UNIVERSITY OF THE PHILIPPINES

CRITICAL AREAS IN CIVIL PROCEDURE

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GENERAL PRINCIPLES

1. ***Substantive law*** is that part of the law which creates, defines and regulates rights, or which regulates rights and duties which give rise to a cause of action, as opposed ***to adjective or remedial law***, which prescribes the method of enforcing rights or obtains a redress for their invasion." ***(2006 BAR)***

2. THE SUPREME COURT NOW HAS THE SOLE AUTHORITY TO PROMULGATE RULES CONCERNING PLEADING, PRACTICE AND PROCEDURE IN ALL COURTS. *(GSIS VS. HEIRS OF CABALLERO [2010]).*

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* **Chairman, 2012-2014 Committee of Experts in Remedial Law**
* **Member, Committee for Revision of the Rules of Civil Procedure**
* **Professorial Lecturer, University of the Philippines Institute for the Administration of Justice**
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- University of the Philippines Law Center (UPLC), University of Santo Tomas Review Center, Adamson University BAR Review, Philippine Christian University Review Program, University of Cebu BAR Review, University of San Carlos BAR Review, University of San Jose – Recoletos, UM Bar Review Program, MLQU BAR Review, Jose Rizal BAR Review Program (JRU), Bulacan State University(BSU) BAR Review,Tarlac State University (TSU) BAR Review, Don Mariano Marcos State University (DMMSU) BAR Review, University of Baguio (UB), Northeastern University, Aquianas University, University of Nueva Caceres, Western Visayas State University(WVSU), Eastern Visayas State University (EVSU), Xavier University, Notre Dame University, University of Mindanao, Lex Cervus BAR Review Program, National Bar Review Center (NBRC), Lex Reviews and Seminars, Inc. (LEX), Philippine Social Justice Foundation (PHILJUST), Magnificus Juris BAR Review Center, Powerhaus Law Review Center, Inc., Center for Professional Reviews and Seminars (CPRS), Suprema Legis Reviews & Seminars, I-Secure On-line BAR Review, Chan Robles BAR Review, Great Minds BAR Review, Primus BAR Review, Sed Lex MCLE Provider, Inc., ACLEX MCLE Provider, Inc., Center for Global Best Practices (CGBP), Juris Praesidium Secundum, etc.

3. THE COURT ADOPTED A POLICY OF LIBERALLY CONSTRUING ITS RULES IN ORDER TO PROMOTE A JUST, SPEEDY AND INEXPENSIVE DISPOSITION OF EVERY ACTION AND PROCEEDING. The rules can be suspended on the following grounds: (1) matters of life, liberty, honor or property, (2) the existence of special or compelling circumstances, (3) the merits of the case, (4) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (5) a lack of any showing that the review sought is merely frivolous and dilatory, and (6) the other party will not be unjustly prejudiced thereby. *(SEC. DE LIMA VS. GATDULA [2013]).*

4. SUBSTANTIAL JUSTICE DEMANDS THAT WE SUSPEND OUR RULES IN THIS CASE. "IT IS ALWAYS WITHIN THE POWER OF THE COURT TO SUSPEND ITS OWN [R]ULES OR EXCEPT A PARTICULAR CASE FROM ITS OPERATION, WHENEVER THE PURPOSES OF JUSTICE REQUIRE. x x x Indeed, when there is a strong showing that a grave miscarriage of justice would result from the strict application of the Rules, this Court will not hesitate to relax the same in the interest of substantial justice." Suspending the Rules is justified "where there exist strong compelling reasons, such as serving the ends of justice and preventing a miscarriage thereof." After all, the Court's "primordial and most important duty is to render justice x x x." *(Almuete vs. People [2013]).*

5. AS A GENERAL RULE, LAWS SHALL HAVE NO RETROACTIVE EFFECT. HOWEVER, EXCEPTIONS EXIST, AND ONE SUCH EXCEPTION CONCERNS A LAW THAT IS PROCEDURAL IN NATURE. The reason is that a remedial statute or a statute relating to remedies or modes of procedure does not create new rights or take away vested rights but only operates in furtherance of the remedy or the confirmation of already existing rights. A statute or rule regulating the procedure of the courts will be construed as applicable to actions pending and undetermined at the time of its passage. All procedural laws are retroactive in that sense and to that extent. The retroactive application is not violative of any right of a person who may feel adversely affected, for, verily, no vested right generally attaches to or arises from procedural laws. *(Dacudao vs. DOJ Secretary [2013]).*

5.1. RETROACTIVE EFFECT OF THE FRESH PERIOD OF 15 DAYS: To standardize the appeal periods and afford litigants fair opportunity to appeal their cases, the Supreme Court ruled in ***Neypes v. Court of Appeals*** that litigants must be given a fresh period of 15 days within which to appeal, counted from receipt of the order dismissing a motion for a new trial or motion for reconsideration under Rules 40, 41, 42, 43 and 45 of the Rules of Court. In ***Fil-Estate Properties, Inc. v. Homena-Valencia***, the Supreme Court held that their principle retroactively applies even to cases pending prior to the promulgation of *Neypes* on September 14, 2005, there being no vested rights in the rules of procedure *(DUARTE VS. DURAN [2011]).*

6. A MOOT AND ACADEMIC CASE IS ONE THAT CEASES TO PRESENT A JUSTICIABLE CONTROVERSY BY VIRTUE OF SUPERVENING EVENTS, SO THAT A DECLARATION THEREON WOULD BE OF NO PRACTICAL USE OR VALUE. The Court did not desist from resolving an issue that a supervening event meanwhile rendered moot and academic if any of the following recognized exceptions obtained, namely: (1) there was a

grave violation of the Constitution; (2) the case involved a situation of exceptional character and was of paramount public interest; (3) the constitutional issue raised required the formulation of controlling principles to guide the Bench, the Bar and the public; and (4) the case was capable of repetition, yet evading review. (*FUNA VS. AGRA, [2013]).*

7. PRINCIPLE OF JUDICIAL HIERARCHY: Under the principle of hierarchy of courts, direct recourse to this Court is improper because the Supreme Court is a court of last resort and must remain to be so in order for it to satisfactorily perform its constitutional functions, thereby allowing it to devote its time and attention to matters within its exclusive jurisdiction and preventing the overcrowding of its docket. Nonetheless, the invocation of this Court's original jurisdiction to issue writs of certiorari has been allowed in certain instances on the ground of special and important reasons clearly stated in the petition, such as, (1) when dictated by the public welfare and the advancement of public policy; (2) when demanded by the broader interest of justice; (3) when the challenged orders were patent nullities; or (4) when analogous exceptional and compelling circumstances called for and justified the immediate and direct handling of the case. *(DY vs. BIBAT-PALAMOS [2013]).*

8. DOCTRINE OF JUDICIAL STABILITY: NO COURT CAN INTERFERE BY INJUNCTION WITH THE JUDGMENTS OR ORDERS OF ANOTHER COURT OF CONCURRENT JURISDICTION HAVING THE POWER TO GRANT THE RELIEF SOUGHT BY THE INJUNCTION. *(CABILI VS. JUDGE BALINDONG [2011]).*

JURISDICTION

1. JURISDICTION OVER THE SUBJECT MATTER: It is a settled rule that jurisdiction over the subject matter is determined by the allegations in the complaint. It is not affected by the pleas or the theories set up by the defendant in an answer or a motion to dismiss. Otherwise, jurisdiction would become dependent almost entirely upon the whims of the defendant. *(MEDICAL PLAZA MAKATI CONDOMINIUM VS. CULLEN [2013]).*

1.1. DOCTRINE OF EQUITABLE ESTOPPEL OR ESTOPPEL BY LACHES: In ***TIJAM V. SIBONGHANOY*** (131 Phil. 556 (1968), the party-litigant actively participated in the proceedings before the lower court and filed pleadings therein. Only 15 years thereafter, and after receiving an adverse Decision on the merits from the appellate court, did the party-litigant question the lower court's jurisdiction. Considering the unique facts in that case, the Supreme Court held that **estoppel by laches** had already precluded the party-litigant from raising the question of lack of jurisdiction on appeal. In ***Figueroa v. People***, G.R. No. 147406, 14 July 2008, 558 SCRA 63, the Supreme Court cautioned that *Tijam* must be construed as an exception to the general rule and applied only in the most

exceptional cases whose factual milieu is similar to that in the latter case *(REPUBLIC VS. BANTIGUE POINT DEVELOPMENT [2012]).*

1.2. LACHES SHOULD BE CLEARLY PRESENT FOR THE *SIBONGHANOY* DOCTRINE TO APPLY BECAUSE THE DOCTRINE ENUNCIATED IN *TIJAM VS. SIBONGHANOY* IS MERELY AN EXCEPTION RATHER THAN THE RULE. *(VDA. DE HERRERA VS. BERNARDO [2011]).*

1.3. THE *EXCLUSION* OF THE TERM *"DAMAGES OF WHATEVER KIND"* IN DETERMINING THE JURISDICTIONAL AMOUNT UNDER SECTION 19 (8) AND SECTION 33 (1) OF B.P. BLG. 129, AS AMENDED BY R.A. NO. 7691, APPLIES TO CASES WHERE THE DAMAGES ARE MERELY INCIDENTAL TO OR A CONSEQUENCE OF THE MAIN CAUSE OF ACTION. HOWEVER, IN CASES WHERE THE CLAIM FOR DAMAGES IS THE MAIN CAUSE OF ACTION, OR ONE OF THE CAUSES OF ACTION, THE AMOUNT OF SUCH CLAIM SHALL BE CONSIDERED IN DETERMINING THE JURISDICTION OF THE COURT *(Administrative Circular No. 09-94) (SANTE vs. HON. CLARAVALL [2010]).*

1.4. The moral damages being claimed by petitioners are merely the consequence of respondents' alleged non-payment of commission and compensation the collection of which is petitioners' main cause of action. Thus, the said claim for moral damages cannot be included in determining the jurisdictional amount. (*CABRERA vs. FRANCISCO [2013]).*

1.5. DUE TO THE NON-PAYMENT OF DOCKET FEES ON PETITIONER'S PERMISSIVE COUNTERCLAIM, THE TRIAL COURT NEVER ACQUIRED JURISDICTION OVER IT. *(GSIS VS. HEIRS OF CABALLERO [2010]).*

1.6. THE COURT OF APPEALS HAS JURISDICTION OVER ORDERS, DIRECTIVES AND DECISIONS OF THE OFFICE OF THE OMBUDSMAN IN ADMINISTRATIVE DISCIPLINARY CASES ONLY. *(OFFICE OF THE OMBUDSMAN VS. HEIRS OF VDA. DE VENTURA [2009]).*

1.7. A PUBLIC OFFICIAL'S RESIGNATION DOES NOT RENDER MOOT AN ADMINISTRATIVE CASE THAT WAS FILED PRIOR TO THE OFFICIAL'S RESIGNATION. *(OMBUDSMAN VS. ANDUTAN, JR., [2011]).*

1.8. IN ORDER FOR THE COURT TO ACQUIRE JURISDICTION OVER AN ADMINISTRATIVE CASE, THE COMPLAINT MUST BE FILED DURING THE INCUMBENCY OF THE RESPONDENT. ONCE JURISDICTION IS ACQUIRED, IT IS NOT LOST BY REASON OF RESPONDENT'S CESSATION FROM OFFICE. The respondent Judge's compulsory retirement divested the OCA of its right to institute a new administrative case against him after his compulsory retirement. The Court can no longer acquire administrative jurisdiction over respondent Judge by filing a new administrative case against him after he has ceased to be a public official. The remedy, if necessary, is to file the appropriate civil or

criminal case against respondent for the alleged transgression. *(Re: Missing Exhibits and Court Properties in Regional Trial Court, Branch 4, Panabo City,Davao Del Norte, [2013]*

1.9. THE METC CAN NOW ASSUME JURISDICTION OVER *ACCION PUBLICIANA* CASES. *(BF CITILAND VS. OTAKE [2010]).*

2. JURISDICTION OVER THE PERSON OF THE DEFENDANT: THE FILING OF A *MOTION FOR TIME* IS CONSIDERED A SUBMISSION TO THE JURISDICTION OF THE COURT: *(GO, VS. CORDERO [2010]).*

