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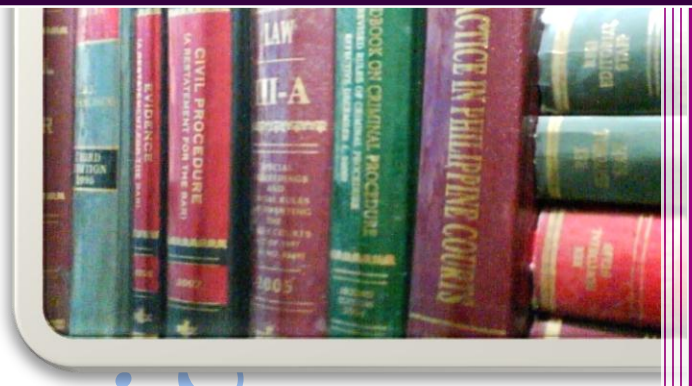

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Judge Ricardo J. Francisco, Evidence Rules, Third Edition.
Justice Oscar M. Herrera, Remedial Law, Vol. III-A, 2005 Edition, Rex Printing Co., Inc.(Notes).
Judge Philger Noel Inovejas, Remedial Law Jurisprudence 2015
Judge Edgardo L. Paras, Rules of Court Annotated, Rex Printing Co., Inc.
Justice Florenz D. Regalado (Ret.), Remedial Law Compendium, Ninth Printing Edition, Philippine Graphic Arts, Inc.
Atty. Leonardo P. Reyes, The People's Constitutional and Statutory Rights, 2000 Edition, National Book Store.
Dean Willard B. Riano, Civil Procedure (A Restatement for the Bar), 2007 Edition; Evidence (A Restatement for the Bar), 2006 Edition, Rex Printing Co., Inc.
Dean Tranquil Salvador
Dean Ferdinand Tan, notes and lectures
Prof. Christian Villasis, Notes and Pointers in Remedial Law 2012-2015
Philippine Association of Law Schools
University of the Philippines Law Complex, Answers to Bar Examination Questions

TO GOD BE ALL THE HONOR AND GLORY!

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PART I

GENERAL PRINCIPLES

Concept of Remedial Law

(1) **Bar 2006**: What is the concept of remedial law? (2%)

The concept of Remedial Law lies at the very core of procedural due process, which means a law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial, and contemplates an opportunity to be heard before judgment is rendered. Remedial Law is that branch of law which prescribes the method of enforcing rights or obtaining redress for their invasion *(Bustos vs. Lucero, GR No. L-2068, 08/20/1948; First Lepanto Ceramics, Inc. vs. CA, GR No. 110571, 03/10/1994; Albert vs. University Publishing, GR No. L-19118, 01/30/1965).*

(2) Since [remedial laws] are promulgated by authority of law, they have the force and effect of law if not in conflict with substantive law *(Ateneo vs. De La Rosa, G.R. No. L-286, 03/28/1946).*

(3) **Bar 2006**: How are remedial laws implemented in our system of government? (2%)

Answer: Remedial laws are implemented in our system of government through the pillars of the judicial system, including the prosecutor service, our courts of justice and quasi-judicial agencies.

Substantive Law Distinguished from Remedial Law

(1) **2006 Bar**: Distinguish between substantive law and remedial law. (2%)

Substantive law creates, defines and regulates rights and duties regarding life, liberty or property which when violated gives rise to a cause of action.

Remedial law prescribes the methods of enforcing those rights and obligations created by substantive law by providing a procedural system for obtaining redress for the invasion of rights and violations of duties and by prescribing rules as to how suits are filed, tried and decided by the courts *(Bustos vs. Lucero, GR No. L-2068, 08/20/1948).*

(2) As applied to criminal law, substantive law is that which declares what acts are crimes and prescribes the punishment for committing them, as distinguished from remedial law which provides or regulates the steps by which one who commits a crime is to be punished.

Meaning of Procedural Laws

(1) Procedural law refers to the adjective law which prescribes rules and forms of procedure in order that courts may be able to administer justice. Procedural laws do not come within the legal conception of a retroactive law, or the general rule against the retroactive operation of statutes – they may be given retroactive effect on actions pending and undetermined at the time of their passage and this will not violate any right of a person who may feel that he is adversely affected, inasmuch as there are no vested rights in rules of procedure *(Jose vs. Javellana, GR No. 158239, 01/25/2012,* citing *De Los Santos vs. Vda. de Mangubat).*

(2) **Bar 1998**: How shall the Rules of Court be construed? (2%)

The Rules of Court should be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding *(Sec. 6, Rule 1).*

Rule-Making Power of the Supreme Court

(1) Section 5 (5), Art. VIII of the Constitution provides that the Supreme Court shall have the power to promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

Limitations of the Rule-making Power of the Supreme Court

(1) The rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases.

(2) They shall be uniform for all courts of the same grade.

(3) They shall not diminish, increase, or modify substantive rights *(Sec. 5[5], Art. VIII, Constitution).*

(4) The power to admit attorneys to the Bar is not an arbitrary and despotic one, to be exercised at the pleasure of the court, or from passion, prejudice or personal hostility, but is the duty of the court to exercise and regulate it by a sound and judicial discretion. *(Andres vs. Cabrera, 127 SCRA 802).*

Power of the Supreme Court to Amend and Suspend Procedural Rules

(1) When transcendental matters of life, liberty or state security are involved *(Mindanao Savings Loan Asso. vs. Vicenta Vda. De Flores, 469 SCRA 416).*

(2) To relieve a litigant of an injustice commensurate with his failure to comply with the prescribed procedure and the mere invocation of substantial justice is not a magical incantation that will automatically compel the Court to suspend procedural rules *(Cu-Unjieng vs. CA, 479 SCRA 594)*

(3) When compelling reasons so warrant or when the purpose of justice requires it, the Supreme Court may suspend procedural rules. What constitutes a good and sufficient cause that would merit suspension of the rules is discretionary upon courts *(CIR vs. Migrant Pagbilao Corp., GR No. 159593, 10/12/2006).*

(4) Where substantial and important issues await resolution *(CIR vs. Migrant Pagbilao Corp., GR No. 159593, 12/12/2006).*

(5) The constitutional power of the Supreme Court to promulgate rules of practice and procedure necessarily carries with it the power to overturn judicial precedents on points of remedial law through the amendment of the Rules of Court *(Pinga vs. Heirs of Santiago, GR 170354, 07/30/2006).*

(6) Reasons that would warrant the suspension of the Rules: (a) the existence of special or compelling circumstances (b) merits of the case (c) cause not entirely attributable to the fault or negligence of the party favored by the suspension of rules (d) a lack of any showing that the review sought is merely frivolous and dilatory (e) the other party will not be unjustly prejudiced thereby *(Sarmiento vs. Zatarain, GR 167471, 02/05/2007).*

(7) The bare invocation of the interest of substantial justice is not a magic wand that will automatically compel the Court to suspend procedural rules. The rules may be relaxed only in exceptionally meritorious cases *(Mapagay vs. People, GR No. 178984, 08/19/2009).*

(8) Procedural rules may be relaxed for persuasive reasons to relieve a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure. More so, when to allow the assailed decision to go unchecked would set a precedent that will sanction a violation of substantive law *(Phil. Economic Zone Authority vs. Carates, GR No, 181274, 07/23/2010).*

(9) In any case, this Court resolves to condone any procedural lapse in the interest of substantial justice given the nature of business of respondent and its over-reaching implication to society. To deny this Court of its duty to resolve the substantive issues would be tantamount to judicial tragedy as planholders, like petitioner herein, would be placed in a state of limbo as to its remedies under existing laws and jurisprudence.

Indeed, where strong considerations of substantive justice are manifest in the petition, the strict application of the rules of procedure may be relaxed, in the exercise of its equity jurisdiction. Thus, a rigid application of the rules of procedure will not be entertained if it will only obstruct rather than serve the broader interests of justice in the light of the prevailing circumstances in the case under consideration *(Victorio-Aquino vs. Pacific Plans, GR No. 193108, 12/10/2014,* cited in *HGL Development Corporation vs. Judge Penuela, GR No. 181353, 06/06/2016).*

(10) In allowing the liberal application of procedural rules, We emphasized in the case of *Obut vs. Court of Appeals, et al. (162 Phil. 731 [1976]),* that placing the administration of justice in a straightjacket, *i.e.,* following technical rules on procedure would result into a poor kind of justice. We added that a too-rigid application of the pertinent provisions of the Rules of Court will not be given premium where it would obstruct rather than serve the broader interests of justice in the light of the prevailing circumstances of the case under consideration. Moreover, in the case of *CMTC International Marketing Corp. v. Bhagis International Trading Corp. (700 Phil. 575 [2012]),* We denied the application of the technical rules to yield to substantive justice. In said case, We ruled that the rules of procedure should give way to strong considerations of substantive justice. Thus, a rigid application of the rules of procedure will not be entertained if it will obstruct rather than serve the broader interests of justice in the light of the prevailing circumstances of the case under consideration. Likewise, in the case of *Uy v. Chua (616 Phil. 768 [2009]),* We interpreted that "[t]he Rules of Court were conceived and promulgated to set forth guidelines in the dispensation of justice but not to bind and chain the hand that dispenses it, for otherwise, courts will be mere slaves to or robots of technical rules, short of judicial discretion."

Considering the foregoing and the circumstances obtaining in this case, We allow the application of liberality of the rules of procedure to give due course to the petition filed by petitioners as the broader interest of justice so requires *(Career Executive Service Board vs. Civil Service Commission, GR No. 196890, 01/11/2018).*

(11) "[T]he rule, which states that the mistakes of counsel bind the client, may not be strictly followed where observance of it would result in the outright deprivation of the client's liberty or property, or where the interest of justice so requires."31 Simply put, procedural rules may be relaxed in order to prevent injustice to a litigant.

