found that the case involves an **intra-corporate dispute** that is within the original and exclusive jurisdiction of the RTCs designated as Special Commercial Courts.

Petitioners subsequently filed a MR, arguing that they filed the case with the Office of the Clerk of Court of the RTC of Muntinlupa City which assigned the same to Branch 276 by *raffle*. As the raffle was beyond their control, they should not be made to suffer the consequences of the wrong assignment of the case, especially after paying the filing fees in the amount of P235,825 that would be for naught if the dismissal is upheld. They further maintained that the RTC has jurisdiction over intra-corporate disputes under Republic Act No. (RA) 8799, but since the Court selected specific branches to hear and decide such suits, the case must, at most, be transferred or raffled off to the proper branch.

ISSUE:

Whether the Regional Trial Court erred in Dismissing the Case for Lack of Jurisdiction

HELD:

YES. While it is correct to categorize the case an intra-corporate dispute. Applying the *relationship test* and the *nature of the controversy test,* the suit between the parties is **clearly rooted in the existence of an intra-corporate relationship** and pertains to the enforcement of their correlative rights and obligations under the Corporation Code and the internal and intra-corporate regulatory rules of the corporation, hence, intra-corporate, which should be heard by the designated Special Commercial Court as provided.

The present controversy lies, however, in the procedure to be followed when a commercial case - such as the instant intra-corporate dispute -has been properly filed in the official station of the designated Special Commercial Court but is, however, later wrongly assigned by raffle to a regular branch of that station.

As a basic premise, let it be emphasized that a court's acquisition of jurisdiction over a particular case's subject matter is different from incidents pertaining to the exercise of its jurisdiction.

DISTINGUISHING JURISDICTION OVER THE SUBJECT MATTER AND EXERCISE OF JURISDICTION

Jurisdiction over the subject matter of a case is **conferred by law**, whereas a court's **exercise of jurisdiction**, unless provided by the law itself, is governed by the Rules of Court or by the orders issued from time to time by the Court.

Corollary thereto, a court's exercise of general or limited jurisdiction is only a matter of procedure AND HAS NOTHING TO DO with the question of jurisdiction

RA 8799 effectively transferred the jurisdiction to hear and try intra-corporate disputes before before the SEC to Regional Trial Courts which shall be delegated as special commercial courts.

Consistent with the foregoing, history depicts that when the transfer of SEC cases to the RTCs was first implemented, they were transmitted to the Executive Judges of the RTCs for raffle between or among its different branches, **unless a specific branch has been designated as a Special Commercial Court, in which instance, the cases were *transmitted* to said branch.**

Petitioners here filed a commercial case with the Office of the Clerk of Court in RTC of Muntinlupa which is the OFFICIAL station of the designated Special Commercial Court. Unfortunately, it was wrongly raffled to a regular branch instead of a Special Commercial Court because the caption of the pleading may have been relied upon in determining which court may try it, being that the action is a "Civil Case for Injunction…"

GUIDELINES ON CASES INVOLVING INTRA-CORPORATE DISPUTES:

1. If a commercial case filed before the proper RTC is wrongly raffled to its regular branch, the proper courses of action are as follows:

> **1.1** If the RTC has only one branch designated as a Special Commercial Court, then the case shall be referred to the Executive Judge for re-docketing as a commercial case, and thereafter, assigned to the sole special branch;
>
> **1.2** If the RTC has multiple branches designated as Special Commercial Courts, then the case shall be referred to the Executive Judge for re-docketing as a commercial case, and thereafter, raffled off among those special branches; and
>
> **1.3** If the RTC has no internal branch designated as a Special Commercial Court, then the case shall be referred to the nearest RTC with a designated Special Commercial Court branch within the judicial region. Upon referral, the RTC to which the case was referred to should re- docket the case as a commercial case, and then: (a) if the said RTC has only one branch designated as a Special Commercial Court, assign the case to the sole special branch; or (b) if the said RTC has multiple branches designated as Special Commercial Courts, raffle off the case among those special branches.

2. If an ordinary civil case filed before the proper RTC is wrongly raffled to its branch designated as a Special Commercial Court, then the case shall be referred to the Executive Judge for re-docketing as an ordinary civil case. Thereafter, it shall be raffled off to all courts of the same RTC (including its designated special branches which, by statute, are equally capable of exercising general jurisdiction same as regular branches), as provided for under existing rules.