2.1. THE RTC HAD INDEED ACQUIRED JURISDICTION OVER THE PERSON OF PRIVATE RESPONDENT WHEN THE LATTER'S COUNSEL ENTERED HIS APPEARANCE ON PRIVATE RESPONDENT'S BEHALF, WITHOUT QUALIFICATION AND WITHOUT QUESTIONING THE PROPRIETY OF THE SERVICE OF SUMMONS, AND EVEN FILED TWO MOTIONS FOR EXTENSION OF TIME TO FILE ANSWER. *(PALMA VS. HON. GALVEZ [2010]).*

2.2. A DEFENDANT WHO FILES A MOTION TO DISMISS, ASSAILING THE JURISDICTION OF THE COURT OVER HIS PERSON, TOGETHER WITH OTHER GROUNDS RAISED THEREIN, IS NOT DEEMED TO HAVE APPEARED VOLUNTARILY BEFORE THE COURT. *(LHUILLIER vs. BRITISH AIRWAYS [2010]).*

2.3. AS A GENERAL PROPOSITION, ONE WHO SEEKS AN AFFIRMATIVE RELIEF IS DEEMED TO HAVE SUBMITTED TO THE JURISDICTION OF THE COURT. It is by reason of this rule that we have had occasion to declare that the filing of motions to admit answer, for additional time to file answer, for reconsideration of a default judgment, and to lift order of default with motion for reconsideration, is considered voluntary submission to the court's jurisdiction. This, however, is tempered by the concept of conditional appearance, such that a party who makes a special appearance to challenge, among others, the court's jurisdiction over his person cannot be considered to have submitted to its authority. Presiding from the foregoing, it is thus clear that:

(1) Special appearance operates as an exception to the general rule on voluntary appearance;

(2) Accordingly, objections to the jurisdiction of the court over the person of the defendant must be explicitly made, i.e., set forth in an unequivocal manner; and

(3) Failure to do so constitutes voluntary submission to the jurisdiction of the court, especially in instances where a pleading or motion seeking affirmative relief is filed and submitted to the court for resolution. *(Optima Realty vs. Hertz Phil. Exclusive Cars [2013]).*

RULES ON SUMMARY PROCEDURE

1. IF THE EXTENSION FOR THE FILING OF PLEADINGS CANNOT BE ALLOWED, IT IS ILLOGICAL AND INCONGRUOUS TO ADMIT A PLEADING THAT IS ALREADY FILED LATE. TO ADMIT A LATE ANSWER IS TO PUT A PREMIUM ON

DILATORY MEASURES, THE VERY MISCHIEF THAT THE RULES SEEK TO REDRESS. *(TERAÑA VS. DESAGUN [2009]).*

2. THE FAILURE OF ONE PARTY TO SUBMIT HIS POSITION PAPER DOES NOT BAR AT ALL THE MTC FROM ISSUING A JUDGMENT ON THE EJECTMENT COMPLAINT. *(TERAÑA VS. DESAGUN [2009]).*

3. THE MOTION FOR RECONSIDERATION OF A JUDGMENT PROHIBITED UNDER SEC. 19(C) OF THE RSP IS THAT WHICH SEEKS RECONSIDERATION OF A JUDGMENT RENDERED BY THE COURT AFTER TRIAL ON THE MERITS. THE DISMISSAL ORDER FOR PLAINTIFF'S FAILURE TO APPEAR IN THE PRELIMINARY CONFERENCE IS NOT A JUDGMENT ON THE MERITS AFTER TRIAL OF THE CASE. *(LUCAS V. FABROS, 324 SCRA 1).*

CIVIL PROCEDURE

ACTIONS

1. PERSONAL ACTION AND REAL ACTIONS: In a ***personal action***, the plaintiff seeks the recovery of personal property, the enforcement of a contract, or the recovery of damages. ***Real actions***, on the other hand, are those affecting title to or possession of real property, or interest therein *(MARCOS-ARANETA VS. CA [2008]).*

1.1. AN ACTION FOR SPECIFIC PERFORMANCE WOULD STILL BE CONSIDERED A REAL ACTION WHERE IT SEEKS THE CONVEYANCE OR TRANSFER OF REAL PROPERTY, OR ULTIMATELY, THE EXECUTION OF DEEDS OF CONVEYANCE OF REAL PROPERTY. *(GOCHAN V. GOCHAN [2001]; COPIOSO VS. COPIOSO [2002].*

2. IN PERSONAM, IN REM AND QUASI IN REM ACTIONS: An *action* ***in personam*** is lodged against a person based on personal liability; an *action* ***in rem*** is directed against the thing itself instead of the person; while an *action* ***quasi in rem*** names a person as defendant, but its object is to subject that person's interest in a property to a corresponding lien or obligation. A petition directed against the "thing" itself or the res, which concerns the status of a person, like a petition for adoption, annulment of marriage, or correction of entries in the birth certificate, is an action in rem. *(LUCAS vs. LUCAS [2011])*

CAUSE OF ACTION

1. **Cause of action** is defined as the act or omission by which a party violates a right of another. It is well-settled that the existence of a cause of action is determined by

the allegations in the complaint. In this relation, a complaint is said to assert a sufficient cause of action if, admitting what appears solely on its face to be correct, the plaintiff would be entitled to the relief prayed for. Accordingly, if the allegations furnish sufficient basis by which the complaint can be maintained, the same should not be dismissed, regardless of the defenses that may be averred by the defendants. *Heirs of Ypon vs. Ricaforte [2013]*

2. **Failure to state a cause of action** refers to the insufficiency of the pleading, and is a ground for dismissal under Rule 16 of the Rules of Court. *(Dabuco vs. Court of Appeals, G.R. No. 133775, January 20, 2000)*

A complaint states a cause of action if it avers the existence of the three essential **elements** of a cause of action, namely:

(a) The legal right of the plaintiff;
(b) The correlative obligation of the defendant; and
(c) The act or omission of the defendant in violation of said legal right.

If the allegations in the complaint do not aver the concurrence of these elements, the complaint becomes vulnerable to a motion to dismiss on the ground of failure to state a cause of action. *(Mercado vs. Sps. Espina [2012]).*

3. FAILURE TO STATE A CAUSE OF ACTION VS. LACK OF CAUSE OF ACTION: ***Failure to state a cause of action*** refers to the insufficiency of the pleading, and is a ground for dismissal under Rule 16 of the *Rules of Court*. On the other hand, ***lack of cause action*** refers to a situation where the evidence does not prove the cause of action alleged in the pleading. *x x x* If the allegations of the complaint do not aver the concurrence of the elements of cause of action, the complaint becomes vulnerable to a motion to dismiss on the ground of ***failure to state a cause of action.*** Evidently, it is not the lack or absence of a cause of action that is a ground for the dismissal of the complaint but the fact that the complaint states no cause of action. ***Failure to state a cause of action*** may be raised at the earliest stages of an action through a motion to dismiss, but ***lack of cause of action*** may be raised at any time after the questions of fact have been resolved on the basis of the stipulations, admissions, or evidence presented *(MACASLANG VS. ZAMORA [2011]).*

4. THE FAILURE TO ALLEGE EARNEST BUT FAILED EFFORTS AT A COMPROMISE IN A COMPLAINT AMONG MEMBERS OF THE SAME FAMILY, IS NOT A JURISDICTIONAL DEFECT BUT MERELY A DEFECT IN THE STATEMENT OF A CAUSE OF ACTION. *(HEIRS OF DR. FAVIS, SR. VS. GONZALES [2014]).*

PARTIES

1. REAL PARTY-IN-INTEREST: EVERY ACTION MUST BE PROSECUTED OR DEFENDED IN THE NAME OF THE REAL PARTY-IN-INTEREST: A case is dismissible for

lack of personality to sue upon proof that the plaintiff is not the real party-in-interest, hence grounded on failure to state a cause of action *(GO, VS. CORDERO [2010]).*

2. A suit that is not brought in the name of the real party in interest is dismissible on the ground that the complaint "fails to state a cause of action." *(PACAÑA-CONTRERAS VS. WATER [2013]).*

3. Where the defendant is neither a natural nor a juridical person or an entity authorized by law, the complaint may be dismissed on the ground that the pleading asserting the claim states no cause of action or for failure to state a cause of action pursuant to Section 1(g) of Rule 16 of the Rules of Court, because a complaint cannot possibly state a cause of action against one who cannot be a party to a civil action. *(Boston Equity Resources vs. CA [2013]).*

4. IN A DERIVATIVE SUIT, THE CORPORATION IS THE REAL PARTY IN INTEREST WHILE THE STOCKHOLDER FILING SUIT FOR THE CORPORATION'S BEHALF IS ONLY A NOMINAL PARTY. THE CORPORATION SHOULD THEREFORE BE INCLUDED AS A PARTY IN THE SUIT. *(CUA, JR., VS. TAN [2009]).*

5. THE GENERAL RULE WITH REFERENCE TO THE MAKING OF PARTIES IN A CIVIL ACTION REQUIRES, OF COURSE, THE JOINDER OF ALL NECESSARY PARTIES WHERE POSSIBLE, AND THE JOINDER OF ALL INDISPENSABLE PARTIES UNDER ANY AND ALL CONDITIONS, THEIR PRESENCE BEING A SINE QUA NON FOR THE EXERCISE OF JUDICIAL POWER. *(BULAWAN VS. AQUENDE [2011]).*

6. NON-JOINDER OF INDISPENSABLE PARTIES IS NOT A GROUND FOR THE DISMISSAL OF THE ACTION. PARTIES MAY BE ADDED BY ORDER OF THE COURT ON MOTION OF THE PARTY OR ON ITS OWN INITIATIVE AT ANY STAGE OF THE ACTION AND/OR SUCH TIMES AS ARE JUST. IF THE PETITIONER OR PLAINTIFF REFUSES TO IMPLEAD AN INDISPENSABLE PARTY DESPITE THE ORDER OF THE COURT, THE LATTER MAY DISMISS THE COMPLAINT OR PETITION FOR THE PETITIONER OR PLAINTIFF'S FAILURE TO COMPLY THEREFOR. THE REMEDY IS TO IMPLEAD THE NON-PARTY CLAIMED TO BE INDISPENSABLE. *(NOCOM VS. CAMERINO [2009]).*

7. INDISPENSABLE PARTIES: WHERE THE EJECTMENT SUIT IS BROUGHT BY A CO-OWNER, WITHOUT REPUDIATING THE CO-OWNERSHIP, THEN THE SUIT IS PRESUMED TO BE FILED FOR THE BENEFIT OF THE OTHER CO-OWNERS AND MAY PROCEED WITHOUT IMPLEADING THE OTHER CO-OWNERS. THE OTHER CO-OWNERS ARE NOT CONSIDERED AS INDISPENSABLE PARTIES TO THE RESOLUTION OF THE CASE. ON THE OTHER HAND, WHERE THE *CO-OWNER REPUDIATES THE CO-OWNERSHIP BY CLAIMING SOLE OWNERSHIP OF THE PROPERTY OR WHERE THE SUIT IS BROUGHT AGAINST A CO-OWNER,* HIS CO-OWNERS ARE INDISPENSABLE PARTIES AND *MUST BE IMPLEADED* AS PARTY-DEFENDANTS, AS THE SUIT AFFECTS THE RIGHTS AND INTERESTS OF THESE OTHER CO-OWNERS. *(MARMO VS. ANACAY [2009]).*

8. WHILE ALL CO-OWNERS ARE REAL PARTIES IN INTEREST IN SUITS TO RECOVER PROPERTIES, ANYONE OF THEM MAY BRING AN ACTION FOR THE RECOVERY OF CO-OWNED PROPERTIES. ONLY THE CO-OWNER WHO FILED THE SUIT FOR THE RECOVERY OF THE CO-OWNED PROPERTY BECOMES AN INDISPENSABLE PARTY THERETO; THE OTHER CO-OWNERS ARE NEITHER INDISPENSABLE NOR NECESSARY PARTIES. (*Esteban vs. Sps. Marcelo [2013]).*