In sum, the Court deems it appropriate to relax the technical rules of procedure in order to afford petitioner the fullest opportunity to establish the merits of its appeal *(B.E. San Diego, Inc. vs. Bernardo, GR No. 233135, 12/05/2018)*,

Nature of Philippine Courts

(1) Philippine courts are both courts of law and of equity. Hence, both legal and equitable jurisdiction is dispensed with in the same tribunal *(US vs. Tamparong, 31 Phil. 321).*

(2) A court of law decides a case according to the promulgated statute. A court of equity decides a case according to the common precepts of what is right and just without inquiring into the terms of the statutes.

What is a Court

(1) A court is an organ of government belonging to the judicial department the function of which is the application of the laws to the controversies brought before it as well as the public administration of justice *(Black's Law Dictionary, 5th Ed., 356)*.

(2) It is a governmental body officially assembled under authority of law at the appropriate time and place for the administration of justice through which the State enforces its sovereign rights and powers *(21 CJS 16)*.

(3) It is a board or tribunal which decides a litigation or contest *(Hidalgo v. Manglapus, 64 OG 3189)*.

Court distinguished from Judge

(1) A court is a tribunal officially assembled under authority of law; a judge is simply an officer of such tribunal;

(2) A court is an organ of the government with a personality separate and distinct from the person or judge who sits on it;

(3) A court is a being in imagination comparable to a corporation, whereas a judge is a physical person ;

(4) A court may be considered an office; a judge is a public officer; and

(5) The circumstances of the court are not affected by the circumstances that would affect the judge.

Classification of Philippine Courts

(1) Philippine courts are classified as either Constitutional Court or Statutory Court:

(a) Constitutional courts are those that owe their creation and existence to the Constitution. Their existence as well as the deprivation of their jurisdictions and power cannot be made the subject of legislation. The Supreme Court is the only court created by the Constitution *(Article VIII, Sec. 1[1], 1987 Constitution)*.

(b) Statutory courts are those created by law whose jurisdiction is determined by legislation. These may be abolished likewise by legislation. BP 129 created the Court of Appeals, Regional Trial Courts, Metropolitan and Municipal Trial Courts. RA 1125 as amended by RA 10660 created the Court of Tax Appeals, while PD 1083 as amended by RA 8369 created the Family Courts, and the Shari'ah District and Circuit Courts.

Courts of Original and Appellate Jurisdiction

(1) A court is one with original jurisdiction when actions or proceedings are originally filed with it. A court is one with appellate jurisdiction when it has the power of review the decisions or orders of a lower court

(2) Metropolitan Trial Courts (MeTC), Municipal Circuit Trial Courts (MCTCs) and Municipal Trial Courts (MTCs) are courts of original jurisdiction without appellate jurisdiction.

Regional Trial Court (RTC) is likewise a court of original jurisdiction with respect to cases originally filed with it; and appellate court with respect to cases decided by MTCs within its territorial jurisdiction *(Sec. 22, BP 129).*

(3) The Court of Appeals is primarily a court of appellate jurisdiction with competence to review judgments of the RTCs and specified quasi-judicial agencies *(Sec. 9[3], BP 129*). It is also a court of original jurisdiction with respect to cases filed before it involving issuance of writs of *certiorari*, *mandamus*, *quo warranto*, *habeas corpus*, and prohibition. CA is a court of original and exclusive jurisdiction over actions for annulment of judgments of RTCs *(Sec. 9 [1],[2], BP 129*).

(4) The Supreme Court (SC) is fundamentally a court of appellate jurisdiction but it may also be a court of original jurisdiction over cases affecting ambassadors, public ministers and consuls, and in cases involving petitions for *certiorari*, prohibition and *mandamus* *(Sec. 5[1], Art. VIII, Constitution).* The Supreme Court *En Banc* is not an appellate court to which decisions or resolutions of a division of the Supreme Court may be appealed.

Courts of General and Special Jurisdiction

(1) Courts of general jurisdiction are those with competence to decide on their own jurisdiction and to take cognizance of all cases, civil and criminal, of a particular nature. Courts of special (limited) jurisdiction are those which have only a special jurisdiction for a particular purpose or are clothed with special powers for the performance of specified duties beyond which they have no authority of any kind.

(2) A court may also be considered 'general' if it has the competence to exercise jurisdiction over cases not falling within the jurisdiction of any court, tribunal, person or body exercising judicial or quasi-judicial functions. It is in this context that the RTC is considered a court of general jurisdiction.

Constitutional and Statutory Courts

(1) A constitutional court is one created by a direct Constitutional provision. Example of this court is the SC, which owes its creation from the Constitution itself. Only the SC is a Constitutional court.

(2) A statutory court is one created by law other than the Constitution. All courts except the SC are statutory courts. The Sandiganbayan (SB) was not directly created by the Constitution but by law pursuant to a constitutional mandate.

Principle of Judicial Hierarchy / Doctrine of Hierarchy of Courts

(1) This is an ordained sequence of recourse to courts vested with concurrent jurisdiction, beginning from the lowest, on to the next higher, and ultimately to the highest. This hierarchy is determinative of the venue of appeals, and is likewise determinative of the proper forum for petitions for extraordinary writs. This is an established policy necessary to avoid inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to preclude the further clogging of the Court's docket *(Sec. 9[1], BP 129; Sec. 5[1], Art. VIII, Constitution of the Philippines).*

(2) The Principle of Judicial Hierarchy of Courts most certainly indicates that petitions for the issuance of extraordinary writs against first level courts should be filed with the RTC and those against the latter should be filed in the Court of Appeals. This rule, however, may

be relaxed when pure questions of law are raised *(Miaque vs. Patag, GR Nos. 1790609-13, 01/30/2009).*

(3) A higher court will not entertain direct resort to it unless the redress cannot be obtained in the appropriate courts. The SC is a court of last resort. It cannot and should not be burdened with the task of deciding cases in the first instances. Its jurisdiction to issue extraordinary writs should be exercised only where absolutely necessary or where serious and important reasons exist.

(4) Petitions for the issuance of extraordinary writs against first level courts should be filed with the RTC and those against the latter with the CA. A direct invocation of the SC's original jurisdiction to issue these writs should be allowed only where there are special and important reasons therefor, clearly and specifically set out in the petition.

(5) The doctrine of hierarchy of courts may be disregarded if warranted by the nature and importance of the issues raised in the interest of speedy justice and to avoid future litigations, or in cases of national interest and of serious implications. Under the principle of liberal interpretations, for example, it may take cognizance of a petition for *certiorari* directly filed before it.

(6) The doctrine on hierarchy of courts is a practical judicial policy designed to restrain parties from directly resorting to this Court when relief may be obtained before the lower courts. The logic behind this policy is grounded on the need to prevent "inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction," as well as to prevent the congestion of the Court's dockets. Hence, for this Court to be able to "satisfactorily perform the functions assigned to it by the fundamental charter[,]" it must remain as a "court of last resort." This can be achieved by relieving the Court of the "task of dealing with causes in the first instance" *(Aala v. Uy, EB, GR No. 202781, 01/10/2017).*

(7) Unfortunately, none of these exceptions were sufficiently established in the present petition so as to convince this court to brush aside the rules on the hierarchy of courts.

Petitioner's allegation that her case has sparked national and international interest is obviously not covered by the exceptions to the rules on hierarchy of courts. The notoriety of a case, without more, is not and will not be a reason for this Court's decisions. Neither will this Court be swayed to relax its rules on the bare fact that the petitioner belongs to the minority party in the present administration. A primary hallmark of an independent judiciary is its political neutrality. This Court is thus loath to perceive and consider the issues before it through the warped prisms of political partisanships.

That the petitioner is a senator of the Republic does not also merit a special treatment of her case. The right to equal treatment before the law accorded to every Filipino also forbids the elevation of petitioner's cause on account of her position and status in the government *(De Lima vs. Judge Guerrero, GR No. 229781, 10/10/2017).*

Aala v. Uy, En Banc, GR No. 202781, 01/10/2017:

There is another reason why this Court enjoins strict adherence to the doctrine on hierarchy of courts. As explained in *Diocese of Bacolod v. Commission on Elections (G.R. No. 205728, 01/21/2015),* "[t]he doctrine that requires respect for the hierarchy of courts was created by this court to ensure that every level of the judiciary performs its designated roles in an effective and efficient manner." Thus:

> Trial courts do not only determine the facts from the evaluation of the evidence presented before them. They are likewise competent to determine issues of law which may include the validity of an ordinance, statute, or even an executive issuance in relation to the Constitution. To effectively perform these functions, they are territorially organized into regions and then into branches. Their writs generally reach within those territorial boundaries. Necessarily, they mostly perform the all-important task of

inferring the facts from the evidence as these are physically presented before them. In many instances, the facts occur within their territorial jurisdiction, which properly present the 'actual case' that makes ripe a determination of the constitutionality of such action. The consequences, of course, would be national in scope. There are, however, some cases where resort to courts at their level would not be practical considering their decisions could still be appealed before the higher courts, such as the Court of Appeals.

The Court of Appeals is primarily designed as an appellate court that reviews the determination of facts and law made by the trial courts. It is collegiate in nature. This nature ensures more standpoints in the review of the actions of the trial court. But the Court of Appeals also has original jurisdiction over most special civil actions. Unlike the trial courts, its writs can have a nationwide scope. It is competent to determine facts and, ideally, should act on constitutional issues that may not necessarily be novel unless there are factual questions to determine.