3. All transfer/raffle of cases is subject to the payment of the appropriate docket fees in case of any difference. On the other hand, all docket fees already paid shall be duly credited, and any excess, refunded.

4. Finally, to avert any future confusion, the Court requires that all initiatory pleadings state the action's nature both in its caption and body. Otherwise, the initiatory pleading may, upon motion or by order of the court motu proprio, be dismissed without prejudice to its re-filing after due rectification. This last procedural rule is prospective in application.

5. All existing rules inconsistent with the foregoing are deemed superseded.

BANK OF THE PHILIPPINE ISLANDS v. SARABIA MANOR HOTEL CORPORATION.
G.R. No. 175844, July 29, 2013

FACTS:

Following the intended construction project of a five-story hotel as another venture of Sarabia Hotel, it obtained a loan package from Far East Bank and Trust Company and that the latter also granted additional credit ON TOP of the aforementioned loan in the same year. The foregoing debts were secured by real estate mortgages over several parcels of land owned by Sarabia and a comprehensive surety agreement signed by its stockholders. By virtue of a merger, Bank of the Philippine Islands (BPI) assumed all of FEBTC's rights against Sarabia.

Sarabia eventually started paying the interests due pertaining to the loan it previously acquired. However, there were difficulties brought about by the construction of the building which led to incurring problems about their cash flow and hence affected their ability to timely pay the interests. Noteworthy, however, is during this time, Sarabia Hotel had more assets than liabilities but nonetheless filed a Petition for Corporate Rehabilitation before the Regional Trial Court (RTC).

Subsequently, the RTC approved Sarabia's rehabilitation plan as recommended by the receiver and It observed that the recommended rehabilitation plan was also practical in terms of the interest rate pegged at 6.75% p.a. since it is based on Sarabia's ability to pay and the creditors' perceived cost of money. More significantly, the RTC did not give credence to BPI's opposition to the Receiver's recommended rehabilitation plan as neither BPI nor the Receiver was able to substantiate the claim that BPI's cost of funds was at the 10% p.a. threshold. In this regard, the RTC gave more credence to the Receiver's determination of fixing the interest rate at 6.75% p.a.

The RTC further noted that while it may be true that Sarabia has been unable to comply with its existing terms with BPI, it has nonetheless complied with its obligations to its employees and suppliers and pay its taxes to both local and national government without disrupting the day-to-day operations of its business as an on-going concern.

On appeal, the Court of Appeals affirmed the RTC's ruling with the modification of reinstating the surety obligations of Sarabia's stockholders to BPI as an additional safeguard for the effective implementation of the approved rehabilitation plan. It also upheld the 6.75%. p.a. interest rate on Sarabia's loans, finding the said rate to be reasonable given that BPI's interests as a creditor were properly accounted for.

BPI mainly argues that the approved rehabilitation plan **did not give due regard to its interests as a secured creditor** in view of the imposition of a fixed interest rate of 6.75% p.a. and the extended loan repayment period.

ISSUE:

Whether the Court of Appeals correctly affirmed Sarabia's rehabilitation plan as approved by the Regional Trial Court

RULING:

YES. The very essence of the rules on corporate rehabilitation is to give companies a means of dealing with debilitating financial predicaments in order to help restore them or to give them hope of operating sustainably once more.

Corporate Rehabilitation as an attempt to conserve and administer the assets of an insolvent corporation in the hope of its eventual return from financial stress to solvency. It contemplates the continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and liquidity. Verily, the purpose of rehabilitation proceedings is to enable the company to gain a new lease on life and thereby allow creditors to be paid their claims from its earnings. Thus, rehabilitation shall be undertaken when it is shown that the continued operation of the corporation is economically more feasible and its creditors can recover, by way of the present value of payments projected in the plan, more, if the corporation continues as a going concern than if it is immediately liquidated.

Recognizing the volatile nature of every business, the rules on corporate rehabilitation have been crafted in order to give companies sufficient leeway to deal with debilitating financial predicaments in the hope of restoring or reaching a sustainable operating form if only to best accommodate the various interests of all its stakeholders, may it be the corporation's stockholders, its creditors and even the general public.

In this light, case law has defined corporate rehabilitation as an attempt to conserve and administer the assets of an insolvent corporation in the hope of its eventual return from financial stress to solvency. It contemplates the continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and liquidity.