VENUE

1. VENUE OF PERSONAL ACTIONS INVOLVING SEVERAL PLAINTIFFS: WHEN THERE IS MORE THAN ONE PLAINTIFF IN A PERSONAL ACTION CASE, THE RESIDENCES OF THE PRINCIPAL PARTIES SHOULD BE THE BASIS FOR DETERMINING PROPER VENUE. *(MARCOS-ARANETA VS. CA [2008]).*

2. WRITTEN STIPULATIONS AS TO VENUE MAY BE RESTRICTIVE IN THE SENSE THAT THE SUIT MAY BE FILED ONLY IN THE PLACE AGREED UPON, OR MERELY PERMISSIVE IN THAT THE PARTIES MAY FILE THEIR SUIT NOT ONLY IN THE PLACE AGREED UPON BUT ALSO IN THE PLACES FIXED BY LAW. *(LEGASPI VS. REPUBLIC [2008]).*

3. UNDER THE "COMPLEMENTARY-CONTRACTS-CONSTRUED-TOGETHER" DOCTRINE, AN ACCESSORY CONTRACT MUST BE READ IN ITS ENTIRETY AND TOGETHER WITH THE PRINCIPAL AGREEMENT. THUS, THE SURETYSHIP AGREEMENT CAN ONLY BE ENFORCED IN CONJUNCTION WITH THE PROMISSORY NOTE. ERGO, THE VENUE STIPULATION IN THE PROMISSORY NOTE ALSO APPLIES TO THE SURETYSHIP AGREEMENT AS AN ANCILLARY CONTRACT OF THE PROMISSORY NOTE. *(PHIL. BANK OF COMMUNICATIONS V. LIM [2005]).*

4. STIPULATION ON VENUE: THE EXCLUSIVE VENUE OF MAKATI CITY, AS STIPULATED BY THE PARTIES AND SANCTIONED BY SECTION 4, RULE 4 OF THE RULES OF COURT, CANNOT BE MADE TO APPLY TO THE *PETITION FOR EXTRAJUDICIAL FORECLOSURE* FILED BY RESPONDENT BANK BECAUSE THE PROVISIONS OF RULE 4 PERTAIN TO VENUE OF ACTIONS, WHICH AN EXTRAJUDICIAL FORECLOSURE IS NOT. *(SPS. OCHOA VS. CHINA BANKING CORPORATION [2011]).*

PLEADINGS

1. THE DEFECTIVE JURAT IN THE VERIFICATION/CERTIFICATION OF NON-FORUM SHOPPING IS NOT A FATAL DEFECT BECAUSE IT IS ONLY A FORMAL, NOT A JURISDICTIONAL, REQUIREMENT THAT THE COURT MAY WAIVE. *(ADVANCE PAPER VS. ARMA TRADERS [2013]).*

2. FORUM-SHOPPING CAN BE COMMITTED IN THREE WAYS: (1) by filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is litis pendentia); (2) by filing multiple cases based on the same cause of action and with the same prayer, the previous case having been finally resolved (where the ground for dismissal is res judicata); and (3) by filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either litis pendentia or res judicata). ***(****BORRA vs. CA [2013]).*

3. THE CERTIFICATION AGAINST FORUM SHOPPING IS REQUIRED ONLY IN A COMPLAINT OR OTHER INITIATORY PLEADING. THE EX PARTE PETITION FOR THE ISSUANCE OF A WRIT OF POSSESSION IS NOT AN INITIATORY PLEADING AND THEREFORE NO CERTIFICATION IS REQUIRED. *(SPS. ARQUIZA VS. CA [2005]).*

4. THE GENERAL RULE IS THAT ALL THE PETITIONERS OR PLAINTIFFS IN A CASE SHOULD SIGN THE CERTIFICATE OF NON-FORUM SHOPPING. However, the signature of any of the **principal petitioners or principal parties**,, would constitute a substantial compliance with the rule on verification and certification of non-forum shopping should there exist a commonality of interest among the parties, or where the parties filed the case as a collective, raising only one common cause of action or presenting a common defense, then the signature of one of the petitioners or complainants, acting as representative, is sufficient compliance. *(MARCOS-ARANETA.VS. CA [2008]).*

5. "WHERE THE PETITIONERS ARE IMMEDIATE RELATIVES, WHO SHARE A COMMON INTEREST IN THE PROPERTY SUBJECT OF THE ACTION, THE FACT THAT ONLY ONE OF THE PETITIONERS EXECUTED THE VERIFICATION OR CERTIFICATION OF NON-FORUM SHOPPING WILL NOT DETER THE COURT FROM PROCEEDING WITH THE ACTION." *(Heirs of Gallardo vs. Soliman [2013]).*

6. WHEN A COMPLAINT *IS* DISMISSED WITHOUT PREJUDICE AT THE INSTANCE OF THE PLAINTIFF, PURSUANT TO SECTION 1, RULE 17 OF THE 1997 RULES OF CIVIL PROCEDURE, THERE IS NO NEED TO STATE IN THE CERTIFICATE OF NON-FORUM SHOPPING IN A SUBSEQUENT RE-FILED COMPLAINT THE FACT OF THE PRIOR FILING AND DISMISSAL OF THE FORMER COMPLAINT. *(BENEDICTO VS. LACSON [2010]).*

7. EXECUTION OF THE CERTIFICATION AGAINST FORUM SHOPPING BY THE ATTORNEY-IN-FACT IS NOT A VIOLATION OF THE REQUIREMENT THAT THE PARTIES MUST PERSONALLY SIGN THE SAME: *(MONASTERIO-PE VS. TONG [2011]).*

8. CORPORATE OFFICERS WHO CAN SIGN THE VERIFICATION AND CERTIFICATION AGAINST FORUM-SHOPPING WITHOUT NEED OF AN AUTHORIZING BOARD RESOLUTION: (1) Chairperson of the board of directors, (2) President, (3) General Manager or acting general manager, (4) Personnel Officer, and (5) Employment

Specialists in a labor case. *(MID-PASIG LAND DEV'T VS. TABLANTE [2010]).*

9. THE RULE IN <u>PERMISSIVE COUNTERCLAIMS</u> IS THAT FOR THE TRIAL COURT TO ACQUIRE JURISDICTION, THE COUNTERCLAIMANT IS BOUND TO PAY THE PRESCRIBED DOCKET FEES. *(GSIS VS. HEIRS CABALLERO [2010]).*

10. EFFECTIVE AUGUST 16, 2004, UNDER SEC. 7, RULE 141, AS AMENDED BY A.M. NO. 04-2-04-SC, DOCKET FEES ARE NOW REQUIRED TO BE PAID IN COMPULSORY COUNTERCLAIM OR CROSS-CLAIMS. *(KOREA TECHNOLOGIES VS. HON. LERMA [2008]).*

<u>SUMMONS</u>

1. SUBSTITUTED SERVICE OF SUMMONS: IT IS ONLY WHEN THE DEFENDANT CANNOT BE SERVED PERSONALLY WITHIN A REASONABLE TIME THAT A SUBSTITUTED SERVICE MAY BE MADE. IMPOSSIBILITY OF PROMPT SERVICE SHOULD BE SHOWN BY STATING THE EFFORTS MADE TO FIND THE DEFENDANT PERSONALLY AND THE FACT THAT SUCH EFFORTS FAILED. THIS STATEMENT SHOULD BE MADE IN THE PROOF OF SERVICE. The **requisites of a valid substituted service:** (1) service of summons within a reasonable time is impossible; (2) the person serving the summons exerted efforts to locate the defendant; (3) the person to whom the summons is served is of sufficient age and discretion; (4) the person to whom the summons is served resides at the defendants place of residence; and (5) pertinent facts showing the enumerated circumstances are stated in the return of service. *(GALURA VS. MATH-AGRO [2009]).*

1.1. EXCEPTION: THERE WAS PROPER SUBSTITUTED SERVICE OF SUMMONS WHERE SERVICE WAS MADE UPON DEFENDANT'S BROTHER AT THE DEFENDANT'S LAST KNOWN ADDRESS. *(SAGANA VS. FRANCISCO [2009]).*

1.2. IT IS NOT NECESSARY THAT THE PERSON IN CHARGE OF THE DEFENDANT'S REGULAR PLACE OF BUSINESS BE SPECIFICALLY AUTHORIZED TO RECEIVE THE SUMMONS. IT IS ENOUGH THAT HE APPEARS TO BE IN CHARGE. *(GENTLE SUPREME PHILIPPINES VS. CONSULTA [2010]).*

1.3. SERVICE OF SUMMONS UPON THE SUBDIVISION SECURITY GUARD UPON THE STRICT INSTRUCTION OF THE DEFENDANT IS CONSIDERED A VALID SUBSTITUTED SERVICE OF SUMMONS. *(ROBINSON VS. MIRALLES [2006]).*

2. SERVICE OF SUMMONS TO A DOMESTIC PRIVATE JURIDICAL ENTITY: THE SERVICE OF SUMMONS MUST BE MADE UPON AN OFFICER WHO IS NAMED IN THE STATUTE *(I.E., THE PRESIDENT, MANAGING PARTNER, GENERAL MANAGER, CORPORATE SECRETARY, TREASURER, OR IN-HOUSE COUNSEL)*, OTHERWISE, THE

SERVICE IS INSUFFICIENT. (*B.D. LONGSPAN BUILDERS VS. R.S. AMPELOQUIO REALTY DEVELOPMENT, [2009]).*

2.1. THE SERVICE OF SUMMONS ON BPI'S BRANCH MANAGER DID NOT BIND THE CORPORATION FOR THE BRANCH MANAGER IS NOT INCLUDED IN THE ENUMERATION IN THE STATUTE OF THE PERSONS UPON WHOM SERVICE OF SUMMONS CAN BE VALIDLY MADE IN BEHALF OF THE CORPORATION. *(BANK OF THE PHILIPPINE ISLANDS V. SPS. SANTIAGO [2007]).*

3. AMENDMENT OF SECTION 12, RULE 14 OF THE RULES OF COURT ON SERVICE OF SUMMONS UPON FOREIGN PRIVATE JURIDICAL ENTITY: "***When the defendant is a foreign private juridical entity which has transacted business in the Philippines****, service may be made on its resident agent designated in accordance with law for that purpose, or, if there be no such agent, on the government official designated by law to that effect, or on any of its officers or agents within the Philippines. x x x* ***If the foreign private juridical entity is not registered in the Philippines or has no resident agent, service may, with leave of court****, be effected out of the Philippines through any of thefollowing means: (a) By personal service coursed through the appropriate court in the foreign country with the assistance of the Department of Foreign Affairs; (b) by publication once in a newspaper of general circulation in the country where the defendant may be found and by serving a copy of the summons and the court order by registered mail at the last known address of the defendant; (c) by facsimile or any recognized electronic means that could generate proof of service; or (d) by such other means as may be warranted in the discretion of the court"* ***(AM. NO. 11-3-6-SC OR NEW RULE ON SERVICE OF SUMMONS ON FOREIGN JURIDICAL ENTITIES: [2011]).***

4. THE PRESENT RULE EXPRESSLY STATES THAT THE SUMMONS BY PUBLICATION APPLIES "*[I]N ANY ACTION* WHERE THE DEFENDANT IS DESIGNATED AS AN UNKNOWN OWNER, OR THE LIKE, OR WHENEVER HIS WHEREABOUTS ARE UNKNOWN AND CANNOT BE ASCERTAINED BY DILIGENT INQUIRY." THUS, IT NOW APPLIES TO ANY ACTION, WHETHER IN PERSONAM, IN REM OR QUASI IN REM. *(SANTOS, JR., VS PNOC EXPLORATION [2008]).*

DEFAULT

1. WHERE THE ANSWER IS FILED BEYOND THE REGLEMENTARY PERIOD BUT BEFORE THE DEFENDANT IS DECLARED IN DEFAULT AND THERE IS NO SHOWING THAT DEFENDANT INTENDS TO DELAY THE CASE, THE ANSWER SHOULD BE ADMITTED *(SAN PEDRO CINEPLEX PROPERTIES VS. HEIRS OF MANUEL ENAÑO [2010]).*