This court, on the other hand, leads the judiciary by breaking new ground or further reiterating - in the light of new circumstances or in the light of some confusions of bench or bar - existing precedents. Rather than a court of first instance or as a repetition of the actions of the Court of Appeals, this court promulgates these doctrinal devices in order that it truly performs that role. (Citation omitted)

(8) In a fairly recent case, we summarized other well-defined exceptions to the doctrine on hierarchy of courts. Immediate resort to this Court may be allowed when any of the following grounds are present:

(a) when genuine issues of constitutionality are raised that must be addressed immediately;
(b) when the case involves transcendental importance;
(c) when the case is novel;
(d) when the constitutional issues raised are better decided by this Court;
(e) when time is of the essence;
(f) when the subject of review involves acts of a constitutional organ;
(g) when there is no other plain, speedy, adequate remedy in the ordinary course of law;
(h) when the petition includes questions that may affect public welfare, public policy, or demanded by the broader interest of justice;
(i) when the order complained of was a patent nullity; and
(j) when the appeal was considered as an inappropriate remedy *(Aala v. Uy, EB, GR No. 202781, 01/10/2017)*.

(9) The rationale for the principle of hierarchy of courts was discussed in *Chamber of Real Estate and Builders Association, Inc. v. Secretary of Agrarian Reform*. In said case, the Court, citing the *Heirs of Bertuldo Hinog v. Hon. Melchor*, explained that:

Primarily, although this Court, the Court of Appeals and the Regional Trial Courts have concurrent jurisdiction to issue writs of *certiorari,* prohibition, *mandamus, quo warranto, habeas corpus* and injunction, **such concurrence does not give the petitioner unrestricted freedom of choice of court forum**. In *Heirs of Bertuldo Hinog v. Melicor,* citing *People v. Cuaresma,* this Court made the following pronouncements:

This Court's original jurisdiction to issue writs of *certiorari* is not exclusive. It is shared by this Court with Regional Trial Courts and with the Court of Appeals. This concurrence of jurisdiction is not, however, to be taken as according to parties seeking any of the writs an absolute, unrestrained freedom of choice of the court to which application therefor will be directed. **There is after all a hierarchy of courts.** That hierarchy is determinative of the venue of appeals, and also serves as a general determinant of the appropriate forum for petitions for

the extraordinary writs. A becoming regard for that judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level ("inferior") courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. **A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition.** This is [an] established policy. It is a policy necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket.

The rationale for this rule is two-fold: (a) it would be an imposition upon the precious time of this Court; and (b) it would cause an inevitable and resultant delay, intended or otherwise, in the adjudication of cases, which in some instances had to be remanded or referred to the lower court as the proper forum under the rules of procedure, or as better equipped to resolve the issues because this Court is not a trier of facts. (Emphases in the original; citations omitted.)

There is nothing in the instant petition which would justify direct recourse to this Court. Thus, dismissal of the same is in order *(Dr. Lasam vs. Philippine National Bank, GR No. 207433, 12/05/2018)*.

Doctrine of Exhaustion of Administrative Remedies

(1) Parties are generally precluded from immediately seeking the intervention of courts when "the law provides for remedies against the action of an administrative board, body, or officer." The practical purpose behind the principle of exhaustion of administrative remedies is to provide an orderly procedure by giving the administrative agency an "opportunity to decide the matter by itself correctly [and] to prevent unnecessary and premature resort to the courts" *(Aala v. Uy, EB, GR No. 202781, 01/10/2017)*.

The doctrine of exhaustion of administrative remedies, like the doctrine on hierarchy of courts, is not an iron-clad rule. It admits of several well-defined exceptions. *Province of Zamboanga del Norte vs. Court of Appeals, (396 Phil. 709 [2000])* has held that the principle of exhaustion of administrative remedies may be dispensed in the following instances:

(1) [W]hen there is a violation of due process;
(2) when the issue involved is purely a legal question;
(3) when the administrative action is patently illegal and amounts to lack or excess of jurisdiction;
(4) when there is estoppel on the part of the administrative agency concerned;
(5) when there is irreparable injury;
(6) when the respondent is a department secretary whose acts, as an alter ego of the President, bears the implied and assumed approval of the latter;
(7) when to require exhaustion of administrative remedies would be unreasonable;
(8) when it would amount to a nullification of a claim;
(9) when the subject matter is a private land in land case proceedings;
(10) when the rule does not provide a plain, speedy and adequate remedy;
(11) when there are circumstances indicating the urgency of judicial intervention; and unreasonable delay would greatly prejudice the complainant;
(12) when no administrative review is provided by law;
(13) where the rule of qualified political agency applies; and
(14) when the issue of non-exhaustion of administrative remedies has been rendered moot.

Doctrine of Judicial Courtesy

(1) The issue in this case is whether the non-issuance by the Court of Appeals (CA) of an injunction justifies the act of the Regional Trial Court (RTC) in granting the petition for mandamus. Negative. The Supreme Court has held in several cases that there are instances where, even if there is no writ of preliminary injunction or TRO issued by a higher court, it would be proper for a lower court or court of origin to suspend its proceedings on the precept of judicial courtesy. Here, the RTC did not apply this principle in the proceeding for the petition for *mandamus*. It failed to consider the fact that the propriety of the very directives under the writ of *mandamus* sought is wholly reliant on the CA resolution and that judicial courtesy dictates that it suspend its proceedings and await the CA's resolution of the petition for review filed by the petitioner *(Aquino v. Municipality of Malay, Aklan, GR No. 211356, 09/29/2014).*

Doctrine of Non-interference or Doctrine of Judicial Stability

(1) Courts of equal and coordinate jurisdiction cannot interfere with each other's orders. Thus, the RTC has no power to nullify or enjoin the enforcement of a writ of possession issued by another RTC. The principle also bars a court from reviewing or interfering with the judgment of a co-equal court over which it has no appellate jurisdiction or power of review.

(2) This doctrine applies with equal force to administrative bodies. When the law provides for an appeal from the decision of an administrative body to the SC or CA, it means that such body is co-equal with the RTC in terms of rank and stature, and logically beyond the control of the latter *(Phil.Spinster Corp. vs. Cagayan Electric Power).*

(3) At the outset, the Court emphasizes that under the doctrine of judicial stability or non-interference in the regular orders or judgments of a co-equal court, the various trial courts of a province or city, having the same equal authority, should not, cannot, and are not permitted to interfere with their respective cases, much less with their orders or judgments. In *Barroso v. Omelia (GR No. 194767, 10/14/2015),* the Court had the opportunity to thoroughly explain the said doctrine in this manner:

> The doctrine of judicial stability or non-interference in the regular orders or judgments of a co-equal court is an elementary principle in the administration of justice: no court can interfere by injunction with the judgments or orders 1of another court of concurrent jurisdiction having the power to grant the relief sought by the injunction. The rationale for the rule is founded on the concept of jurisdiction: a court that acquires jurisdiction over 'the case and renders judgment therein has jurisdiction over its judgment, to the exclusion of all other coordinate courts, for its execution and over all incidents, and to control, in furtherance of justice, the conduct of ministerial officers acting in connection with this judgment.
>
> Thus, we have repeatedly held that a case where an execution order has been issued is cbnsidered as still pending, so that all proceedings on the execution are still proceedings in the suit. A court which issued a writ of execution has the inherent power, for the advancement of justice, to correct errors of its ministerial officers and to control its own processes. To hold otherwise would be to divide the jurisdiction of the appropriate1 forum in the resolution of incidents arising in execution proceedings. Splitting of jurisdiction is obnoxious to the orderly administratiqn of justice *(Del Rosario vs. Ocampo-Ferrer, GR No. 215348, 06/20/2016).*

(4) A losing party cannot seek relief from the execution of a final judgment by bringing a separate action to prevent the execution of the judgment against her by the enforcing sheriff. Such action contravenes the policy on judicial stability. She should seek the relief in the same court that issued the writ of execution.

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And, lastly, the present appeal, even assuming that it was timely taken, would still fail for its lack of merit. We would still uphold the dismissal of the case by RTC (Branch 23) considering that the assailed actions and processes undertaken by the respondent to levy the properties of the petitioner were deemed proceedings in the same civil action assigned to the RTC (Branch 19) as the court that had issued the writ of execution. Such proceedings, being incidents of the execution of the final and executory decision of the RTC (Branch 19), remained within its exclusive control.

On the other hand, to allow the petitioner's action in the RTC (Branch 23) would disregard the doctrine of judicial stability or non-interference, under which no court has the power to interfere by injunction with the judgments or decrees of a court of concurrent or coordinate jurisdiction. Courts and tribunals with the same or equal authority - even those exercising concurrent and coordinate jurisdiction - are not permitted to interfere with each other's respective cases, much less their orders or judgments therein. This is an elementary principle of the highest importance essential to the orderly administration of justice. Its observance is not required on the grounds of judicial comity and courtesy alone; it is enforced to prevent unseemly, expensive, and dangerous conflicts of jurisdiction and of processes. A contrary rule would dangerously lead to confusion and seriously hamper the administration of justice *(Dy Chiao vs. Bolivar, GR No 192491, 08/17/2016).*

JURISDICTION

(1) Jurisdiction is the power and authority of the court to hear, try and decide a case.