Verily, the purpose of rehabilitation proceedings is to enable the company to gain a new lease on life and thereby allow creditors to be paid their claims from its earnings. Thus, rehabilitation shall be undertaken when it is shown that the continued operation of the corporation is economically more feasible and its creditors can recover, by way of the present value of payments projected in the plan, more, if the corporation continues as a going concern than if it is immediately liquidated.

The CRAM-DOWN CLAUSE

Section 23, Rule 4 of the **Interim Rules of Procedure on Corporate Rehabilitation (Interim Rules)** states that a rehabilitation plan may be approved **even over the opposition of the creditors holding a majority of the corporation's total liabilities** if there is a showing that rehabilitation is feasible and the opposition of the creditors is manifestly unreasonable.

Also known as the **"cram-down" clause**, this provision, which is currently incorporated in the FRIA, is necessary to curb the majority creditors' natural tendency to dictate their own terms and conditions to the rehabilitation, absent due regard to the greater long-term benefit of all stakeholders. Otherwise stated, it forces the creditors to accept the terms and conditions of the rehabilitation plan, preferring long-term viability over immediate but incomplete recovery.

It is within the parameters of the aforesaid provision that the Court examines the approval of Sarabia's rehabilitation.

i. Feasibility of Sarabia's rehabilitation.

If the results of the financial examination and analysis show that there is a **real opportunity to rehabilitate** the corporation in view of the assumptions made and financial goals stated in the proposed rehabilitation plan, then it may be said that a rehabilitation is feasible.

In this accord, the r**ehabilitation court should not hesitate to allow the corporation to operate as an on-going concern**, albeit under the terms and conditions stated in the approved rehabilitation plan. On the other hand, if the results of the financial examination and analysis clearly indicate that there lies no reasonable probability that the distressed corporation could be revived and that liquidation would, in fact, better subserve the interests of its stakeholders, then it may be said that a rehabilitation would not be feasible.

In such case, the rehabilitation court may convert the proceedings into one for liquidation.

Clearly, Sarabia has the financial capability to undergo the rehabilitation despite its financial constraints because it continues to be profitable and its operations were not disrupted.

Second, Sarabia has the ability to have sustainable profits over a long period of time.

Third, the interests of Sarabia's creditors are well-protected. Therefore, based on the above-stated reasons, the Court finds Sarabia's rehabilitation to be feasible.

ii. Manifest unreasonableness of BPI 's opposition.

Anent the matter of the imposition 6.75% p.a. interest rate, it must be pointed out that **oppositions which push for high interests rates are generally frowned upon** in rehabilitation proceedings given that the inherent purpose of a rehabilitation is to find ways and means to minimize the expenses of the distressed corporation during the rehabilitation period. It is the objective of a rehabilitation proceeding to provide the best possible framework for the corporation to gradually regain or achieve a sustainable operating form.

Hence, if a creditor, whose interests remain well-preserved under the existing rehabilitation plan, still declines to accept interests pegged at reasonable rates during the period of rehabilitation, and, in turn, proposes rates which are largely counter-productive to the rehabilitation, then it may be said that the creditor's opposition is manifestly unreasonable.

In this case, the Court finds BPI's opposition on the approved interest rate to be manifestly unreasonable considering that: (a) the 6.75% p.a. interest rate already constitutes a reasonable rate of interest which is concordant with Sarabia's projected rehabilitation; and (b) on the contrary, BPI's proposed escalating interest rates remain hinged on the theoretical assumption of future fluctuations in the market, this notwithstanding the fact that its interests as a secured creditor remain well-preserved.

III. BANKING LAWS

DOMINADOR APIQUE v. EVANGELINE APIQUE FAHNENSTICH
GR 205705, August 5, 2015

FACTS:

Dominador and Evangeline are siblings and maintaining a joint savings account with Equitable PCI Bank. Sometime in 2002, Dominador withdrew money from the joint account and deposited the same to his own bank account. Evangeline discovered the withdrawal and demanded the return of the amount withdrawn but it was unheeded. This prompted Evangeline to file a complaint for sum of money and damages with prayer for TRO against Dominador.

Evangeline argued that she did not authorize Dominador to withdraw and that Equitable violated banking rules for allowing the withdrawal without retention of the passbook.

Dominador defended by arguing he was authorized through powers of attorney, while Equitable said the account was an "OR" account such that any of the holders may transact without signature of another.