2. REMEDIES WHEN A PARTY IS DECLARED IN DEFAULT (2012 and 2013 BAR EXAMINATIONS): It is well-settled that a defendant who has been declared in default has the following remedies, *to wit*: he may, **at any time after discovery of the default but**

before judgment, file a *motion, under oath, to set aside the order of default* on the ground that his failure to answer was due to fraud, accident, mistake or excusable neglect, and that he has a meritorious defense; **if judgment has already been rendered when he discovered the default, but before the same has become final and executory**, he may file a *motion for new trial* under Section 1(a) of Rule 37**; if he discovered the default after the judgment has become final and executory,** he may file a *petition for relief* under Section 2 of Rule 38; and he may also appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition to set aside the order of default has been presented by him. Thus, respondent, which had been declared in default, may file a notice of appeal and question the validity of the trial court's judgment without being considered to have submitted to the trial court's authority *(B.D. LONGSPAN BUILDERS, INC. VS. R.S. AMPELOQUIO REALTY DEVELOPMENT, INC. G.R. NO. 169919, SEPTEMBER 11, 2009, FIRST DIVISION, CARPIO, J.).* ***NOTE:*** *The following are the additional remedies in cases of default: Motion for Reconsideration (Rule 37), Annulment of judgment (Rule 47) and Petition for Certiorari (Rule 65).*

ALLEGATIONS AND DENIALS IN THE PLEADINGS

1. A PERSON'S DENIAL FOR LACK OF KNOWLEDGE OF THINGS THAT BY THEIR NATURE HE OUGHT TO KNOW IS NOT AN ACCEPTABLE DENIAL. *(EQUITABLE CARDNETWORK VS. CAPISTRANO [2012]).*

2. NEGATIVE PREGNANT: "If an allegation is not specifically denied or the denial is a negative pregnant, the allegation is deemed admitted." "Where a fact is alleged with some qualifying or modifying language, and the denial is conjunctive, a 'negative pregnant' exists, and only the qualification or modification is denied, while the fact itself is admitted." "A denial in the form of a negative pregnant is an ambiguous pleading, since it cannot be ascertained whether it is the fact or only the qualification that is intended to be denied." "Profession of ignorance about a fact which is patently and necessarily within the pleader's knowledge, or means of knowing as ineffectual, is no denial at all." *(VENZON vs. RURAL BANK OF BUENAVISTA [2013]).*

3. ACTIONABLE DOCUMENT: WHERE THE DEFENSE IN THE ANSWER IS BASED ON AN ACTIONABLE DOCUMENT, A REPLY SPECIFICALLY DENYING IT UNDER OATH MUST BE MADE; OTHERWISE, THE GENUINENESS AND DUE EXECUTION OF THE DOCUMENT WILL BE DEEMED ADMITTED. *(CASENT REALTY DEVELOPMENT VS. PHILBANKING CORP. [2007]).*

3.1. IMPLIED ADMISSION RULE UNDER SECTION 8 OF RULE 8 DOES NOT APPLY TO A PLAINTIFF WHO FILES A REPLY NOT UNDER OATH IF THE VERIFIED COMPLAINT ALREADY TRAVERSES THE ACTIONABLE DOCUMENT ATTACHED TO THE ANSWER. *(TITAN CONSTRUCTION V. DAVID [2010]).*

AMENDMENTS

1. Under Section 8, Rule 10 of the Rules of Court, an amended complaint supersedes an original one. As a consequence, the original complaint is deemed withdrawn and no longer considered part of the record. *(Figuracion vs. Libi, G.R. No. 155688, November 28, 2007)* In the present case, the Amended Complaint is, thus, treated as an entirely new complaint. As such, respondents had every right to move for the dismissal of the said Amended Complaint. Were it not for the filing of the said Motion, respondents would not have been able to file a petition for certiorari before the CA which, in turn, rendered the presently assailed judgment in their favor**.** *(MERCADO VS. SPS. ESPINA [2012]).*

2. AMENDMENTS AFTER THE FILING OF A RESPONSIVE PLEADING: The granting of leave to file amended pleading is a matter particularly addressed to the sound discretion of the trial court; and that discretion is broad, subject only to the limitations that the amendments should not substantially change the cause of action or alter the theory of the case, or that it was not made to delay the action. Nevertheless, as enunciated in ***Valenzuela v. Court of Appeals***, 416 Phil. 289 (2001) even if the amendment substantially alters the cause of action or defense, such amendment could still be allowed when it is sought to serve the higher interest of substantial justice; prevent delay; and secure a just, speedy and inexpensive disposition of actions and proceedings. *(TIU VS.PHILIPPINE BANK OF COMMUNICATIONS [2009]).*

3. AMENDMENT TO CONFER JURISDICTION TO THE COURT MAY BE ALLOWED IF AMENDMENT IS A MATTER OF RIGHT. *(SANTE VS. HON. CLARAVALL [2010]).*

4. If the case is remanded to the RTC for the purpose of computing the damages, it is not considered a new case where an amendment of the complaint may still be allowed. Rather, it is merely a continuation of the trial. *(REPUBLIC VS. TETRO ENTERPRISES [2014]).*

FILING AND SERVICE OF PLEADINGS

1. AS A *GENERAL RULE*, WHEN A PARTY IS REPRESENTED BY COUNSEL OF RECORD, SERVICE OF ORDERS AND NOTICES MUST BE MADE UPON SAID ATTORNEY AND NOTICE TO THE CLIENT AND TO ANY OTHER LAWYER, NOT THE COUNSEL OF RECORD, IS NOT NOTICE IN LAW. THE *EXCEPTION* TO THIS RULE IS WHEN SERVICE UPON THE PARTY HIMSELF HAS BEEN ORDERED BY THE COURT. *(SPS. BELEN VS. HON. CHAVEZ [2008]).*

2. "THE DATE OF DELIVERY OF PLEADINGS TO A PRIVATE LETTER-FORWARDING AGENCY IS NOT TO BE CONSIDERED AS THE DATE OF FILING THEREOF IN COURT;" INSTEAD, "THE DATE OF ACTUAL RECEIPT BY THE COURT X X X IS DEEMED THE DATE OF FILING OF THAT PLEADING." *(Heirs of Numeriano Miranda vs. Miranda [2013]).*

3. Section 13, Rule 13 of the Rules of Court provides that if service is made by registered mail, proof shall be made by an affidavit of the person mailing of facts showing compliance with Section 7, Rule 13 of the Rules of Court and the registry receipt issued by the mailing office. However, the presentation of an affidavit and a registry receipt is not indispensable in proving service by registered mail. Other competent evidence, such as the certifications from the Philippine Post Office, may establish the fact and date of actual service. These certifications are direct and primary pieces of evidence of completion of service. *(PLANTERS DEVELOPMENT BANK vs. SPS. LOPEZ [2013]).*

4. THE SUPREME COURT HAS STRICTLY CONSTRUED THE REQUIREMENTS OF THE PROPER SERVICE OF PAPERS AND JUDGMENTS. Both in ***Heirs of Delos Santos v. Del Rosario,*** *G.R. No. 139167, 29 June 2005, 462 SCRA 98* **and** ***Tuazon v. Molina,*** *No. L-55697, 26 February 1981, 103 SCRA 365,* the service of the trial court's decision at an ***adjacent office*** and the receipt thereof by a person not authorized by the counsel of record was held ineffective. Likewise, the service of the decision made at the ***ground floor instead of at the 9th floor*** of a building in the address on record of petitioners counsel, was held invalid in ***PLDT v. NLRC,*** *No. L-60050, 213 Phil. 362 (1984). (SPS. BELEN VS. HON. CHAVEZ [2008]).*

5. NOTHING IN THE RULES AUTHORIZES PUBLICATION OF A NOTICE OF HEARING TO FILE ANSWER. *(ABERCA VS. VER [2012]).*

MOTIONS

1. Every motion must be set for hearing by the movant except for those motions which the court may act upon without prejudice to the rights of the adverse party. The notice of hearing must be addressed to all parties and must specify the time and date of the hearing, with proof of service. This Court has indeed held, time and again, that under Sections 4 and 5 of Rule 15 of the Rules of Court, the requirement is mandatory. Failure to comply with the requirement renders the motion defective. "As a rule, a motion without a notice of hearing is considered pro forma and does not affect the reglementary period for the appeal or the filing of the requisite pleading. *(Preysler, Jr. vs. Manila Southcoast Development Corporation [2010]).*

2. THERE IS NO RULE PROHIBITING THE FILING OF A PRO FORMA MOTION AGAINST AN INTERLOCUTORY ORDER AS THE PROHIBITION APPLIES ONLY TO A FINAL RESOLUTION OR ORDER OF THE COURT. THE COURT HELD, NONETHELESS, THAT A *SECOND MOTION* CAN BE DENIED ON THE GROUND THAT IT IS MERELY A REHASH OR A MERE REITERATION OF THE GROUNDS AND ARGUMENTS ALREADY PASSED UPON AND RESOLVED BY THE COURT *(PHILIPPINE NATIONAL BANK VS. THE INTESTATE ESTATE OF FRANCISCO DE GUZMAN [2010]).*

3. HYPOTHETICAL ADMISSION RULE: WHEN A MOTION TO DISMISS IS FILED, THE MATERIAL ALLEGATIONS OF THE COMPLAINT ARE DEEMED TO BE HYPOTHETICALLY ADMITTED. THIS HYPOTHETICAL ADMISSION, EXTENDS NOT

ONLY TO THE RELEVANT AND MATERIAL FACTS WELL PLEADED IN THE COMPLAINT, BUT ALSO TO INFERENCES THAT MAY BE FAIRLY DEDUCED FROM THEM. *(THE MUNICIPALITY OF HAGONOY, BULACAN VS. HON. DUMDUM, JR., [2010]).*

4. By the very words of Rule 15, Section 4 of the Rules of Court, the moving party is required to serve motions in such a manner as to ensure the receipt thereof by the other party at least three days before the date of hearing. The purpose of the rule is to prevent a surprise and to afford the adverse party a chance to be heard before the motion is resolved by the trial court. Plainly, the rule does not require that the court receive the notice three days prior to the hearing date. *(Republic vs. Diaz-Enriquez [2013]).*

DISMISSALS

1. The Court has consistently held that the affirmative defense of prescription does not automatically warrant the dismissal of a complaint under Rule 16 of the Rules of Civil Procedure. An allegation of prescription can effectively be used in a motion to dismiss only when the complaint on its face shows that indeed the action has already prescribed. If the issue of prescription is one involving evidentiary matters requiring a full-blown trial on the merits, it cannot be determined in a motion to dismiss. Those issues must be resolved at the trial of the case on the merits wherein both parties will be given ample opportunity to prove their respective claims and defenses. *(SANCHEZ VS. SANCHEZ [2013]).*

2. LITIS PENDENTIA AND RES JUDICATA ARE NOT PRESENT BETWEEN A PETITION FOR WRIT OF POSSESSION AND ACTION FOR ANNULMENT OF FORECLOSURE. *(SPS. VICENTE VS. PHILIPPINE COMMERCIAL INTERNATIONAL BANK [2006]).*

3. RES JUDICATA: THE PREVIOUS FINAL JUDGMENT DENYING A PETITION FOR DECLARATION OF NULLITY OF THE MARRIAGE ON THE GROUND OF PSYCHOLOGICAL INCAPACITY BARS A SUBSEQUENT PETITION FOR DECLARATION OF NULLITY OF MARRIAGE ON THE GROUND OF LACK OF MARRIAGE LICENSE. BOTH PETITIONS ACTUALLY HAVE THE SAME CAUSE OF ACTION ALTHOUGH FOUNDED MERELY ON DIFFERENT GROUNDS. HENCE, A PARTY CANNOT EVADE OR AVOID THE APPLICATION OF RES JUDICATA BY SIMPLY VARYING THE FORM OF HIS ACTION OR ADOPTING A DIFFERENT METHOD OF PRESENTING HIS CASE. *(MALLION V. ALCANTARA [2006]).*

4. Litis pendentia, as a ground for the dismissal of a civil action, refers to a situation where two actions are pending between the same parties for the same cause of action, so that one of them becomes unnecessary and vexatious. It is based on the policy against multiplicity of suits and authorizes a court to dismiss a case *motu proprio. (Subic Telecommunications Company, Inc. vs. Subic Bay Metropolitan Authority, G.R. No. 185159, October 12, 2009).* **The requisites in order that an action may be dismissed on the ground of *litis pendentia* are**: (a) the identity of parties, or at least such as representing the same interest in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts, and (c) the identity of the two cases such that

judgment in one, regardless of which party is successful, would amount to *res judicata* in the other. *(Republic vs. Carmel Development, Inc G. R. No. 142572. February 20, 2002)*