(2) A judgment of a court without jurisdiction over the case is null and void. This ground of lack of jurisdiction may be raised even on appeal. Exception: Jurisdictional estoppel *(estoppel in pais, Rule 131).*

(3) Jurisdiction is not only the power of the court to hear and decide cases; it includes the power to execute decisions *(Secretary of Justice vs. Echegaray, 301 SCRA 96).*

(4) Jurisdiction is conferred by law based on the facts alleged in the complaint since the latter comprises a concise statement of the ultimate facts constituting the plaintiff's causes of action *(Sante vs. Claravall, GR No. 173915, 02/22/2010).*

(5) The three essential elements of jurisdiction are: *one,* that the court must have cognizance of the class of cases to which the one to be adjudged belongs; *two,* that the proper parties must be present; and, *three,* that the point decided must be, in substance and effect, within the issue. The test for determining jurisdiction is ordinarily the nature of the case as made by the complaint and the relief sought; and the primary and essential nature of the suit, not its incidental character, determines the jurisdiction of the court relative to it *(Salvador vs. Patricia, Inc., GR No. 195834, 11/09/2016).*

(6) Jurisdiction may be classified into original and appellate, the former being the power to take judicial cognizance of a case instituted for judicial action for the first time under conditions provided by law, and the latter being the authority of a court higher in rank to re-examine the final order or judgment of a lower court that tried the case elevated for judicial review. Considering that the two classes of jurisdiction are exclusive of each other, one must be expressly conferred by law. One does not flow, nor is inferred, from the other.

Jurisdiction is to be distinguished from its exercise. When there is jurisdiction over the person and subject matter, the decision of all other questions arising in the case is but an exercise of that jurisdiction. Considering that jurisdiction over the subject matter determines the power of a court or tribunal to hear and determine a particular case, its existence does not depend upon the regularity of its exercise by the court or tribunal. The test of jurisdiction is whether or not the court or tribunal had the power to enter on the inquiry, not whether or not its conclusions in the course thereof were correct, for the power to decide necessarily carries with it the power to decide wrongly as well as rightly. In a manner of speaking, the lack of the power to act at all results in a judgment that is void; while the lack of the power to render an erroneous decision results in a judgment that is valid until set aside. That the decision is erroneous does not divest the court or tribunal that rendered it of the jurisdiction conferred by law to try the case. Hence, if the court or tribunal has jurisdiction over the civil action, whatever error may be attributed to it is simply one of judgment, not of jurisdiction; appeal, not *certiorari,* lies to correct the error *(Salvador vs. Patricia, Inc., GR No. 195834, 11/09/2016).*

(7) A void judgment is no judgment at all in legal contemplation. In *Canero vs. University of the Philippines (GR No. 156380, 09/08/2004),* we held that -- x x x A void judgment is not entitled to the respect accorded to a valid judgment, but may be entirely disregarded or declared inoperative by any tribunal in which effect is sought to be given to it. It has no legal or binding effect or efficacy for any purpose or at any place. It cannot affect, impair or create rights. It is not entitled to enforcement and is, ordinarily, no protection to those who seek to enforce. In other words, a void judgment is regarded as a nullity, and the situation is the same as it would be if there was no judgment.
A judgment rendered without jurisdiction is a void judgment. This want of jurisdiction may pertain to lack of jurisdiction over the subject matter or over the person of one of the parties.

A void judgment may also arise from the tribunal's act constituting grave abuse of discretion amounting to lack or excess of jurisdiction *(Imperial vs. Armes, GR No. 178842; Cruz v. Imperial, GR No. 195509, 01/30/2017)*.

(8) Jurisdiction is defined as the power and authority of the courts to hear, try and decide cases. What determines the jurisdiction of the court is the nature of the action pleaded as appearing from the allegations in the complaint. The averments and the character of the relief sought are the ones to be consulted.

The principle is that jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint which comprise a concise statement of the ultimate facts constituting the plaintiff's cause of action. The nature of an action, as well as which court or body has jurisdiction over it, is determined based *on* the allegations contained in the complaint of the plaintiff, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted. Jurisdiction being a matter of substantive law, the established rule is that the statute in force at the time of the commencement of the action determines the jurisdiction of the court *(Anama vs. Citibank, GR No. 192048, 12/13/2017)*.

Jurisdiction over the Parties

(1) The manner by which the court acquires jurisdiction over the parties depends on whether the party is the plaintiff or the defendant.

(2) Jurisdiction over the plaintiff is acquired by his filing of the complaint or petition and the payment of correct docket fee. By doing so, he submits himself to the jurisdiction of the court.

(3) Jurisdiction over the person of the defendant is obtained either by a valid service of summons upon him or by his voluntary submission to the court's authority.

(4) The mode of acquisition of jurisdiction over the plaintiff and the defendant applies to both ordinary and special civil actions like mandamus or unlawful detainer cases.

How Jurisdiction over Plaintiff is Acquired

(1) Jurisdiction over the plaintiff is acquired when the action is commenced by the filing of the complaint, and the payment of the correct docket fees.

(2) Plaintiff's failure to pay the filing fees on the supplemental complaint did not divest the RTC of the jurisdiction it already had over the case *(PNOC Shipping and Transport Corp. vs. CA, 358 Phil. 38, 62 [1998])*. However, as to the damages that plaintiffs claim under their supplemental complaint, the trial court should have treated their Supplemental Pleading as not filed. A supplemental complaint is like any complaint and the rule is that the filing fees due on a complaint need to be paid upon its filing. The Rules do not require the court to make special assessments in cases of supplemental complaints. Plaintiffs have no excuse for their continuous failure to pay the fees they owed the court *(Do-All Metals Industries vs. Security Bank Corp., GR No. 176339, 01/10/2011)*.

How Jurisdiction over Defendant is Acquired

(1) Jurisdiction over the person of the defendant is required only in an action *in personam*; it is not a prerequisite in an action *in rem* and *quasi in rem*. In an action *in personam*, jurisdiction over the person is necessary for the court to validly try and decide the case, while in a proceeding *in rem* or *quasi in rem*, jurisdiction over the person of the defendant is not a prerequisite to confer jurisdiction on the court, provided the latter has jurisdiction over the *res*.

(2) By voluntary appearance of the defendant, without service of summons or despite a defective service of summons. The defendant's voluntary appearance in the action shall be equivalent to service of summons.

(3) Instances when the appearance of the defendant is not tantamount to voluntary submission to the jurisdiction of the court:

(a) when defendant files the necessary pleading;
(b) when defendant files motion for reconsideration of the judgment by default;
(c) when defendant files a petition to set aside the judgment of default;
(d) when the parties jointly submit a compromise agreement for approval of the court;
(e) when defendant files an answer to the contempt charge;
(f) when defendant files a petition for certiorari without questioning the court's jurisdiction over his person.

(4) 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. What the rule on voluntary appearance means is that the voluntary appearance of the defendant in court is without qualification, in which case he is deemed to have waived his defense of lack of jurisdiction over his person due to improper service of summons *(Lhuillier vs. British Airways, GR No. 171092, 03/15/2010)*.

(5) The filing of a *motion for time* is considered a submission to the jurisdiction of the court. A party who makes a special appearance in court challenging the jurisdiction of said court on the ground of invalid service of summons is not deemed to have submitted himself to the jurisdiction of the court *(UCPB vs. Ongpin, GR No. 146593, 10/26/2001)*. In this case, however, although the Motion to Dismiss filed specifically stated as one (1) of the grounds lack of "personal jurisdiction," it must be noted that defendant had earlier filed a Motion for Time to file an appropriate responsive pleading even beyond the time provided in the summons by publication. Such motion did not state that it was a conditional appearance entered to question the regularity of the service of summons, but an appearance submitting to the jurisdiction of the court by acknowledging the summons by publication issued by the court and praying for additional time to file a responsive pleading. Consequently, defendant having acknowledged the summons by publication and also having invoked the jurisdiction of the trial court to secure affirmative relief in his motion for additional time, he effectively submitted voluntarily to the trial court's jurisdiction. He is now estopped from asserting otherwise, even before this Court *(Go vs. Cordero, GR No. 164703, 05/04/2010)*.

(6) A special appearance before the court challenging its jurisdiction over the person through a motion to dismiss even if the movant invokes other grounds–is not tantamount to *estoppel* or a waiver by the movant of his objection to jurisdiction over his person; and such is not constitutive of a voluntary submission to the jurisdiction of the court *(Kukan International Corp. vs. Reyes, GR No. 182729, 09/29/2010)*.

(1) It is the power to deal with the general subject involved in the action, and means not simply jurisdiction of the particular case then occupying the attention of the court but jurisdiction of the class of cases to which the particular case belongs. It is the power or authority to hear and determine cases to which the proceeding in question belongs.

(2) When a complaint is filed in court, the basic questions that *ipso facto* are to be immediately resolved by the court on its own are:

(a) What is the subject matter of their complaint filed before the court?

(b) Does the court have jurisdiction over the said subject matter of the complaint before it?

Answering these questions inevitably requires looking into the applicable laws conferring jurisdiction.

(3) The exclusion of the term "damages of whatever kind" in determining the jurisdictional amount under Section 19 [8] and Section 33 [1] of BP 129, as amended by RA 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 *(Sante vs. Claravall, supra)*.

(4) **Issue** is a single, certain, and material point arising out of the allegations and contentions of the parties; it is a matter affirmed on one side and denied on the other, and when a fact is alleged in the complaint and denied in the answer, the matter is then put in issue between the parties *(Black's Dictionary, 9th Ed.)*.

(5) Pag-IBIG requested the intervention of the trial court through a letter on the alleged anomalous auction sale conducted. The Court ruled that the trial court did not acquire jurisdiction over the case since no proper initiatory pleading was filed. Said letter could not in any way be considered as a pleading. Also, no docket fees were paid before the trial court. Rule 141 of the Rules of Court mandates that "upon the filing of the pleading or other application which initiates an action or proceeding, the fees prescribed shall be paid in full *(Monsanto vs. Lim and De Guzman, GR No. 178911, 09/17/2014)*.