The Regional Trial Court (RTC) ruled in favor of Dominador ratiocinating that an "OR" account authorizes any of the account holders to transact without consent or signature of the others.

The Court of Appeals reversed and set aside the RTC ruling that even though it is an "OR" account, the holder is not given the unbridled right to withdraw any amount at any time.

ISSUE:

Whether in a joint bank account, can any of the account holders transact with the account any time even without consent of the other account holders

HELD:

YES, unless the contrary is stipulated.

A Joint account is one that is held jointly by 2 or more natural persons or 2 or more juridical persons. Depositors therein are co-owners and their share shall be presumed equal unless the contrary is proved. The common banking practice is that each holder may deposit or withdraw partially or wholly unless they have internally agreed upon a different set up.

In this case, (as admitted by the parties) the purpose of opening a joint account is for Evangeline's business projects and financial obligations and only due to that purpose may Dominador withdraw. Since the withdrawals by Dominador in this case did not fall under any of the purposes, he should return the same.

LAND BANK OF THE PHILIPPINES v. EDUARDO CACAYURAN
GR 191667, April 17, 2013

FACTS:

Agoo Sangguniang Bayan passed a certain resolution to implement a redevelopment plan to redevelop the Agoo Public Plaza. To finance the plan, the Sangguniang Bayan passed a resolution authorizing then Mayor Eriguel to obtain a loan from Land Bank. Incidental to the loan is the mortgage of a portion of the plaza as collateral.

The commercial loan was opposed by some residents of the municipality. The opposition was embodied in a manifesto launched through a signature campaign by the residents and Cacayuran. Invoking his right as taxpayer, Cacayuran filed a complaint against the officials and Land bank assailing the validity of the loans on the ground that the Plaza lot used as collateral is a property of public dominion and therefore beyond the commerce of man.

The Regional Trial Court ruled for the nullity of the subject loans, saying that the loans were passed in a highly irregular manner, as such, the Municipality is not bound by the same.

Upon appeal to the Court of Appeals, it affirmed with modification the RTC's ruling, explaining that Cacayuran has locus standi as resident and taxpayer in the municipality and the issue involves public interest. And that the plaza cannot be a valid collateral to a loans for it is of public dominion. Hence the present petition for certiorari.

ISSUE:

1. Whether the resolutions are valid
2. Whether the loans in this case are ultra vires

HELD:

1. NO. While ordinances are laws and possess a general and permanent character, resolutions are merely declarations of the sentiment or opinion of a law making body on a specific matter and are temporary in nature. As opposed to ordinances, "no rights can be conferred by and be inferred from a resolution." In this accord, it cannot be denied that the SB violated Section 444(b)(1)(vi) of the LGC altogether. Noticeably, the passage of the Subject Resolutions was also tainted with other irregularities, such as

SB's failure to submit the Subject Resolutions to the Sangguniang Panlalawigan of La Union for its review contrary to Section 56 of the LGC; and

Lack of publication and posting in contravention of Section 59 of the LGC.

2. YES. Generally, an ultra vires act is one committed outside the object for which a corporation is created as defined by the law of its organization and therefore beyond the powers conferred upon it by law.

There are two (2) types of ultra vires acts. There is a distinction between an act utterly beyond the jurisdiction of a municipal corporation and the irregular exercise of a basic power under the legislative grant in matters not in themselves jurisdictional.

The former are ultra vires in the primary sense and void; the latter, ultra vires only in a secondary sense which does not preclude ratification or the application of the doctrine of estoppel in the interest of equity and essential justice.

In the given case, it is clear that the subject loans belong to the first class of ultra vires acts deemed as void. Records disclose that the said loans were executed by the Municipality for the purpose of funding the conversion of the Agoo Plaza into a commercial center pursuant to the Redevelopment Plan.

However, the conversion of the said plaza is beyond the Municipality's jurisdiction considering the property's nature as one for public use and thereby, forming part of the public dominion. Accordingly, it cannot be the object of appropriation either by the State or by private persons. Nor can it be the subject of lease or any other contractual undertaking.

APEX BANCRIGHTS HOLDINGS, INC. v. BANGKO SENTRAL NG PILIPINAS DEPOSIT CORPORATION
GR No. 189358, Oct. 08, 2014

DOCTRINE:

The Monetary Board is not required to make an independent determination of whether a bank may still be rehabilitated or not. Sec. 30 of RA 7653 does not require the same.