Under the established jurisprudence on *litis pendentia*, the following considerations predominate in the ascending order of importance in determining which action should prevail: (1) the date of filing, with preference generally given to the first action filed to be retained; (2) whether the action sought to be dismissed was filed merely to preempt the later action or to anticipate its filing and lay the basis for its dismissal; and (3) whether the action is the appropriate vehicle for litigating the issues between the parties. *(Film Development Council of the Philippines vs. SM Prime Holdings, Inc. [2013]).*

5. THE DEFENDANT MAY REITERATE ANY OF THE GROUNDS FOR DISMISSAL PROVIDED UNDER RULE 16 OF THE RULES OF COURT AS AFFIRMATIVE DEFENSES IN HIS ANSWER. BUT, A PRELIMINARY HEARING MAY NO LONGER BE HAD THEREON IF A MOTION TO DISMISS HAD ALREADY BEEN PREVIOUSLY DENIED, EXCEPT ONLY WHERE THERE WERE SEVERAL DEFENDANTS BUT ONLY ONE OF THEM FILED A MOTION TO DISMISS. *(SPS. ABRAJANO VS. HEIRS OF AUGUSTO SALAS, JR., [2006]).*

6. UNDER SECTION 3, RULE 17 OF THE 1997 RULES OF CIVIL PROCEDURE, THE DISMISSAL OF THE COMPLAINT DUE TO THE FAULT OF PLAINTIFF DOES NOT NECESSARILY CARRY WITH IT THE DISMISSAL OF THE COUNTERCLAIM, COMPULSORY OR OTHERWISE. IN FACT, THE DISMISSAL OF THE COMPLAINT IS WITHOUT PREJUDICE TO THE RIGHT OF DEFENDANTS TO PROSECUTE THE COUNTERCLAIM. *(PINGA VS. THE HEIRS OF GERMAN SANTIAGO [2006]).*

7. AN UNQUALIFIED ORDER IS DEEMED TO BE A DISMISSAL WITH PREJUDICE. IN OTHER WORDS, DISMISSALS OF ACTIONS (UNDER SECTION 3, RULE 17 OF THE RULES OF COURT) WHICH DO NOT EXPRESSLY STATE WHETHER THEY ARE WITH OR WITHOUT PREJUDICE ARE HELD TO BE WITH PREJUDICE. *(SHIMIZU PHILIPPINES CONTRACTORS VS. MAGSALIN [2012]).*

PRE-TRIAL

1. THE HOLDING OF A PRE-TRIAL CONFERENCE IS MANDATORY AND FAILURE TO DO SO IS INEXCUSABLE. *(NPC VS. ADIONG [2011]).*

Pre-trial is primarily intended to insure that the parties properly raise all issues necessary to dispose of a case. The parties must disclose during pre-trial all issues they intend to raise during the trial, except those involving privileged or impeaching matters. Although a pre-trial order is not meant to catalogue each issue that the parties may take up during the trial, issues not included in the pre-trial order may be considered only if they are impliedly included in the issues raised or inferable from the issues raised by necessary implication. The basis of the rule is simple. Petitioners are bound by the delimitation of the

issues during the pre-trial because they themselves agreed to the same. *(Licomcen, Inc. vs. Engr. Salvador Abainza [2013]).*

2. THE ABSENCE OF THE NOTICE OF PRE-TRIAL CONSTITUTES A VIOLATION OF A PERSON'S CONSTITUTIONAL RIGHT TO DUE PROCESS: *(PNB VS. SPS. PEREZ [2011]).*

3. It is clear that the failure of a party to appear at the pre-trial has adverse consequences. If the absent party is the plaintiff, then his case shall be dismissed. If it is the defendant who fails to appear, then the plaintiff is allowed to present his evidence ex parte and the court shall render judgment on the basis thereof. Thus, the plaintiff is given the privilege to present his evidence without objection from the defendant, the likelihood being that the court will decide in favor of the plaintiff, the defendant having forfeited the opportunity to rebut or present its own evidence. *(BENVIDEZ VS. SALVADOR [2013])*

4. To reiterate, A.M. No. 01-10-5-SC-PHILJA regards mediation as part of pre-trial where parties are encouraged to personally attend the proceedings. The personal non-appearance, however, of a party may be excused only when the representative, who appears in his behalf, has been duly authorized to enter into possible amicable settlement or to submit to alternative modes of dispute resolution. To ensure the attendance of the parties, A.M. No. 01-10-5-SC-PHILJA specifically enumerates the sanctions that the court can impose upon a party who fails to appear in the *proceedings* which includes censure, reprimand, contempt, and even dismissal of the action in relation to Section 5, Rule 18 of the Rules of Court. The respective lawyers of the parties may attend the proceedings and, if they do so, they are enjoined to cooperate with the mediator for the successful amicable settlement of disputes so as to effectively reduce docket congestion. *(Sandoval Shipyards **vs**. PMMA [2013]).*

COMPUTATION OF TIME

1. A.M. 00-2-14-SC clarifies the application of Section 1, Rule 22 of the Rules of Court **when the last day on which a pleading is due falls on a Saturday, Sunday, or legal holiday and the original period is extended. The clarification states:**

Whereas, the aforecited provision applies in the matter of filing of pleadings in courts when the due date falls on a Saturday, Sunday, or legal holiday, in which case, **the filing of the said pleading on the next working day is deemed on time;**

Whereas, the question has been raised if the period is extended ipso jure to the next working day immediately following where the last day of the period is a Saturday, Sunday or legal holiday so that when a motion for extension of time is filed, the period of extension is to be reckoned from the next working day and not from the original expiration of the period;

NOW THEREFORE, the Court Resolves, for the guidance of the Bench and the Bar, to declare that **Section 1, Rule 22 speaks only of "the last day of the period" so that when a party seeks an extension and the same is granted, the due date ceases to be the last day and hence, the provision no longer applies. Any extension of time to file the required pleading should therefore be counted from the expiration of the period regardless of the fact that said due date is a Saturday, Sunday or legal holiday.** *(Reinier Pacific International Shipping vs. Guevarra [2013]).*

MODES OF DISCOVERY

1. DISCOVERY PROCEDURES: TRIAL COURTS ARE DIRECTED TO ISSUE ORDERS REQUIRING PARTIES TO AVAIL OF DISCOVERY PROCEDURES. *(A.M. No. 03-1-09-Sc, Pars. I.A. 1.2; 2(E)) (HYATT INDUSTRIAL MANUFACTURING VS. LEY CONSTRUCTION AND DEVELOPMENT [2006]).*

2. DEPOSITIONS SERVE AS A DEVICE FOR ASCERTAINING THE FACTS RELATIVE TO THE ISSUES OF THE CASE. THE EVIDENT PURPOSE IS TO ENABLE THE PARTIES, CONSISTENT WITH RECOGNIZED PRIVILEGES, TO OBTAIN THE FULLEST POSSIBLE KNOWLEDGE OF THE ISSUES AND FACTS BEFORE CIVIL TRIALS AND THUS PREVENT THE SAID TRIALS FROM BEING CARRIED OUT IN THE DARK. (*SAN LUIS VS. HON. ROJAS [2008]).*

3. THE RULE DOES NOT MAKE ANY DISTINCTION OR RESTRICTION AS TO WHO CAN AVAIL OF DEPOSITION. THE FACT THAT PRIVATE RESPONDENT IS A NON-RESIDENT FOREIGN CORPORATION IS IMMATERIAL. THE RULE CLEARLY PROVIDES THAT THE TESTIMONY OF ANY PERSON MAY BE TAKEN BY DEPOSITION UPON ORAL EXAMINATION OR WRITTEN INTERROGATORIES, AT THE INSTANCE OF ANY PARTY. (*SAN LUIS VS. HON. ROJAS [2008]).*

4. DEPOSITION: THERE IS REALLY NOTHING OBJECTIONABLE, PER SE, WITH PETITIONER AVAILING OF THIS DISCOVERY MEASURE AFTER PRIVATE RESPONDENT HAS RESTED HIS CASE AND PRIOR TO PETITIONER'S PRESENTATION OF EVIDENCE. TO REITERATE, DEPOSITIONS MAY BE TAKEN AT ANY TIME AFTER THE INSTITUTION OF ANY ACTION, WHENEVER NECESSARY OR CONVENIENT. *(PAJARILLAGA VS. COURT OF APPEALS [2008]).*

5. REQUEST FOR ADMISSION: To elucidate, the scope of a request for admission filed pursuant to Rule 26 of the Rules of Court and a party's failure to comply with the same are respectively detailed in Sections 1 and 2 thereof, to wit:

> SEC. 1.Request for admission. – At any time after issues have been joined, a party may file and serve upon any other party a written request for

the admission by the latter of the genuineness of any material and relevant document described in and exhibited with the request or of the truth of any material and relevant matter of fact set forth in the request. Copies of the documents shall be delivered with the request unless copies have already been furnished.

SEC. 2.Implied admission. – Each of the matters of which an admission is requested shall be deemed admitted unless, within a period designated in the request, which shall not be less than fifteen (15) days after service thereof, or within such further time as the court may allow on motion, the party to whom the request is directed files and serves upon the party requesting the admission a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny those matters.

Objections to any request for admission shall be submitted to the court by the party requested within the period for and prior to the filing of his sworn statement as contemplated in the preceding paragraph and his compliance therewith shall be deferred until such objections are resolved, which resolution shall be made as early as practicable. (Emphasis and underscoring supplied)

Based on the foregoing, once a party serves a request for admission regarding the truth of any material and relevant matter of fact, the party to whom such request is served is given a period of fifteen (15) days within which to file a sworn statement answering the same. Should the latter fail to file and serve such answer, each of the matters of which admission is requested shall be deemed admitted.

The exception to this rule is when the party to whom such request for admission is served had already controverted the matters subject of such request in an earlier pleading. Otherwise stated, if the matters in a request for admission have already been admitted or denied in previous pleadings by the requested party, the latter cannot be compelled to admit or deny them anew. In turn, the requesting party cannot reasonably expect a response to the request and thereafter, assume or even demand the application of the implied admission rule in Section 2, Rule 26.

The rationale behind this exception had been discussed in the case of CIR vs. Manila Mining Corporation, citing Concrete Aggregates Corporation vs. CA, where the Court held as follows:

As Concrete Aggregates Corporation vs. Court of Appeals holds, admissions by an adverse party as a mode of discovery contemplates of interrogatories that would clarify and tend to shed light on the truth or falsity of the allegations in a pleading, and does not refer to a mere reiteration of what has already been alleged in the pleadings; otherwise, it

constitutes an utter redundancy and will be a useless, pointless process which petitioner should not be subjected to.

Likewise, in the case of Limos v. Odones, the Court explained:

> A request for admission is not intended to merely reproduce or reiterate the allegations of the requesting party's pleading but should set forth relevant evidentiary matters of fact described in the request, whose purpose is to establish said party's cause of action or defense. Unless it serves that purpose, it is pointless, useless and a mere redundancy. *(Metro Manila Shopping Mecca Corp. vs. Toledo [2013]).*

6. A MOTION FOR PRODUCTION OR INSPECTION OF DOCUMENTS OR THINGS UNDER RULE 27 IS SUBJECT TO THE REQUIREMENT THAT THE DOCUMENTS OR THINGS SHOULD NOT BE PRIVILEGED. *(AIR PHILIPPINES VS. PENNSWELL, INC., [2007]).*

6.1 THE PRODUCTION ORDER UNDER THE RULE ON THE WRIT OF AMPARO SHOULD NOT BE CONFUSED WITH A SEARCH WARRANT FOR LAW ENFORCEMENT UNDER ART. III, SEC. 2 OF THE 1987 CONSTITUTION. The Constitutional provision is a protection of the people from the unreasonable intrusion of the government, not a protection of the government from the demand of the people as such respondents. **Instead, the amparo production order may be limited to the production of documents or things under Sec. 1, Rule 27 of the Rules of Civil Procedure** *(Sec. of National Defense vs. Manalo [2008]).*

TRIAL

1. SUBPOENA: A SUBPOENA IS A PROCESS DIRECTED TO A PERSON REQUIRING HIM TO ATTEND AND TO TESTIFY AT THE HEARING OR TRIAL OF AN ACTION OR AT ANY INVESTIGATION CONDUCTED UNDER THE LAWS OF THE PHILIPPINES, OR FOR THE TAKING OF HIS DEPOSITION. In this jurisdiction, there are two (2) kinds of subpoena, to wit: subpoena *ad testificandum* and subpoena *duces tecum*. The ***first*** is used to compel a person to testify, while the ***second*** is used to compel the production of books, records, things or documents therein specified. As characterized in ***H.C. Liebenow vs. The Philippine Vegetable Oil Company***: The subpoena *duces tecum* is, in all respects, like the ordinary subpoena *ad testificandum* with the exception that it concludes with an injunction that the witness shall bring with him and produce at the examination the books, documents, or things described in the subpoena.