(6) The complaint of the petitioners did not contain any averment of the assessed value of the property. Such failure left the trial court bereft of any basis to determine which court could validly take cognizance of the cause of action for quieting of title. Thus, the RTC could not proceed with the case and render judgment for lack of jurisdiction. Although neither the parties nor the lower courts raised jurisdiction of the trial court in the proceedings, the issue did not simply vanish because the Court can hereby *motu proprio* consider and resolve it now by virtue of jurisdiction being conferred only by law, and could not be vested by any act or omission of any party *(Salvador vs. Patricia, Inc., GR No. 195834, 11/09/2016)*.

(7) In determining whether an action is one the subject matter of which is not capable of pecuniary estimation, this Court has adopted the criterion of first ascertaining the nature of the principal action or remedy sought. If it is primarily for the recovery of a sum of money, the claim is considered capable of pecuniary estimation, and whether jurisdiction is in the municipal courts or in the [C]ourts of [F]irst [I]nstance would depend on the amount of the claim. However, where the basic issue is something other than the right to recover a sum of money, where the money claim is purely incidental to, or a consequence of, the principal relief sought, this Court has considered such actions as cases where the subject of the litigation may not be estimated in terms of money, and are cognizable exclusively by [C]ourts of [F]irst [I]nstance (now Regional Trial Courts) *(Cabrera vs. Francisco, 716 Phil. 574 [2013]; Dee vs. Harvest All Investment Ltd., GR No. 224834, 03/15/2017)*.

(8) Verily, the deletion of Section 21 (k) of Rule 141 and in lieu thereof, the application of Section 7 (a) [fees for actions where the value of the subject matter can be determined/estimated], 7 (b) (1) [fees for actions where the value of the subject matter cannot be estimated], or 7 (b) (3) [fees for all other actions not involving property] of the same Rule to cases involving intra-corporate controversies for the determination of the correct filing fees, as the case may be, serves a dual purpose: on the one hand, the amendments concretize the Court's recognition that the subject matter of an intra-corporate controversy may or may not be capable of pecuniary estimation; and on the other hand, they were also made to correct the anomaly created by A.M. No. 04-2-04-SC dated July 20, 2004 (as advanced by the *Lu obiter dictum)* implying that all intra-corporate cases involved a subject matter which is deemed capable of pecuniary estimation.

… In view of the foregoing, and having classified Harvest All, *et al.*'s action as one incapable of pecuniary estimation, the Court finds that Harvest All, *et al.* should be made to pay the appropriate docket fees in accordance with the applicable fees provided under Section 7 (b) (3) of Rule 141 [fees for all other actions not involving property] of the Revised Rules of Court, in conformity with A.M. No. 04-02-04-SC dated October 5, 2016 *(Dee v. Harvest all Investment Ltd., GR No. 224834, 03/15/2017).*

Jurisdiction versus Exercise of Jurisdicion

(1) Jurisdiction is the power or authority of the court to hear and decide cases, and to execute judgments. The exercise of this power or authority is the exercise of jurisdiction.

(2) Jurisdiction of a court to hear and decide a controversy is called its jurisdiction, which includes the power to determine whether or not it has the authority to hear and determine the controversy presented, and the right to decide whether or not the statement of facts that confer jurisdiction exists, as well as all other matters that arise in the case legitimately before the court. Jurisdiction imports the power and authority to declare the law, to expound or to apply the laws exclusive of law and of fact, the power to hear, determine, and pronounce judgment on the issues before the court, and the power to inquire into the facts, to apply the law, and to pronounce the judgment.

But judicial power is to be distinguished from jurisdiction in that the former cannot exist without the latter and must of necessity be exercised within the scope of the latter, not beyond it.

Jurisdiction is a matter of substantive law because it is conferred only by law, as distinguished from venue, which is a purely procedural matter. The conferring law may be the Constitution, or the statute organizing the court or tribunal, or the special or general statute defining the jurisdiction of an existing court or tribunal, but it must be in force at the time of the commencement of the action. Jurisdiction cannot be presumed or implied, but must appear clearly from the law or it will not be held to exist, but it may be conferred on a court or tribunal by necessary implication as well as by express terms. It canot be conferred by the agreement of the parties, by the court's acquiescence, or by the erroneous belief of the court that it had jurisdiction; or by the waiver of objections, or by the silence of the parties *(Salvador vs. Patricia, Inc., GR No. 195834, 11/09/2016).*

Error of Jurisdiction vs. Error of Judgment

(1) An error of jurisdiction is one where the act complained of was issued by the court without or in excess of jurisdiction. It occurs when the court exercises a jurisdiction not conferred upon it by law, or when the court or tribunal although with jurisdiction, acts in excess of its jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction.

(2) An error of judgment is one which the court may commit in the exercise of its jurisdiction. As long as the court acts within its jurisdiction, any alleged errors committed in the exercise of its discretion will amount to nothing more than mere errors of judgment. Errors of judgment include errors of procedure or mistakes in the court's findings.

(3) Errors of judgment are correctible by appeal; errors of jurisdiction are correctible only by the extraordinary writ of *certiorari*. Any judgment rendered without jurisdiction is a total nullity and may be struck down at any time, even on appeal; the only exception is when the party raising the issue is barred by estoppel.

(4) When a court, tribunal, or officer has jurisdiction over the person and the subject matter of the dispute, the decision on all other questions arising in the case is an exercise of that jurisdiction. Consequently, all errors committed in the exercise of said jurisdiction are merely errors of judgment. Under prevailing procedural rules and jurisprudence, errors of judgment are not proper subjects of a special civil action for certiorari.

How Jurisdiction is Conferred and Determined

(1) Jurisdiction is a matter of substantive law because it is conferred by law. This jurisdiction which is a matter of substantive law should be construed to refer only to jurisdiction over the subject matter. Jurisdiction over the parties, the issues and the *res* are matters of procedure. The test of jurisdiction is whether the court has the power to enter into the inquiry and not whether the decision is right or wrong.

(2) It is the duty of the court to consider the question of jurisdiction before it looks at other matters involved in the case. If the court finds that it has jurisdiction, it is the duty of the court to exercise the jurisdiction conferred upon it by law and to render a decision in a case properly submitted to it. It cannot decline to exercise its jurisdiction. Failure to do so may be enforced by way of mandamus proceeding.

(3) The rule requiring jurisdiction over the parties is based on due process. Due process consists of notice and hearing. Notice means that persons with interests in the subject of litigation are to be informed of the facts and the law on which the complaint or petition is based for them to adequately defend their interests. This is done by giving the parties notification of the proceedings. On the other hand, hearing means that the parties must be given an opportunity to be heard or a chance to defend their interests. Courts are guardians of constitutional rights, and therefore, cannot deny due process rights while at the same time be considered to be acting within their jurisdiction.

Jurisdiction over the parties is the power of the courts to make decisions that are binding on them. Jurisdiction over complainants or petitioners is acquired as soon as they file their complaints or petitions, while jurisdiction over defendants or respondents is acquired through valid service of summons or their voluntary submission to the courts' jurisdiction.

Violation of due process is a jurisdictional defect. Hence, proper service of summons is imperative. A decision rendered without proper service of summons suffers a jurisdictional infirmity. In the service of summons, personal service is the preferred mode. As a rule, summons must be served personally on a defendant *(People's General Insurance Corporation vs. Guansing, GR No. 204759, 11/14/2018)*.

Doctrine of Ancillary Jurisdiction

(1) This is the power of the court to decide incidental matters (e.g., Intervention, 3rd party complaint).

Doctrine of Primary Jurisdiction

(1) Courts will not resolve a controversy involving a question which is within the jurisdiction of an administrative tribunal, especially where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact.

(2) The objective is to guide a court in determining whether it should refrain from exercising its jurisdiction until after an administrative agency has determined some question or some aspect of some question arising in the proceeding before the court *(Omictin vs. CA, GR 148004, 01/22/2007)*.

(3) The Doctrine of Primary Jurisdiction precludes the courts from receiving a controversy over which jurisdiction has initially been lodged with an administrative body of special competence *(Sps. Fajardo vs. Flores, GR No. 167891, 01/15/2010)*.

Doctrine of Adherence of Jurisdiction / Continuity of Jurisdiction

(1) In view of the principle that once a court has acquired jurisdiction, that jurisdiction continues until the court has done all that it can do in the exercise of that jurisdiction. This principle also means that once jurisdiction has attached, it cannot be ousted by subsequent happenings or events, although of a character which would have prevented jurisdiction from attaching in the first instance. The court, once jurisdiction has been acquired, retains that jurisdiction until it finally disposes of the case *(Abad vs. RTC Manila, 10/12/1987)*.

(2) Even the finality of the judgment does not totally deprive the court of jurisdiction over the case. What the court loses is the power to amend, modify or alter the judgment. Even after the judgment has become final, the court retains jurisdiction to enforce and execute it *(Echegaray vs. Secretary of Justice, 301 SCRA 96)*, except in the case of the existence of a law that divests the court of jurisdiction.

Objection to Jurisdiction over the Subject Matter

(1) When it appears from the pleadings or evidence on record that the court has no jurisdiction over the subject matter, the court shall dismiss the same *(Sec. 1, Rule 9)*. The court may on its own initiative object to an erroneous jurisdiction and may *ex mero motu* take cognizance of lack of jurisdiction at any point in the case and has a clearly recognized right to determine its own jurisdiction.

(2) Jurisdiction over the subject matter may be raised at any stage of the proceedings, even for the first time on appeal. When the court dismisses the complaint for lack of jurisdiction over the subject matter, it is common reason that the court cannot remand the case to another court with the proper jurisdiction. Its only power is to dismiss and not to make any other order.