FACTS:

Export and Industry Bank (EIB) entered into a three-way merger with Urban Bank, Inc. (UBI) and Urbancorp Investments, Inc. (UII) in an attempt to rehabilitate UBI which was then under receivership.

After the merger, EIB encountered financial difficulties which prompted respondent the Philippine Deposit Insurance Corp. (PDIC) to extend financial assistance to it. EIB still failed to overcome the financial difficulties, causing PDIC to release additional financial assistance to it. EIB thereafter failed to comply with BSP's capital requirements causing its stockholder to commence the process of selling the bank.

Banco de Oro (BDO) expressed interest in acquiring EIB. However, it did not proceed due to several issues encountered in the assumption of liabilities. EIB's president and chairman voluntarily turned over the full control of EIB to BSP and informed the latter that it will declare a bank holiday.

BSP through the Monetary Board prohibited EIB from doing business in the Philippines and placed it under receivership of PDIC, in accordance with the New Central Bank Act. PDIC took over EIB. PDIC submitted its initial receivership report to the Monetary Board, stating that EIB can be rehabilitated or permitted to resume business.

The public bidding failed, thus PDIC informed BSP that EIB can hardly be rehabilitated and that it is insolvent. The BSP directed PDIC to proceed with the liquidation of EIB.

Petitioners who are stockholders, representing majority stock of EIB filed a petition for certiorari, blaming PDIC for the failure to rehabilitate EIB. PDIC countered that the Petitioning Stockholders were estopped from assailing the placement of EIB under receivership and its eventual liquidation since they had already surrendered full control to the BSP.

The Court of Appeals dismissed the petition. It ruled that the Monetary Board did not gravely abuse its discretion in ordering the liquidation of EIB pursuant to the PDIC's finding that EIB can no longer be rehabilitated.

ISSUE:

Whether the Order for the liquidation of EIB was proper.

RULING:

YES, It is settled that "the power and authority of the Monetary Board to close banks and liquidate them thereafter when public interest so requires is an exercise of the police power of the State.

Police power, however, is subject to judicial inquiry. It may not be exercised arbitrarily or unreasonably and could be set aside if it is either capricious, discriminatory, whimsical, arbitrary, unjust, or is tantamount to a denial of due process and equal protection clauses of the Constitution."

Otherwise stated and as culled from the above provision, the actions of the Monetary Board shall be final and executory and may not be restrained or set aside by the court except on petition for certiorari on the ground that the action taken was in excess of jurisdiction or with such grave abuse of discretion as to amount to lack or excess of jurisdiction. "There is grave abuse of discretion when there is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim and despotism."

In line with the foregoing, the Court agrees with the CA that the Monetary Board did not gravely abuse its discretion in ordering the liquidation of EIB.

The Monetary Board's issuance of the Resolution ordering the liquidation of EIB cannot be considered to be tainted with grave abuse of discretion as it was amply supported by the factual circumstances at hand and made in accordance with prevailing law and jurisprudence.

IV. TRANSPORTATION LAWS

ACE NAVIGATION CO., INC. (ACENAV) *v.* FGU INSURANCE CORPORATION and PIONEER INSURANCE AND SURETY CORPORATION
G.R. No. 171591, 25 June 2012

Doctrine: A mere agent is different from a ship agent. The former cannot be held liable for the damage supposedly caused by its principal.

FACTS:

The subject vessel in this case is owned by Pakarti which it chartered to Shinwa. Shinwa entered into a time charter party contract with Sky, which further chartered it to Regency. Thereafter, CARDIA Ltd. shipped on board the subject vessel 165,200 bags of cement, which was insured to respondents, to be delivered to its consignee HEINDRICH. It was Regency that directly dealt with consignee Heindrich and issued the Clean Bill of Lading. When the vessel arrived at the port it was found that out of the 165,200 bags of cement, 43,905 bags were in bad order and condition. Respondents paid Heindrich, then filed a complaint for damages against Regency, Pakarti, Shinwa, Sky and ACE Navigation Co.