Well-settled is the rule that **before a subpoena *duces tecum* may issue, the court must first be satisfied that the following requisites are present**: (1) the books, documents or other things requested must appear *prima facie* relevant to the issue subject

of the controversy ***(test of relevancy);*** and (2) such books must be reasonably described by the parties to be readily identified ***(test of definiteness).*** *(LOZADA VS. ARROYO [2012]).*

2. FAILURE TO STATE A CAUSE OF ACTION MAY BE CURED BY EVIDENCE DURING THE TRIAL AND AMENDMENTS TO CONFORM TO EVIDENCE PRESENTED. *(SWAGMAN HOTELS VS. CA [2005]]).*

3. THE FACTUAL FINDINGS OF THE TRIAL COURT, AFFIRMED BY THE COURT OF APPEALS, ARE FINAL AND CONCLUSIVE AND MAY NOT BE REVIEWED ON APPEAL. The established **exceptions** are: (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is grave abuse of discretion; (3) when the findings are grounded entirely on speculations, surmises or conjectures; (4) when the judgment of the CA is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the CA, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) when the findings of fact are conclusions without citation of specific evidence on which they are based; (8) when the CA manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (9) when the findings of fact of the CA are premised on the absence of evidence and are contradicted by the evidence on record *(FILIPINAS FIBER SYNTHETIC vs. DELOS SANTOS [2011]).*

4. THE GENERAL RULE IS THAT UPON THE DISMISSAL OF THE DEMURRER IN THE APPELLATE COURT, THE DEFENDANT LOSES THE RIGHT TO PRESENT HIS EVIDENCE AND THE APPELLATE COURT SHALL THEN PROCEED TO RENDER JUDGMENT ON THE MERITS ON THE BASIS OF PLAINTIFF'S EVIDENCE. *(REPUBLIC VS. TUVERA [2007]).*

5. THE 90-DAY PERIOD WITHIN WHICH A SITTING TRIAL JUDGE SHOULD DECIDE A CASE OR RESOLVE A PENDING MATTER IS MANDATORY. THE PERIOD IS RECKONED FROM THE DATE OF THE FILING OF THE LAST PLEADING. If the Judge cannot decide or resolve within the period, she can be allowed additional time to do so, provided she files a written request for the extension of her time to decide the case or resolve the pending matter. Only a valid reason may excuse a delay. *(Lubaton vs. Judge Lazaro [2013]).*

JUDGMENT

1. DISTINCTION BETWEEN FINAL AND INTERLOCUTORY ORDER: The ***first*** disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing more to be done except to enforce by execution what the court has determined, but the ***latter*** does not completely dispose of the case but leaves something else to be decided upon. An ***interlocutory order*** deals with preliminary matters and the

trial on the merits is yet to be held and the judgment rendered. The **test to ascertain whether or not an order or a judgment is interlocutory or final is:** *does the order or judgment leave something to be done in the trial court with respect to the merits of the case*? If it does, the order or judgment is interlocutory; otherwise, it is final. *(PAHILA-GARRIDO VS. TORTOGO [2011]).*

2. WHEN THERE IS A CONFLICT BETWEEN THE DISPOSITIVE PORTION OR FALLO OF A DECISION AND THE OPINION OF THE COURT CONTAINED IN THE TEXT OR BODY OF THE JUDGMENT, THE FORMER PREVAILS OVER THE LATTER. THE EXCEPTION IS WHERE THE INEVITABLE CONCLUSION FROM THE BODY OF THE DECISION IS SO CLEAR AS TO SHOW THAT THERE WAS A MISTAKE IN THE DISPOSITIVE PORTION, THE BODY OF THE DECISION WILL PREVAIL. *(THE LAW FIRM OF ARMOVIT VS. COURT OF APPEALS [2011]).*

3. A VOID JUDGMENT OR ORDER HAS NO LEGAL AND BINDING EFFECT, FORCE OR EFFICACY FOR ANY PURPOSE. In contemplation of law, it is non-existent. Such judgment or order may be resisted in any action or proceeding whenever it is involved. It is not even necessary to take any steps to vacate or avoid a void judgment or final order; it may simply be ignored. Accordingly, a void judgment is no judgment at all. It cannot be the source of any right nor of any obligation. All acts performed pursuant to it and all claims emanating from it have no legal effect. Hence, it can never become final, and any writ of execution based on it is void: "x x x it may be said to be a lawless thing which can be treated as an outlaw and slain at sight, or ignored wherever and whenever it exhibits its head." *(LAND BANK OF THE PHILIPPINES VS. SPS. ORILLA [2013]).*

4. A JUDGMENT ON THE PLEADINGS MAY BE SOUGHT ONLY BY A CLAIMANT, WHO IS THE PARTY SEEKING TO RECOVER UPON A CLAIM, COUNTERCLAIM OR CROSS-CLAIM; OR TO OBTAIN A DECLARATORY RELIEF. *(MENESES VS. SEC. OF AGRARIAN REFORM [2006]).*

5. For a summary judgment to be proper, the movant must establish two requisites: (a) there must be no genuine issue as to any material fact, except for the amount of damages; and (b) the party presenting the motion for summary judgment must be entitled to a judgment as a matter of law. Where, on the basis of the pleadings of a moving party, including documents appended thereto, no genuine issue as to a material fact exists, the burden to produce a genuine issue shifts to the opposing party. If the opposing party fails, the moving party is entitled to a summary judgment.

A ***genuine issue*** is an issue of fact which requires the presentation of evidence as distinguished from an issue which is a sham, fictitious, contrived or a false claim.

When the facts as pleaded appear uncontested or undisputed, then there is no real or genuine issue or question as to any fact and summary judgment called for. On the other hand, where the facts pleaded by the parties are disputed or contested, proceedings for a

summary judgment cannot take the place of a trial. The evidence on record must be viewed in light most favorable to the party opposing the motion who must be given the benefit of all favorable inferences as can reasonably be drawn from the evidence.

The doctrine of primary jurisdiction does not warrant a court to arrogate unto itself the authority to resolve a controversy the jurisdiction over which is initially lodged with an administrative body of special competence. *(SMART COMMUNICATIONS vs. ALDECOA [2013]).*

6. BOTH THE RULES ON JUDGMENT ON THE PLEADINGS AND SUMMARY JUDGMENTS HAVE NO PLACE IN CASES OF DECLARATION OF ABSOLUTE NULLITY OF MARRIAGE, LEGAL SEPARATION AND EVEN IN ANNULMENT OF MARRIAGE. *(DE DIOS CARLOS vs. SANDOVAL [2008]).*

7. DISTINCTION BETWEEN JUDGMENT ON THE PLEADINGS AND SUMMARY JUDGMENT: Simply stated, what distinguishes a judgment on the pleadings from a summary judgment is the **presence of issues** in the Answer to the Complaint. When the Answer fails to tender any issue, that is, if it does not deny the material allegations in the complaint or admits said material allegations of the adverse party's pleadings by admitting the truthfulness thereof and/or omitting to deal with them at all, a ***judgment on the pleadings*** is appropriate. On the other hand, when the Answer specifically denies the material averments of the complaint or asserts affirmative defenses, or in other words raises an issue, a ***summary judgment*** is proper provided that the issue raised is not genuine. "A 'genuine issue' means an issue of fact which calls for the presentation of evidence, as distinguished from an issue which is fictitious or contrived or which does not constitute a genuine issue for trial." *(BASBAS VS. SAYSON [2011]).*

POST-JUDGMENT REMEDIES

1. GENERAL RULE: A SECOND MOTION FOR RECONSIDERATION IS GENERALLY A PROHIBITED PLEADING. THE COURT, HOWEVER, DOES NOT DISCOUNT INSTANCES WHEN IT MAY AUTHORIZE THE SUSPENSION OF THE RULES OF PROCEDURE SO AS TO ALLOW THE RESOLUTION OF A SECOND MOTION FOR RECONSIDERATION, IN CASES OF EXTRAORDINARILY PERSUASIVE REASONS SUCH AS WHEN THE DECISION IS A PATENT NULLITY *(UNIVERSITY OF THE EAST VS. UNIVERSITY OF THE EAST EMPLOYEES' ASSOCIATION [2011]).*

2. SECOND AND SUBSEQUENT MOTIONS FOR RECONSIDERATION ARE, AS A GENERAL RULE, PROHIBITED. Section 2, Rule 52 of the Rules of Court provides that "no second motion for reconsideration of a judgment or final resolution by the same party shall be entertained." The rule rests on the basic tenet of immutability of judgments. "At some point, a decision becomes final and executory and, consequently, all litigations must come to an end." The general rule, however, against second and subsequent motions for

reconsideration admits of settled exceptions. For one, the present Internal Rules of the Supreme Court, particularly Section 3, Rule 15 thereof, provides:

> Sec. 3. Second motion for reconsideration. — The Court shall not entertain a second motion for reconsideration, and any exception to this rule can only be granted in the higher interest of justice by the Court en banc upon a vote of at least two-thirds of its actual membership. There is reconsideration "in the higher interest of justice" when the assailed decision is not only legally erroneous, but is likewise patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties. A second motion for reconsideration can only be entertained before the ruling sought to be reconsidered becomes final by operation of law or by the Court's declaration. *(MCBURNIE vs. GANZON [2013]).*

2.1. EXCEPTION: NO MOTION FOR RECONSIDERATION OF A JUDGMENT OR FINAL RESOLUTION BY THE SAME PARTY SHALL BE ENTERTAINED: *Section 2, Rule 52 of the Rules of Court explicitly provides that "[n]o motion for reconsideration of a judgment or final resolution by the same party shall be entertained. Moreover,* ***Section 3, Rule 15 of the Internal Rules of the Supreme Court (A.M. No. 10-4-20-SC.)*** *decrees viz:* ***"SEC. 3. Second motion for reconsideration. -*** *The Court shall not entertain a second motion for reconsideration and any exception to this rule can only be granted in the higher interest of justice by the Court en banc upon a vote of at least two-thirds of its actual membership. There is reconsideration 'in the* ***highest interest of justice'*** *when the assailed decision is not only legally erroneous but is likewise patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties. A second motion for reconsideration can only be entertained* ***before the ruling sought to be reconsidered becomes final by operation of law or by the Court's declaration"*** *(ALIVIADO VS. PROCT ER & GAMBLE PHILS [2011]).*

2.2. THE FILING OF A MOTION FOR EXTENSION OF TIME TO FILE A MOTION FOR RECONSIDERATION IN THE COURT OF APPEALS DOES NOT TOLL THE FIFTEEN-DAY PERIOD TO APPEAL, CITING HABALUYAS ENTERPRISES, INC. VS. JAPSON. NO. L-70895, MAY 30, 1986. However, in previous cases, the Supreme Court suspended this rule in order to serve substantial justice. In ***Barnes vs. Padilla,*** *G.R. No. 160753, June 28, 2005,* the Supreme Court exempted from the operation of the general rule the petitioner whose motion for extension of time to file a motion for reconsideration was denied by the CA. *(GARCIA VS. COURT OF APPEALS [2013]).*