(3) Under the omnibus motion rule, a motion attacking a pleading like a motion to dismiss shall include all grounds then available and all objections not so included shall be deemed waived. The defense of lack of jurisdiction over the subject matter is however, a defense not barred by the failure to invoke the same in a motion to dismiss already filed. Even if a motion to dismiss was filed and the issue of jurisdiction was not raised therein, a party

may, when he files an answer, raise the lack of jurisdiction as an affirmative defense because this defense is not barred under the *omnibus motion rule*.

(4) The basic rule is that the jurisdiction of a court over the subject matter is determined from the allegations in the complaint, the law in force at the time the complaint is filed, and the character of the relief sought, irrespective of wheter the plaintiff is entitled to all or some of the claims averred. Jurisdiction over the subject matter is not affected by the pleas or the theories set up by the defendant in the answer or motion to dismiss; otherwise, jurisdiction becomes dependent almost entirely upon the whims of the defendant *(Malabanan vs. Republic, GR No. 201821, 09/19/2018)*.

Effect of Estoppel on Objection to Jurisdiction

(1) The active participation of a party in a case is tantamount to the recognition of that court's jurisdiction and will bar a party from impugning the court's jurisdiction. Jurisprudence however, did not intend this statement to lay down the general rule. *(Lapanday Agricultural & Development Corp. vs. Estita, 449 SCRA 240; Mangaiag vs. Catubig-Pastoral, 474 SCRA 153).* The *Sibonghanoy* applies only to exceptional circumstances. The general rule remains: a court's lack of jurisdiction may be raised at any stage of the proceedings even on appeal *(Francel Realty Corp. vs. Sycip, 469 SCRA 424; Concepcion vs. Regalado, GR 167988, 02/06/2007).*

(2) The doctrine of estoppel by laches in relation to objections to jurisdiction first appeared in the landmark case of ***Tijam vs. Sibonghanoy***, *23 SCRA 29*, where the SC barred a belated objection to jurisdiction that was raised only after an adverse decision was rendered by the court against the party raising the issue of jurisdiction and after seeking affirmative relief from the court and after participating in all stages of the proceedings. This doctrine is based upon grounds of public policy and is principally a question of the inequity or unfairness of permitting a right or claim to be enforced or asserted.

(3) The Supreme Court frowns upon the undesirable practice of submitting one's case for decision, and then accepting the judgment only if favorable, but attacking it for lack of jurisdiction if it is not *(BPI vs. ALS Mgt. & Devt. Corp., 427 SCRA 564).*

Jurisdiction over the Issues

(1) It is the power of the court to try and decide issues raised in the pleadings of the parties.

(2) An issue is a disputed point or question to which parties to an action have narrowed down their several allegations and upon which they are desirous of obtaining a decision. Where there is no disputed point, there is no issue.

(3) Generally, jurisdiction over the issues is conferred and determined by the pleadings (initiatory pleadings or complaint and not the answer) of the parties. The pleadings present the issues to be tried and determine whether or not the issues are of fact or law.

(4) Jurisdiction over the issues may also be determined and conferred by stipulation of the parties as when in the pre-trial, the parties enter into stipulations of facts and documents or enter into agreement simplifying the issues of the case.

(5) It may also be conferred by waiver or failure to object to the presentation of evidence on a matter not raised in the pleadings. Here, the parties try with their express or implied consent issues not raised by the pleadings. The issues tried shall be treated in all respects as if they had been raised in the pleadings.

Jurisdiction over the *Res* or Property in Litigation

(1) Jurisdiction over the *res* refers to the court's jurisdiction over the thing or the property which is the subject of the action. Jurisdiction over the *res* may be acquired by the court by placing the property or thing under its custody *(custodia legis)*. Example: attachment of property. It may also be acquired by the court through statutory authority conferring upon it the power to deal with the property or thing within the court's territorial jurisdiction. Example: suits involving the status of the parties or suits involving the property in the Philippines of non-resident defendants.

(2) Jurisdiction over the *res* is acquired by the seizure of the thing under legal process whereby it is brought into actual custody of law, or it may result from the institution of a legal proceeding wherein the power of the court over the thing is recognized and made effective *(Banco Español Filipino vs. Palanca, 37 Phil. 291)*.

Jurisdiction of Courts

Jurisdiction of the Supreme Court

(1) The Supreme Court (SC) has exclusive original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari*, prohibition and *mandamus*, *quo warranto*, and *habeas corpus* *(Section 5[1], Article VIII, Constitution).*

(2) The SC has jurisdiction to review, revise, reverse, modify, or affirm on appeal or *certiorari*, as the law or the Rules of Cour may provide, final judgments and orders of lower courts in:
   (a) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question
   (b) All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto
   (c) All cases in which the jurisdiction of any lower court is in issue
   (d) All criminal cases in which the penalty imposed is *reclusion perpetua* or higher
   (e) All cases in which only an error or question of law is involved
   (Section 5(2), Article VIII, Constitution).

(3) Promulgate rules concerning the protection and enforcement of constitutional rights, pleding, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged *(Section 5[5], Article VIII, Constitution).*

(4) Concurrent original jurisdiction:
   (a) With Court of Appeals in petitions for *certiorari*, prohibition and *mandamus* against the RTC, CSC, Central Board of Assessment Appeals, NLRC, Quasi-judicial agencies, and writ of *kalikasan*, all subject to the doctrine of hierarchy of courts.
   (b) With the CA, Sandiganbayan, RTC, and Shari-ah in petitions for *certiorari*, prohibition and *mandamus* against lower courts and bodies; and in petitions for *quo warranto*, and writs of *habeas corpus*, all subject to the doctrine of hierarchy of courts.
   (c) With CA, RTC and Sandiganbayan for petitions for writs of amparo and habeas data
   (d) Concurrent original jurisdiction with the RTC in cases affecting ambassadors, public ministers and consuls.

(5) Appellate jurisdiction by way of petition for review on certiorari (appeal by *certiorari* under Rule 45) against the CA, CTA *en banc*, Sandiganbayan, RTC on pure questions of law; and in cases involving the constitutionality or validity of a law or treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance or regulation, legality of a tax, impost, assessment, toll or penalty, jurisdiction of a lower court; and CTA in its decisions rendered *en banc*.

(6) Exceptions in which factual issues may be resolved by the Supreme Court:
   (a) When the findings are grounded entirely on speculation, surmises or conjectures;
   (b) When the inference made is manifestly mistaken, absurd or impossible;
   (c) When there is grave abuse of discretion;
   (d) When the judgment is based on misapprehension of facts;
   (e) When the findings of facts are conflicting;
   (f) When in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;
   (g) When the findings are contrary to the trial court;

(h) When the findings are conclusions without citation of specific evidence on which they are based;
(i) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent;
(j) When the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and
(k) When the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, could justify a different conclusion.

(7) Well settled is the rule that the Supreme Court is not a trier of facts. The function of the Court in petitions for review on certiorari is limited to reviewing errors of law that may have been committed by the lower courts.

Nevertheless, the Court has enumerated several exceptions to this rule: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the Court of Appeals are contrary to those of the trial court; (9) the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the Court of Appeals are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.

Here, one of the exceptions exists - that the judgment is based on misapprehension of facts. To finally resolve the factual dispute, the Court deems it proper to tackle the factual question presented *(Escolano vs. People, GR No. 226991, 12/10/2018)*.

Jurisdiction of the Court of Appeals

(1) Exclusive original jurisdiction in actions for the annulment of the judgments of the RTC *(Rule 47).*

(2) Concurrent original jurisdiction:
(a) With SC to issue writs of certiorari, prohibition and mandamus against the RTC, CSC, CBAA, other quasi-judicial agencies mentioned in Rule 43, and the NLRC, and writ of kalikasan.
(b) With the SC, Sandiganbayan, RTC, and Shari-ah to issue writs of certiorari, prohibition and mandamus against lower courts and bodies and writs of *quo warranto*, *habeas corpus*, whether or not in aid of its appellate jurisdiction, and writ of continuing mandamus on environmental cases.
(c) With the SC, RTC and Sandiganbayan for petitions for writs of amparo and habeas data
(d) Freeze order over illegally-acquired properties *(RA 1379)*
(e) Cases falling under RA 4200.

(3) Exclusive appellate jurisdiction:
(a) by way of ordinary appeal from the RTC and the Family Courts.
(b) by way of petition for review from the RTC rendered by the RTC in the exercise of its appellate jurisdiction.
(c) by way of petition for review from the decisions, resolutions, orders or awards of the CSC, CBAA and other bodies mentioned in Rule 43 and of the Office of the Ombudsman in administrative disciplinary cases.

(d) over decisions of MTCs in cadastral or land registration cases pursuant to its delegated jurisdiction; this is because decisions of MTCs in these cases are appealable in the same manner as decisions of RTCs.