The RTC dismissed the complaint, but the CA found Pakarti, Shinwa and Sky solidarily liable for 70% of the damages sustained by the cargo because of its failure to prove that they exercised extraordinary diligence in the vigilance over the bags of cement entrusted to them for transport. On the other hand, the CA passed on the remaining 30% of the amount claimed to the shipper, CARDIA, and its agent, ACENAV, upon a finding that the damage was partly due to the cargo's inferior packing. ACENAV asserts that it cannot be held liable for the damages because it was not a party to the bill of lading, and that its principal, CARDIA, was not impleaded as a party in the suit.

ISSUE:

Whether a mere agent of the shipper can be held liable for the damage done to the goods shipped.

HELD:

NO. A ship agent, under the Code of Commerce, is understood to be the person entrusted with the provisioning of a vessel, or who represents her in the port in which she may be found. In this case, the obligation of ACENAV was limited to informing the consignee HEINDRICH of the arrival of the vessel in order for the latter to immediately take possession of the goods. No evidence was offered to establish that ACENAV had a hand in the provisioning of the vessel or that it represented the carrier, its charterers, or the vessel at any time during the unloading of the goods. Hence, ACENAV was not a ship agent within the meaning of Art. 586 of the Code of Commerce, but a mere agent of CARDIA, the shipper.

On this score, we follow the Civil Code. Art. 1897 of the Code provides that an agent is not personally liable to the party with whom he contracts, unless he expressly binds himself or exceeds the limits of his authority without giving such party sufficient notice of his powers. Both exceptions do not obtain in this case. Furthermore, since CARDIA was not impleaded as a party in the instant suit the liability cannot be borne by ACENAV. As mere agent, ACENAV cannot be made responsible or held accountable for the damage supposedly caused by its principal. Accordingly, ACENAV cannot be jointly and severally liable with CARDIA to pay 30% of the respondents' claim.

V. SPECIAL COMMERCIAL LAWS

Puerto Azul Land, Inc. (PALI) v. Pacific Wide Realty and Development Corporation (PWRDC)
G.R. No. 184000, 17 September 2014

FACTS:

PALI obtained loans from several creditors, secured by real estate mortgage. Foreseeing the impossibility of meeting its debts and obligations, PALI filed a Petition for Suspension of Payments and Rehabilitation before the RTC, attributing its financial difficulties to: (a) the denial by the Philippine Stock Exchange of its application for the public listing of its shares of stock which resulted in the loss of potential investors and real estate buyers; (b) the 1997 Asian financial crisis; and (c) the real estate bubble burst. Thereafter, the Rehabilitation Receiver recommended PALI's rehabilitation over its dissolution and liquidation. The rehabilitation plan was contested on the ground that the same is unreasonable and results in the impairment of the obligations of contract. PWRDC contests the following stipulations in PALI's rehabilitation plan: fifty percent (50%) reduction of the principal obligation;

condonation of the accrued and substantial interests and penalty charges; repayment over a period of ten years, with minimal interest of two percent (2%) for the first five years and five percent (5%) for the next five years until fully paid, and only upon availability of cash flow for debt service.

ISSUE:

Whether the rehabilitation plan is valid?

HELD:

YES. The Interim Rules on Corporate Rehabilitation provides for means of execution of the rehabilitation plan, which may include, among others, the conversion of the debts or any portion thereof to equity, restructuring of the debts, *dacion en pago*, or sale of assets or of the controlling interest. The restructuring of the debts of PALI is part and parcel of its rehabilitation. Moreover, per findings of fact of the RTC and as affirmed by the CA, the restructuring of the debts of PALI would not be prejudicial to the interest of PWRDC as a secured creditor.

There is nothing unreasonable or onerous about the 50% reduction of the principal amount when, as found by the court *a quo*, a Special Purpose Vehicle (SPV) acquired the credits of PALI from its creditors at deep discounts of as much as 85%. Meaning, PALI's creditors accepted only 15% of their credit's value. Stated otherwise, if PALI's creditors are in a position to accept 15% of their credit's value, with more reason that they should be able to accept 50% thereof as full settlement by their debtor.