3. APPEALS: THE RIGHT TO APPEAL IS NOT A NATURAL RIGHT OR A PART OF DUE PROCESS, BUT MERELY A STATUTORY PRIVILEGE AND MAY BE EXERCISED ONLY IN THE MANNER AND IN ACCORDANCE WITH THE PROVISIONS OF THE LAW. THE PARTY WHO SEEKS TO AVAIL OF THE SAME MUST COMPLY WITH THE REQUIREMENTS OF THE RULES, FAILING IN WHICH THE RIGHT TO APPEAL IS LOST *(HEIRS OF AGAPATIO OLARTE VS. OFFICE OF THE PRESIDENT OF THE PHILIPPINES [2011]).*

3.1. PAYMENT OF DOCKET AND OTHER FEES WITHIN THIS PERIOD IS MANDATORY FOR THE PERFECTION OF THE APPEAL. OTHERWISE, THE RIGHT TO APPEAL IS LOST. *(D.M. WENCESLAO VS. CITY OF PARANAQUE [2011]).*

3.2. VICARIOUS APPEAL: A PARTY'S APPEAL FROM A JUDGMENT WILL NOT INURE TO THE BENEFIT OF A CO-PARTY WHO FAILED TO APPEAL; AND AS AGAINST THE LATTER, THE JUDGMENT WILL CONTINUE TO RUN ITS COURSE UNTIL IT BECOMES FINAL AND EXECUTORY. TO THIS GENERAL RULE, HOWEVER, ONE EXCEPTION STANDS OUT: WHERE BOTH PARTIES HAVE A COMMONALITY OF INTERESTS, THE APPEAL OF ONE IS DEEMED TO BE THE VICARIOUS APPEAL OF THE OTHER. *(MARICALUM MINING CORP. VS. REMINGTON INDUSTRIAL SALES CORP. [2008]).*

4. THE DESIGNATION OF THE WRONG COURT DOES NOT NECESSARILY AFFECT THE VALIDITY OF THE NOTICE OF APPEAL. HOWEVER, THE DESIGNATION OF THE PROPER COURT SHOULD BE MADE WITHIN THE 15-DAY PERIOD TO APPEAL. *(TORRES VS. PEOPLE [2011]).*

5. NO QUESTION WILL BE ENTERTAINED ON APPEAL UNLESS IT HAS BEEN RAISED IN THE PROCEEDINGS BELOW. POINTS OF LAW, THEORIES, ISSUES AND ARGUMENTS NOT BROUGHT TO THE ATTENTION OF THE LOWER COURT, ADMINISTRATIVE AGENCY OR QUASI-JUDICIAL BODY, NEED NOT BE CONSIDERED BY A REVIEWING COURT, AS THEY CANNOT BE RAISED FOR THE FIRST TIME AT THAT LATE STAGE. *(DOMINGO VS. COLINA [2013]).*

6. FRESH PERIOD RULE: In ***Neypes v. Court of Appeals****, G.R. No. 141524, September 14, 2005, 469 SCRA 633, 644,* the Court declared that a party-litigant should be allowed a fresh period of 15 days within which to file a notice of appeal in the RTC, counted from receipt of the order dismissing or denying a motion for new trial or motion for reconsideration, so as to standardize the appeal periods provided in the Rules of Court and do away with the confusion as to when the 15-day appeal period should be counted. Furthermore, in ***Sumiran v. Damaso****, G.R. No. 162518, August 19, 2009, 596 SCRA 450, 455,* the Court again emphasized that the ruling in *Neypes*, being a matter of procedure, must be given retroactive effect and applied even to actions pending in this Court. *(TORRES VS. SPS. ALAMAG [2010]).*

6.1. Fresh period rule" shall also apply to Rule 40 governing appeals from the Municipal Trial Courts to the Regional Trial Courts; Rule 42 on petitions for review from the Regional Trial Courts to the Court of Appeals; Rule 43 on appeals from quasi-judicial agencies to the Court of Appeals and Rule 45 governing appeals by certiorari to the Supreme Court. The new rule aims to regiment or make the appeal period uniform, to be counted from receipt of the order denying the motion for new trial, motion for reconsideration (whether full or partial) or any final order or resolution. *(GAGUI vs. DEJERO [2013]).*

6.2. THE *NEYPES* RULE DOES NOT APPLY TO A PETITION FOR CERTIORARI TO REVIEW THE JUDGMENT OF THE COMELEC AND THE COA WHICH IS GOVERNED BY SECTION 3, RULE 64. *(PATES V. COMELEC, 30 JUNE 2009).*

6.3. THE FRESH 15-DAY PERIOD PROVIDED FOR IN NEYPES APPLIES TO APPEALS IN CRIMINAL CASES, NOTWITHSTANDING THE WORDINGS OF SECTION 6, RULE 122. *(YU V. SAMSON-TATAD [2011]).*

7. MODES OF APPEAL: Section 2, Rule 41 of the Rules of Court provides the three modes of appeal, which are as follows: ***"Section 2. Modes of appeal. —***

(a) Ordinary appeal. — *The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.*

(b) Petition for review. — *The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review in accordance with Rule 42.*

(c) Appeal by certiorari. — *In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on certiorari in accordance with Rule 45" (emphasis supplied).*

The **first mode** of appeal, the ordinary appeal under Rule 41 of the Rules of Court, is brought to the CA from the RTC, in the exercise of its original jurisdiction, and resolves questions of fact or mixed questions of fact and law. The **second mode** of appeal, the petition for review under Rule 42 of the Rules of Court, is brought to the CA from the RTC, acting in the exercise of its appellate jurisdiction, and resolves questions of fact or mixed questions of fact and law. The **third mode** of appeal, the appeal by *certiorari* under Rule 45 of the Rules of Court, is brought to the Supreme Court and resolves only questions of law *(HEIRS OF NICOLAS CABIGAS VS. LIMBACO [2011]).*

8. A QUESTION OF FACT IS NOT APPROPRIATE FOR A PETITION FOR REVIEW ON CERTIORARI UNDER RULE 45 OF THE RULES OF COURT. The parties may raise only questions of law because the Supreme Court is not a trier of facts. As a general rule, We are not duty-bound to analyze again and weigh the evidence introduced in and considered by the tribunals below. When supported by substantial evidence, the findings of fact of the CA are conclusive and binding on the parties and are not reviewable by this Court, except: (1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion;

(4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the CA, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both parties; (7) When the findings are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) When the findings of fact of the CA are premised on the supposed absence of evidence and contradicted by the evidence on record. *(NATIONAL UNION OF BANK EMPLOYEES vs. PHILNABANK EMPLOYEES ASSOCIATION [2013]).*

8.1. TENANCY RELATIONSHIP IS A QUESTION OF FACT THAT IS BEYOND THE SCOPE OF A PETITION FOR REVIEW ON CERTIORARI UNDER RULE 45. *(ESTATE OF PASTOR SAMSON VS. SUSANO [2011]).*

9. PETITION FOR RELIEF FROM JUDGMENT: A PETITION FOR RELIEF FROM JUDGMENT IS <u>NOT</u> AN AVAILABLE REMEDY IN THE COURT OF APPEALS OR THE SUPREME COURT. *(PURCON, JR. VS. MRM PHILIPPINES [2008]).*

It must be stressed that in petitions for review under Rule 45, only questions of law must be raised. It is elementary rule that the Supreme Court is not a trier of facts and this doctrine applies with greater force in labor cases. In exceptional cases, however, the Court may be urged to probe and resolve factual issues when the LA and the NLRC came up with conflicting positions. It is well settled that in termination cases, the burden of proof rests upon the employer to show that the dismissal was for a just and valid cause, and failure to discharge the same would mean that the dismissal is not justified and, therefore, illegal. *(CONCRETE SOLUTIONS, INC. VS. CABUSAS [2013]).*

9.1. PETITION FOR RELIEF: IT IS A REMEDY PROVIDED BY LAW TO ANY PERSON AGAINST WHOM A DECISION OR ORDER IS ENTERED INTO THROUGH <u>FRAUD, ACCIDENT, MISTAKE OR EXCUSABLE NEGLIGENCE</u>. THE RELIEF PROVIDED FOR IS OF EQUITABLE CHARACTER, ALLOWED ONLY IN EXCEPTIONAL CASES AS WHERE THERE IS NO OTHER AVAILABLE OR ADEQUATE REMEDY. *(SAMONTE VS. S.F. NAGUIAT, INC. [2009]).*

9.2 THE PETITION MUST BE FILED WITHIN 60 DAYS AFTER THE PETITIONER LEARNS OF THE JUDGMENT, FINAL ORDER, OR OTHER PROCEEDING TO BE SET ASIDE, AND NOT MORE THAN SIX (6) MONTHS AFTER SUCH JUDGMENT OR FINAL ORDER WAS ENTERED. *(TORRES VS. CHINA BANKING CORPORATION [2010]).*

10. ANNULMENT OF JUDGMENT (RULE 47): An action to annul a final judgment is an extraordinary remedy, which is not to be granted indiscriminately. It is a recourse equitable in character, allowed only in exceptional cases as where there is no adequate or appropriate remedy available (such as new trial, appeal, petition for relief) through no fault of petitioner. It is an equitable principle as it enables one to be discharged

from the burden of being bound to a judgment that is an absolute nullity to begin with. Yet, more importantly, the relief it affords is equitable in character because it strikes at the core of a final and executory judgment, order or resolution, allowing a party-litigant another opportunity to reopen a judgment that has long elapsed into finality. The reason for the restriction is to prevent this extraordinary action from being used by a losing party to make a complete farce of a duly promulgated decision that has long become final and executor xxx The underlying reason is traceable to the notion that annulling final judgments goes against the grain of finality of judgment. Litigation must end and terminate sometime and somewhere, and it is essential to an effective administration of justice that once a judgment has become final, the issue or cause involved therein should be laid to rest. The basic rule of finality of judgment is grounded on the fundamental principle of public policy and sound practice that at the risk of occasional error, the judgment of courts and the award of quasi-judicial agencies must become final at some definite date fixed by law. *(GOCHAN VS. MANCAO [2013]).*

10.1. Although Section 2 of Rule 47 provides that a petition for annulment may be based only on the grounds of extrinsic fraud and lack of jurisdiction, jurisprudence has recognized denial of due process as an additional ground. *(GOCHAN VS. MANCAO [2013]).*

10.2. UNDER B.P. BLG. 129, THE COURT OF APPEALS HAS EXCLUSIVE ORIGINAL JURISDICTION OVER ACTIONS FOR THE ANNULMENT OF JUDGMENTS OF THE RTC. *(ESTATE OF THE LATE JESUS YUJUICO VS. REPUBLIC [2007]).*

10.3. ANNULMENT OF JUDGMENT UNDER RULE 47 DOES <u>NOT</u> APPLY TO CRIMINAL CASES. *(PEOPLE VS. BITANGA [2007]).*

10.4. RULE 47 APPLIES ONLY TO PETITIONS FOR THE NULLIFICATION OF JUDGMENTS RENDERED BY REGIONAL TRIAL COURTS FILED WITH THE COURT OF APPEALS. IT DOES NOT PERTAIN TO THE NULLIFICATION OF DECISIONS OF THE COURT OF APPEALS. *(GRANDE VS. UNIVERSITY OF THE PHILIPPINES [2006]).*

10.5. The general rule is that, except to correct clerical errors or to make nunc pro tunc entries, a final and executory judgment can no longer be disturbed, altered, or modified in any respect, and that nothing further can be done but to execute it. A final and executory decision can, however, be invalidated via a petition to annul the same or a petition for relief under Rules 47 and 38, respectively, of the 1997 Rules of Civil Procedure (Rules). *(GOCHAN VS. MANCAO [2013]).*

11. RULE 64: DECISIONS, ORDERS OR RULINGS OF THE COMMISSION ON AUDIT MAY BE BROUGHT TO THE SUPREME COURT ON CERTIORARI UNDER RULE 65 BY THE AGGRIEVED PARTY. *(VERZOSA, JR. VS. CARAGUE [2011]).*

12. PETITION FOR CERTIORARI UNDER RULE 65: A PETITION FOR CERTIORARI IS THE PROPER REMEDY WHEN ANY TRIBUNAL, BOARD OR OFFICER