(4) The Court of Appeals has jurisdiction over orders, directives and decisions of the Office of the Ombudsman in administrative cases only. It cannot, therefore, review the orders, directives or decisions of the Office of the Ombudsman in criminal or non-administrative cases *(Office of the Ombudsman vs. Heirs of Vda. De Ventura, GR No. 151800, 1105/2009).*

(5) The CA also has concurrent original jurisdiction over petitions for issuanceof writ of *amparo,* writ of *habeas data*, and writ of *kalikasan* *(Anama vs. Citibank, GR No. 192048, 12/13/2017).*

(6) **2006 Bar**: Does the Court of Appeals have jurisdiction to review the decisions in criminal and administrative cases of the Ombudsman? (2.5%)

Answer: The Supreme Court has exclusive appellate jurisdiction over decisions of the Ombudsman in criminal cases *(Sec. 14, RA 6770).* In administrative and disciplinary cases, appeals from the Ombudsman must be taken to the Court of Appeals under Rule 43 *(Lanting vs. Ombudsman, GR No. 141426, 05/06/2005; Fabian vs. Desierto, GR No. 129742, 0916/1998; Sec. 14, RA 6770).*

(7) **2008 Bar**: Give at least three instances where the Court of Appeals may act as a trial court. (3%)

Answer: The Court of Appeals may act as a trial court in the following instances:
(a) In annulment of judgments *(Secs. 5 and 6, Rule 47)*;
(b) When a motion for new trial is granted by the Court of Appeals *(Sec. 4, Rule 53)*;
(c) A petition for habeas corpus shall be set for hearing *(Sec. 12, Rule 102)*;
(d) To resolve factual issues in cases within its original and appellate jurisdiction *(Sec. 12, Rule 124)*;
(e) In cases of new trial based on newly discovered evidence *(Sec. 14, Rule 124)*;
(f) In cases involving claims for damages arising from provisional remedies;
(g) In writ of amparo proceedings *(AM No. 07-9-12-SC)*;
(h) In writ of kalikasan proceedings *(Rule 7, AM No. 09-6-8-SC)*;
(i) In writ of habeas data proceedings *(AM No. 08-1-16-SC).*

Jurisdiction of the Court of Tax Appeals *(RA 9282 and Rule 5, AM 05-11-07-CTA)*

(1) Exclusive original or appellate jurisdiction to review by appeal

(a) Decisions of CIR in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the NIRC or other laws administered by BIR;

(b) Inaction by CIR in cases involving disputed assessments, refunds of IR taxes, fees or other charges, penalties in relation thereto, or other matters arising under the NIRC or other laws administered by BIR, where the NIRC or other applicable law provides a specific period of action, in which case the inaction shall be deemed an implied denial;

(c) Decisions, orders or resolutions of the RTCs in local taxes originally decided or resolved by them in the exercise of their original or appellate jurisdiction;

(d) Decisions of the Commissioner of Customs (1) in cases involving liability for customs duties, fees or other charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or (2) other matters arising under the Customs law or other laws, part of laws or special laws administered by BOC;

(e) Decisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals;

(f) Decision of the Secretary of Finance on customs cases elevated to him automatically for review from decisions of the Commissioner of Customs which are adverse to the government under Sec. 2315 of the Tariff and Customs Code;

(g) Decisions of Secretary of Trade and Industry in the case of non-agricultural product, commodity or article, and the Secretary of Agriculture in the case of agricultural product, commodity or article, involving dumping duties and counterveiling duties under Secs. 301 and 302, respectively, of the Tariff and Customs Code, and safeguard measures under RA 8800, where either party may appeal the decision to impose or not to impose said duties.

(2) Exclusive original jurisdiction

(a) Over all criminal cases arising from violation of the NIRC or the TCC and other laws, part of laws, or special laws administered by the BIR or the BOC where the principal amount of taxes and fees, exclusive of charges and penalties claimed is less than ₱1M or where there is no specified amount claimed (the offenses or penalties shall be tried by the regular courts and the jurisdiction of the CTA shall be appellate);

(b) In tax collection cases involving final and executory assessments for taxes, fees, charges and penalties where the principal amount of taxes and fees, exclusive of charges and penalties claimed is less than P1M tried by the proper MTC, MeTC and RTC.

(3) Exclusive appellate jurisdiction

(a) In criminal offenses (1) over appeals from the judgment, resolutions or orders of the RTC in tax cases originally decided by them, in their respective territorial jurisdiction, and (2) over petitions for review of the judgments, resolutions or orders of the RTC in the exercise of their appellate jurisdiction over tax cases originally decided by the MeTCs, MTCs, and MCTCs in their respective jurisdiction;

(b) In tax collection cases (1) over appeals from the judgments, resolutions or orders of the RTC in tax collection cases originally decided by them in their respective territorial jurisdiction; and (2) over petitions for review of the judgments, resolutions or orders of the RTC in the exercise of their appellate jurisdiction over tax collection cases originally decided by the MeTCs, MTCs and MCTCs in their respective jurisdiction.

(4) **2006 Bar**: Mark filed with the Bureau of Internal Revenue a complaint for refund of taxes paid, but it was not acted upon. So, he filled a similar complaint with the Court of Tax Appeals (CTA) raffled to one of its Divisions. Mark's complaint was dismissed. Thus, he filed with the Court of Appeals (CA) a petition for certiorari under Rule 65. Does the CA have jurisdiction over Mark's petition? (2.5%)

Answer: No. The procedure is governed by Sec. 11 of RA 9282. Decisions of the Court of Tax Appeals (CTA) must be appealed to the CTA en banc. Further, the CTA now has the same rank as the CA and is no longer considered a quasi-judicial agency. It is likewise provided in the said law that the decisions of the CTA en banc are cognizable by the Supreme Court under Rule 45 of the Rules of Civil Procedure.

Jurisdiction of the Sandiganbayan

The Sandiganbayan has the following jurisdictions:

(1) Exclusive Original Jurisdiction in all cases involving:

Under RA 10660 *(2015):*

a. Violations of ***Republic Act No. 3019***, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, ***Republic Act No. 1379***, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

(1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade '27' and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758), specifically including:

(a) Provincial governors, vice-governors, members of the sangguniang panlalawigan, and provincial treasurers, assessors, engineers, and other provincial department heads:

(b) City mayors, vice-mayors, members of the sangguniang panlungsod, city treasurers, assessors, engineers, and other city department heads;

(c) Officials of the diplomatic service occupying the position of consul and higher;

(d) Philippine army and air force colonels, naval captains, and all officers of higher rank;

(e) Officers of the Philippine National Police while occupying the position of provincial director and those holding the rank of senior superintendent and higher;

(f) City and provincial prosecutors and their assistants, and officials and prosecutors in the Office of the Ombudsman and special prosecutor;

(g) Presidents, directors or trustees, or managers of government-owned or controlled corporations, state universities or educational institutions or foundations.

(2) Members of Congress and officials thereof classified as Grade '27' and higher under the Compensation and Position Classification Act of 1989;

(3) Members of the judiciary without prejudice to the provisions of the Constitution;

(4) Chairmen and members of the Constitutional Commissions, without prejudice to the provisions of the Constitution; and

(5) All other national and local officials classified as Grade '27' and higher under the Compensation and Position Classification Act of 1989.

b. Other offenses or felonies whether simple or complexed with other crimes committed by the public officials and employees mentioned in subsection a. of this section in relation to their office.

c. Civil and criminal cases filed pursuant to and in connection with Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986.

Provided, That the Regional Trial Court shall have exclusive original jurisdiction where the information: (a) does not allege any damage to the government or any bribery; or (b) alleges damage to the government or bribery arising from the same or closely related transactions or acts in an amount not exceeding One million pesos (P1,000,000.00).

Subject to the rules promulgated by the Supreme Court, the cases falling under the jurisdiction of the Regional Trial Court under this section shall be tried in a judicial region other than where the official holds office.

In cases where none of the accused are occupying positions corresponding to Salary Grade '27' or higher, as prescribed in the said Republic Act No. 6758, or military and PNP officers mentioned above, exclusive original jurisdiction thereof shall be vested in the proper regional trial court, metropolitan trial court, municipal trial court, and municipal circuit trial court, as the case may be, pursuant to their respective jurisdictions as provided in Batas Pambansa Blg. 129, as amended.

The Sandiganbayan shall exercise exclusive appellate jurisdiction over final judgments, resolutions or orders of regional trial courts whether in the exercise of their own original jurisdiction or of their appellate jurisdiction as herein provided.

The Sandiganbayan shall have exclusive original jurisdiction over petitions for the issuance of the *writs* of *mandamus,* prohibition, *certiorari, habeas corpus,* injunctions, and other ancillary writs and processes in aid of its appellate jurisdiction and over petitions of similar nature, including *quo warranto,* arising or that may arise in cases filed or which may be filed under Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986: *Provided,* That the jurisdiction over these petitions shall not be exclusive of the Supreme Court.

The procedure prescribed in Batas Pambansa Blg. 129, as well as the implementing rules that the Supreme Court has promulgated and may hereafter promulgate, relative to appeals/petitions for review to the Court of Appeals, shall apply to appeals and petitions for review filed with the Sandiganbayan. In all cases elevated to the Sandiganbayan and from the Sandiganbayan to the Supreme Court, the Office of the Ombudsman, through its special prosecutor, shall represent the People of the Philippines, except in cases filed pursuant to Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986.

In case private individuals are charged as co-principals, accomplices or accessories with the public officers or employees, including those employed in government-owned or controlled corporations, they shall be tried jointly with said public officers and employees in the proper courts which shall exercise exclusive jurisdiction over them.

Any provisions of law or Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability shall at all times be simultaneously instituted with, and jointly determined in, the same proceeding by the Sandiganbayan or the appropriate courts, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action shall be recognized: *Provided, however,* That where the civil action had heretofore been filed separately but judgment therein has not yet been rendered, and the criminal case is hereafter filed with the Sandiganbayan or the appropriate court, said civil action shall be transferred to the Sandiganbayan or the appropriate court, as the case may be, for consolidation and joint determination with the criminal action, otherwise the separate civil action shall be deemed abandoned.