ILDEFONSO CRISOLOGO v PEOPLE OF THE PHILIPPINES AND CHINA BANKING CORPORATION
G.R. No. 199481, December 3, 2012

FACTS:

Ildefonso Crisologo is the President of Novachemical Industries, Inc. (Novachem). It applied for commercial letters of credit from China Bank to be able to purchase Amoxicillin Trihydrate micronized from Hyundai Chemical Company in Seoul and to purchase glass containers from San Miguel Corporation. Chinabank issued the Letters of Credit (for the amounts of P 2,139,119.80 and P1,712,289.90). When the goods were received, Ildefonso executed for and in behalf of Novachem the Corresponding Trust Receipt Agreements in favor of Chinabank

Subsequently, Chinabank filed before the City Prosecutor's Office a complaint-affidavit against Crisologo for violation of P.D. No. 115 in relation to Art. 315 (trust receipts law in relation to Estafa) for allegedly failing to turn-over the goods from the sale in spite of Chinabank's demands with intent to defraud and with abuse of confidence misappropriated the goods which caused Chinabank damage and prejudice.

Crisologo claimed that Novachem was granted a credit line and LC's secured by Trust Receipt agreements and there was an agreement between them allegedly allowing Crisologo to pay the obligation in installments and that Novachem would give instructions as to what particular letter of credit or trust receipt obligation its payments would be applied to. In spite of such agreement, it was Chinabank who allegedly deviated.

The City Prosecutor found probable cause to indict petitioner as charged and filed the corresponding informations before the Regional Trial Court of Manila.

Thereafter, the Regional Trial Court rendered a Decision **acquitting petitioner of the criminal charges for failure of the prosecution to prove his guilt beyond reasonable doubt**.

However, the court adjudged him civilly liable to Chinabank, without need for a separate civil action, for the amounts of P1,843,567.90 and P879,166.81 under L/C Nos. 89/0301 and DOM-33041, respectively, less the payment of P500,000.00 made during the preliminary investigation, with legal interest from the filing of the informations on October 27, 1994 until full payment, and for the costs.

Subsequently, on appeal of the civil aspect, the CA affirmed the RTC Decision holding petitioner civilly liable. It noted that petitioner signed the "Guarantee Clause" of the trust receipt agreements in his personal capacity and even waived the benefit of excussion against Novachem. As such, he is personally and solidarily liable with Novachem.

Issues:

1. Whether the CA erred in declaring him civilly liable under the subject L/Cs which are corporate obligations of Novachem?
2. Whether the imposition by Chinabank of the interest rate may be done unilaterally?
3. Whether Ms. De Mesa had the capacity to sue on behalf of Chinabank even though she had no proof of authority to represent the latter? YES

HELD:

1. YES AND NO

YES, the CA erred because insofar as the TRUST RECEIPTS LAW is concerned, sec. 13 of the law states that if a corporation violates the law, the penalty shall be imposed against the directors officers or employees responsible for the offense. In this case, petitioner was acquitted of the charge for violation of the Trust Receipts Law. **HE IS relieved of the corporate criminal liability as well as the corresponding civil liability** arising therefrom.

NO. Because as correctly found by the RTC and the CA, he may still be held liable for the trust receipts and L/C transactions he had entered into in behalf of Novachem.

Debts incurred by directors, officers, and employees acting as corporate agents are not their direct liability but of the corporation they represent, except if they contractually agree/stipulate or assume to be personally liable for the corporations debts, as in this case.

The RTC and the CA adjudged petitioner personally and solidarily liable with Novachem for the obligations secured by the subject trust receipts based on the finding that he signed the guarantee clauses therein in his personal capacity and even waived the benefit of excussion.

A review of the records shows that petitioner signed only the guarantee clauses of the Trust Receipt and the corresponding Application and Agreement for Commercial Letter of Credit No. L/C No. With respect to the Trust Receipt and Irrevocable Letter of Credit No. L/C issued to SMC for the glass containers, the second pages of these documents **that would have reflected the guarantee clauses were missing and did not form part of the prosecution's formal offer of evidence**. In relation thereto, Chinabank stipulated before the CA that the second page of the Trust Receipt attached to the complaint before the court a quo would serve as the missing page.

A perusal of the said page, however, reveals that the same does not bear the signature of the petitioner in the guarantee clause. Hence, it was error for the CA to hold petitioner likewise liable for the obligation secured by the said trust receipt Neither was sufficient evidence presented to prove that petitioner acted in bad faith or with gross negligence as regards the transaction that would have held him civilly liable for his actions in his capacity as President of Novachem.

IN THIS CASE, remember that there were two Letters of Credit. He cannot be held liable for both, because he has only signed one of them in his personal capacity.