EXERCISING JUDICIAL OR QUASI-JUDICIAL FUNCTIONS HAS ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION, OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION AND THERE IS NO APPEAL, NOR ANY PLAIN SPEEDY, AND ADEQUATE REMEDY AT LAW. *(TIU VS. PHILIPPINE BANK OF COMMUNICATIONS [2009]).*

12.1. CERTIORARI IS A REMEDY DESIGNED FOR THE CORRECTION OF ERRORS OF JURISDICTION, NOT ERRORS OF JUDGMENT. In Pure Foods Corporation v. NLRC, the Supreme Court explained the simple reason for the rule in this light: When a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being exercised when the error is committed x x x. Consequently, an error of judgment that the court may commit in the exercise of its jurisdiction is not correctable through the original civil action of certiorari. *(TANKEH VS. DEVELOPMENT BANK OF THE PHILIPPINES [2013]).*

12.2 Even if the findings of the court are incorrect, as long as it has jurisdiction over the case, such correction is normally beyond the province of certiorari. Where the error is not one of jurisdiction, but of an error of law or fact a mistake of judgment, appeal is the remedy. *(TANKEH VS. DEVELOPMENT BANK OF THE PHILIPPINES [2013]).*

12.3. ERRORS OF JUDGMENT ARE NOT PROPER SUBJECTS OF A SPECIAL CIVIL ACTION FOR *CERTIORARI*. *(ARTISTICA CERAMICA VS. CIUDAD DEL CARMEN HOMEOWNER'S ASSOCIATION [2010]).*

12.4. A MOTION FOR RECONSIDERATION IS A CONDITION SINE QUA NON FOR THE FILING OF A PETITION FOR CERTIORARI. The rule is, however, circumscribed by **well-defined exceptions**, such as (1) where the order is a patent nullity, as where the court a quo has no jurisdiction; (2) where the questions raised in the certiorari proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (3) where there is an urgent necessity for the resolution of the question and any further delay will prejudice the interests of the Government or of the petitioner, or the subject matter of the action is perishable; (4) where, under the circumstances, a motion for reconsideration will be useless; (5) where petitioner was deprived of due process and there is extreme urgency for relief; (6) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (7) where the proceedings in the lower court are a nullity for lack of due process; (8) where the proceedings was ex parte or in which the petitioner had no opportunity to object; and (9) where the issue raised is one purely of law or public interest is involved. (i) where the issue raised is one purely of law or where public interest is involved. *(BEATRIZ SIOK PING TANG VS. SUBIC BAY DISTRIBUTION, [2010]).*

12.5. NOTICE OF APPEAL IS THE PROPER MODE OF APPEAL FROM A DECISION OF THE RTC IN A PETITION FOR *CERTIORARI* UNDER RULE 65. *(BF CITILAND VS. OTAKE [2010]).*

EXECUTION AND SATISFACTION OF JUDGMENTS

1. EXECUTION AS A MATTER OF RIGHT AND DISCRETION: Normally, execution will issue as a **matter of right** only (a) when the judgment has become final and executory; (b) when the judgment debtor has renounced or waived his right of appeal; (c) when the period for appeal has lapsed without an appeal having been filed; or (d) when, having been filed, the appeal has been resolved and the records of the case have been returned to the court of origin. **Execution pending appeal is the exception to the general rule**. As such exception, the court's discretion in allowing it must be strictly construed and firmly grounded on the existence of good reasons. ***"Good reasons,"*** it has been held, consist of compelling circumstances that justify immediate execution lest the judgment becomes illusory. The circumstances must be superior, outweighing the injury or damages that might result should the losing party secure a reversal of the judgment. Lesser reasons would make of execution pending appeal, instead of an instrument of solicitude and justice, a tool of oppression and inequity" *(FLORENDO VS. PARAMOUNT INSURANCE CORP., [2010]).*

1.1. MOTION FOR EXECUTION: THERE IS NO NEED TO FILE A MOTION FOR EXECUTION IN AN AMPARO OR HABEAS CORPUS DECISION. *(LT. COL. BOAC VS. CADAPAN [2011]).*

1.2. VARIANCE IN THE TERMS OF THE JUDGMENT AND THE WRIT OF EXECUTION: IF THE WRIT OF EXECUTION VARIED THE TERMS OF THE JUDGMENT AND EXCEEDED THEM, IT HAD NO VALIDITY. *(KKK FOUNDATION VS. HON. CALDERON-BARGAS [2007]).*

1.3. Immediacy of the execution, however, does not mean instant execution. The sheriff must comply with the Rules of Court in executing a writ. Any act deviating from the procedure laid down in the Rules of Court is a misconduct and warrants disciplinary action. In this case, Sec. 10(c), Rule 39 of the Rules prescribes the procedure in the implementation of the writ.

Even in cases wherein decisions are immediately executory, the required three-day notice cannot be dispensed with. A sheriff who enforces the writ without the required notice or before the expiry of the three-day period is running afoul with the Rules. *(ALCONERA VS. PALLANAN [2014]).*

1.4. *GENERAL RULE:* THE RULE ON EXECUTION BY MOTION OR BY INDEPENDENT ACTION UNDER SECTION 6, RULE 39 APPLIES ONLY TO CIVIL ACTIONS AND *NOT* TO SPECIAL PROCEEDINGS SUCH AS AN EX PARTE PETITION FOR THE ISSUANCE OF THE WRIT OF POSSESSION AS IT IS NOT IN THE NATURE OF A CIVIL ACTION. *(SPS. TOPACIO VS. BANCO FILIPINO SAVINGS AND MORTGAGE BANK [2010]).*

1.5. SECTION 6, RULE 39 REFERS TO CIVIL ACTIONS AND IS NOT

APPLICABLE TO SPECIAL PROCEEDINGS, SUCH AS A LAND REGISTRATION CASE. *(TING VS. HEIRS OF DIEGO LIRIO [2007]).*

1.6. DURING EXECUTION PROCEEDINGS, ERRORS MAY BE COMMITTED SUCH THAT THE RIGHTS OF A PARTY MAY BE PREJUDICED, IN WHICH CASE CORRECTIVE MEASURES ARE CALLED FOR. THESE MAY INVOLVE INSTANCES WHERE:

1) The [W]rit of [E]xecution varies the judgment;
2) There has been a change in the situation of the parties making execution inequitable or unjust;
3) Execution is sought to be enforced against property exempt from execution;
4) It appears that the controversy has never been subject to the judgment of the court;
5) The terms of the judgment are not clear enough and there remains room for interpretation thereof; or
6) The [W]rit of [E]xecution [was] improvidently issued, or x x x is defective in substance, or [was] issued against the wrong party, or x x x the judgment debt has been paid or otherwise satisfied, or the writ was issued without authority.

In such event, one of the corrective measures that may be taken is the quashing of the Writ of Execution. *(ARAULLO VS. OFFICE OF THE OMBUDSMAN [2013]).*

2. "[E]XECUTION PENDING APPEAL DOES NOT BAR THE CONTINUANCE OF THE APPEAL ON THE MERITS, FOR THE RULES OF COURT PRECISELY PROVIDES FOR RESTITUTION ACCORDING TO EQUITY IN CASE THE EXECUTED JUDGMENT IS REVERSED ON APPEAL." Note under Section 5, Rule 39 of the Rules of Court, which provides that:

> Sec. 5. Effect of reversal of executed judgment. - Where the executed judgment is reversed totally or partially, or annulled, on appeal or otherwise, the trial court may, on motion, issue such orders of restitution or reparation of damages as equity and justice may warrant under the circumstances. (Emphasis supplied)

Evidently, the action of the RTC in ordering the issuance of the writ of execution against herein petitioner for it to return the excess amount private respondent has paid in compliance with the execution pending appeal, is in accordance with the Rules. *(0. VENTANILLA ENTERPRISES CORP. VS. TAN [2013]).*

2.1. TO STAY THE IMMEDIATE EXECUTION OF THE JUDGMENT IN AN EJECTMENT CASE, THE DEFENDANT MUST PERFECT AN APPEAL, FILE A SUPERSEDEAS BOND, AND PERIODICALLY DEPOSIT THE RENTALS BECOMING DUE DURING THE PENDENCY OF THE APPEAL. OTHERWISE, THE WRIT OF EXECUTION WILL ISSUE UPON MOTION OF THE PLAINTIFF. *(ACBANG VS. HON. LUCZON, JR., [2014]).*

3. FOR A THIRD-PARTY CLAIM OR A TERCERIA TO PROSPER, THE CLAIMANT MUST FIRST SUFFICIENTLY ESTABLISH HIS RIGHT ON THE PROPERTY. *(VILLASI VS. GARCIA [2014]).*

4. The ministerial issuance of a writ of possession in favor of the purchaser in an extra-judicial foreclosure sale, however, admits of an exception. Section 33, Rule 39 of the Rules of Court (Rules) pertinently provides that the possession of the mortgaged property may be awarded to a purchaser in an extra-judicial foreclosure unless a third party is actually holding the property by adverse title or right. *(SPS. MARQUEZ VS. SPS. ALINDOG [2014]).*

4.1. After consolidation of title in the purchaser's name for failure of the mortgagor to redeem the property, the purchaser's right to possession ripens into the absolute right of a confirmed owner. At that point, the issuance of a writ of possession, upon proper application and proof of title, to a purchaser in an extrajudicial foreclosure sale becomes merely a ministerial function, unless it appears that the property is in possession of a third party claiming a right adverse to that of the mortgagor. The foregoing rule is contained in Section 33, Rule 39 of the Rules of Court. *(Rural Bank of Sta. Barbara (Iloilo), Inc. vs. Centeno, [2013]).*

4.2. If a parcel of land is occupied by a party other than the judgment debtor, the proper procedure is for the court to order a hearing to determine the nature of said adverse possession before it issues a writ of possession. *(Guevara et al. vs. Ramos et al., G.R. No. L-24358 March 31, 1971)*

This is because a third party, who is not privy to the debtor, is protected by the law. Such third party may be ejected from the premises only after he has been given an opportunity to be heard, to comply with the time-honored principle of due process. *(Unchuan vs. Court of Appeals, G.R. No. 78775 May 31, 1988)*

In the same vein, under Section 33 of Rule 39 of the Rules on Civil Procedure, the possession of a mortgaged property may be awarded to a purchaser in the extrajudicial foreclosure, unless a third party is actually holding the property adversely vis-à-vis the judgment debtor. *(Royal Savings Bank vs. Asia [2013]).*

5. DOCTRINE OF FINALITY OF JUDGMENT OR IMMUTABILITY OF JUDGMENT: A DECISION THAT HAS ACQUIRED FINALITY BECOMES IMMUTABLE AND UNALTERABLE, AND MAY NO LONGER BE MODIFIED IN ANY RESPECT, EVEN IF THE MODIFICATION IS MEANT TO CORRECT ERRONEOUS CONCLUSIONS OF FACT AND LAW, AND WHETHER IT BE MADE BY THE COURT THAT RENDERED IT OR BY THE HIGHEST COURT OF THE LAND. *(ESCALANTE VS. PEOPLE [2013]).*

5.1. EXCEPTIONS: THE SO-CALLED *NUNC PRO TUNC* ENTRIES WHICH CAUSE NO PREJUDICE TO ANY PARTY, VOID JUDGMENTS, AND WHENEVER CIRCUMSTANCES TRANSPIRE AFTER THE FINALITY OF THE DECISION WHICH RENDER ITS EXECUTION UNJUST AND INEQUITABLE. *(LAND BANK VS. LISTANA [2011]).*

5.2. EXCEPTIONS: IN *BARNES V. PADILLA,* THE SUPREME COURT LAID DOWN EXCEPTIONS TO THE RULE ON THE FINALITY OF JUDGMENTS IN ORDER TO SERVE SUBSTANTIAL JUSTICE CONSIDERING (a) matters of life, liberty, honor or property, (b) the existence of special or compelling circumstances, (c) the merits of the case, (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (e) a lack of any showing that the review sought is merely frivolous and dilatory, and (f) the other party will not be unjustly prejudiced thereby. *(PCI LEASING VS. MILAN [2010]).*

"The only way to keep what we have is by giving it away.

Kindly share this material without discrimination of any kind, and surely the blessings will return to you a thousand fold."

Good luck to all of you. See you in Court!

PROF. CHRISTIAN "KIT" VILLASIS