2. **YES.** On the matter of interest, while petitioner assailed the unilateral imposition of interest rates above the stipulated 18% p.a., he failed to submit a summary of the pertinent dates when excessive interests were imposed and the purported over-payments that should be refunded. **Having failed to prove his affirmative defense**, the Court finds no reason to disturb the amount awarded to Chinabank. Settled is the rule that in civil cases, the party who asserts the affirmative of an issue has the onus to prove his assertion in order to obtain a favorable judgment. Thus, the burden rests on the debtor to prove payment rather than on the creditor to prove non-payment.

3. **YES.** The Court noted that as Staff Assistant of Chinabank, Ms. De Mesa was tasked, among others, to review applications for L/Cs, verify the documents of title and possession of goods covered by L/Cs, as well as pertinent documents under trust receipts (TRs); prepare/send/cause the preparation of statements of accounts reflecting the outstanding balance under the said L/Cs and/or TRs, and accept the corresponding payments; refer unpaid obligations to Chinabank's lawyers and follow-up results thereon. As such, she was in a position to verify the truthfulness and correctness of the allegations in the Complaint-Affidavit. Besides, petitioner voluntarily submitted to the jurisdiction of the court a quo and did not question Ms. De Mesa's authority to represent Chinabank in the instant case until an adverse decision was rendered against him.

Assailed Decision Affirmed with Modification.

NORLINDA S. MARILAG *v.* **MARCELINO B. MARTINEZ**
G.R. No. 201892, 22 July 22, 2015

Doctrine: The fact that the creditor accepts payments from a third person, who has assumed the obligation, will result merely in the addition of debtors, not novation, and the creditor may enforce the obligation against both debtors.

FACTS:

Rafael obtained from Norlinda a loan amounting to P160K, with 5% monthly interest, payable in 6 months. The loan was secured by a real estate mortgage over a parcel of land. Rafael failed to settle his obligation despite repeated demands, prompting Norlinda to file a complaint for Judicial Foreclosure of Real Estate Mortgage in the RTC. The RTC ordered Rafael to pay P229,200.00 for principal and interest. Prior to Rafael's notice of the said decision, Marcelino (Rafael's son) agreed to pay for his father's obligation and paid P400k to Norlinda and executed a promissory note (PN) amounting to P289K for the balance of the agreed financial obligation of his father which is P689K. Thereafter, after learning of the RTC decision, Marcelino refused to pay the amount covered by the PN, prompting Norlinda to file a complaint for sum of money against him.

The court a quo denied recovery on the PN but later on set aside its decision. It declared that the causes of action in the collection and foreclosure cases are distinct, and Marcelino's failure to comply with his obligation under the PN justifies Norlinda to seek judicial relief. The CA reversed and held that res judicata applies in this case, considering that the judicial foreclosure and collection cases were filed as a consequence of the non-payment of Rafael's loan.

ISSUE:

Whether the action for foreclosure and for collection of unpaid debt have the same cause of action.

HELD:

YES. The rule is whether the entire amount arises from one and the same act or contract which must, thus, be sued for in one action, or the several parts arise from distinct and different acts or contracts, for which a party may maintain separate suits.

In this case, although the PN was executed by Marcelino who was not the original debtor, the same does not constitute a separate and distinct contract of loan which would have given rise to a separate cause of action. Marcelino's agreement to pay Rafael's obligation and execution of the PN did not extinguished by novation the contract of loan between Rafael and Norlinda absent an express agreement thereto, because novation is never presumed. Further, the Deed of Real Estate Mortgage and the PN both refer to one and the same obligation, i.e., Rafael's loan obligation. As such, there exists only one cause of action for a single breach of that obligation.

In loan contracts secured by a real estate mortgage, the rule is that the creditor-mortgagee has a single cause of action against the debtor-mortgagor, i.e., to recover the debt, through the filing of a personal action for collection of sum of money or the institution of a real action to foreclose on the mortgage security. The two remedies are alternative, not cumulative or successive. Therefore, as Norlinda had already instituted judicial foreclosure proceedings over the mortgaged property, she is now barred from availing herself of an ordinary action for collection, regardless of whether or not the decision in the foreclosure case had attained finality. In fine, the dismissal of the collection case here is in order.

NO HONEST EFFORTS ARE EVER WASTED!

GOOD LUCK AND GOD BLESS
☺

Batangas City and Manila
APRIL 24, 2019

All for the Greater Glory of GOD!

+

AMDG