(c) Bribery (Chapter II, Sec. 2, Title VII, Book II, RPC) where one or more of the principal accused are occupying the following positions in the government, whether in permanent, acting or interim capacity at the time of the commission of the offense

1. Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade 27 and higher, of the Compensation and Position Classification Act of 1989 *(RA 6758)*
2. Members of Congress and officials thereof classified as G-27 and up under RA 6758
3. Members of the Judiciary without prejudice to the provisions of the Constitution
4. Chairmen and Members of the Constitutional Commissions without prejudice to the provisions of the Constitution
5. All other national and local officials classified as Grade 27 and higher under RA 6758

(d) Other offenses or felonies committed by the public officials and employees mentioned in Sec. 4(a) of RA 7975 as amended by RA 8249 in relation to their office

(e) Civil and criminal cases filed pursuant to and in connection with EO Nos. 1, 2, 14-A *(Sec. 4, RA 8249)*

(2) Concurrent Original jurisdiction with SC, CA and RTC for petitions for writs of *habeas* data and amparo, quo warranto, mandamus, and certiorari.

(3) On the issue on jurisdiction, it is of no moment that Inocentes does not occupy a position with a salary grade of 27 since he was the branch manager of the GSIS' field office in Tarlac City, a government-owned or -controlled corporation, at the time of the commission of the offense, which position falls within the coverage of the Sandiganbayan's jurisdiction.

The applicable law provides that violations of R.A. No. 3019 committed by presidents, directors or trustees, or *managers of government-owned or -controlled corporations*, and state universities shall be within the exclusive original jurisdiction of the Sandganbayan. We have clarified the provision of law defining the jurisdiction of the Sandiganbayan by explaining that the Sandiganbayan maintains its jurisdiction over those officials specifically enumerated in (a) to (g) of Section 4(1) of P.D. No. 1606, as amended, regardless of their salary grades. Simply put, those that are classified as Salary Grade 26 and below may still fall within the jurisdiction of the Sandiganbayan, provided they hold the positions enumerated by the law. In this category, it is the position held, not the salary grade, which determines the jurisdiction of the Sandiganbayan *(Inocentes vs. People, GR No. 205963-64, 07/07/2016)*.

(4) **2001 Bar**: Governor Padro Mario of Tarlac was charged with indirect bribery before the Sandiganbayan for accepting a car in exchange of the award of a series of contracts for medical supplies. The Sandiganbayan, after going over the information, found the same to be valid and ordered the suspension of Mario. The latter contested the suspension claiming that under the law *(Sec. 13, RA 3019)*, his suspension is not automatic upon the filing of the information and his suspension under Sec. 13, RA 3019 is in conflict with Sec. 5 of the Decentralization Act of 1967 (RA 5185). The Sandiganbayan overruled Mario's contention stating that Mario's suspension under the circumstances is mandatory. Is the court's ruling correct? Why? (5%)

Answer: Yes, Mario's suspension is mandatory, although not automatic *(Sec. 13, RA 3019, in relation to Sec. 5, RA 5185)*. It is mandatory after the determination of the validity of the information in a pre-suspension hearing. The purpose of suspension is to prevent the accused public officer from frustrating or hampering his prosecution by intimidating or influencing witnesses or tampering with evidence or from committing further acts of malfeasance while in office *(Segovia vs. Sandiganbayan, 282 SCRA 328 [1988])*.

(1) The jurisdiction of the Ombudsman to take cognizance of cases cognizable by the Sandiganbayan in the exercise of its original jurisdiction is for the conduct of preliminary investigation in criminal cases.

(2) The Ombudsman has under its general investigatory powers the authority to investigate forfeiture cases where the alleged ill-gotten wealth had been amassed before February 25, 1986. In *Republic vs. Sandiganbayan, GR No. 90529, 08/16/1991,* the Supreme Court emphatically explained that, "While they do not discount the authority of the Ombudsman, they believe and so hold that the exercise of his correlative powers to both investigate and initiate the proper action for the recovery of ill-gotten wealth and/or unexplained wealth is restricted only to cases for the recovery of ill-gotten and/or unexplained wealth which were amassed after February 25, 1986. Prior to said date, the Ombudsman is without authority to initiate such forfeiture proceedings. We, however, uphold his authority to investigate cases for the forfeiture or recovery of such ill-gotten and/or unexplained wealth amassed even before the abovementioned date, pursuant to his general investigatory power under Section 15(1) of RA 6770". Here, although it was the Ombudsman who conducted the preliminary investigation, it was the OSG that instituted the action in line with the Court's ruling in the above-cited case and other cases that followed *(Romualdez vs. Sandiganbayan, GR No. 16160, 07/13/2010).*

(3) **2005 Bar**: Regional Director AG of the Department of Public Works and Highways was charged with violation of Setion 3(e) of Republic Act No. 3019 in the Office of the Ombudsman. An administrative charge for gross misconduct arising from the transaction subject matter of said criminal case was filed against him in the same office. The Ombudsman assigned a team composed of investigators from the Office of the Special Prosecutor and from the Office of the Deputy Ombudsman for the military to conduct a joint investigation of the criminal case and the administrative case. The team of investigators recommended to the Ombudsman that AG be preventively suspended for a period not exceeding six (6) months on its finding that the evidence of guilt is strong. The Ombudsman issued the said order as recommended by the investigators.

AG moved to reconsider the order on the following grounds:

a. The Office of the Special Prosecutor had exclusive authority to conduct a preliminary investigation of the criminal case;

b. The order for his preventive suspension was premature because he had yet to file his answer to the administrative complaint and submit countervailing evidence; and

c. He was a career executive service officer and under Presidential Decree No. 807 *(Civil Service Law*), his preventive suspension shall be for a maximum period of three months.

Resolve with reasons the motion of respondent AG. (5%)

Answer: The Motion for Reconsideration should be denied for the following reasons:

a. AG's contention that the Office of the Special Prosecutor had exclusive authority to conduct a preliminary investigation of the criminal case should be rejected considering that the investigatory powers of the Office of Special Prosecutor is under the supervision of the Office of Ombudsman, which exercises the investigatory and prosecutory powers granted by the Constitution *(Office of the Ombudsman vs. Enoc, 374 SCRA 691 [2002]).*

This is but in accordance with Section 31 of RA 6770 which provides that the Ombudsman may utilize the personnel of his office and/or designate or deputize any fiscal state prosecutor or lawyer in the government service to act as special investigator or prosecutors to assist in the investigation and prosecution of certain

cases. Those designated or deputized to assist him herein provided shall be under his supervision and control.

b. The order of preventive suspension need not wait for the answer to the administrative complaint and the submission of counterveiling evidence *(Garcia vs. Mojica, 314 SCRA 207; Lastimosa vs. Vasquez, 243 SCRA 497 [1997]).*

c. His preventive suspension as a career executive officer under the Civil Service Law may only be for a maximum period of three months *(Sec. 42, PD 807).* The period of suspension under the Anti-Graft Law is the same pursuant to the equal protection clause. However, under Section 24 of the Ombudsman Act, the Ombudsman is expressly authorized to issue an order of preventive suspension of not more than six (6) months without pay *(Garcia vs. Mojica, 314 SCRA 207; Layno vs. Sandiganbayan, 136 Scra 536 [1985]).*

(4) The Court of Appeals has jurisdiction over orders, directives and decisions of the Office of the Ombudsman in administrative disciplinary cases only. It cannot, therefore, review the orders, directives or decisions of the Office of the Ombudsman in criminal or non-administrative cases.

Bunag-Cabacungan's contention that the phrase "in all other cases" has removed the distinction between administrative and criminal cases of the Ombudsman is ludicrous. It must be stressed that the above-quoted Section 7 is provided under Rule III, which deals with the procedure in administrative cases. When Administrative Order No. 07 was amended by Administrative Order No. 17, Section 7 was retained in Rule III. It is another rule, Rule II, which provides for the procedure in criminal cases. Thus, the phrase "in all other cases" still refers to administrative cases, not criminal cases, where the sanctions imposed are different from those enumerated in Section 7. It is important to note that the petition filed by Bunag-Cabacungan in CA-G.R. SP No. 86630 assailed only the "administrative decision" rendered against her by the OMB for Luzon *(Duyon vs. Special Fourth Division of the Court of Appeals and Bunag-Cabacungan, GR No. 172218, 11/26/2014).*

(5) Lastly, we correct the erroneous interpretation and application by the Court of Appeals of Section 20(5) of Republic Act (R.A.) No. 6770 or the Ombudsman Act of 1989, which reads:

Section 20. *Exceptions.* - The Office of the Ombudsman may not conduct the necessary investigation of any administrative act or omission complained of if it believes that:

(1) The complainant has an adequate remedy in another judicial or quasi-judicial body;

(2) The complaint pertains to a matter outside the jurisdiction of the Office of the Ombudsman;

(3) The complaint is trivial, frivolous, vexatious or made in bad faith;

(4) The complainant has no sufficient personal interest in the subject matter of the grievance; or

(5) The complaint was filed after one (1) year from the occurrence of the act or omission complained of,

The declaration of the CA in its assailed decision that while as a general rule the word "may" is directory, the negative phrase "may not" is mandatory in tenor; that a directory word, when qualified by the word "not," becomes prohibitory and therefore beoomes mandatory in character, is not plausible. It is not supported by jurisprudence on statutory construction.

Clearly, Section 20 of R.A. 6770 does not prohibit the Ombudsman from condvcting an administrative· investigation after the lapse of one year, reckoned from the time the alleged act was committed. Without doubt, even if the administrative case was filed beyond the one (1) year period stated in Section 20(5), the Ombudsman was well within its discretion to conduct the administrative investigation.

Furthermore, it was settled in the case of *Office of the Ombudsman v. Medrano* that the administrative disciplinary authority of the Ombudsman over a public school teacher is not an exclusive power but is concurrent with the proper committee of the Department of Education. The fact that a referral to the proper committee would have been the prudent thing to do does not operate to divest the Ombudsman of its constitutional power to investigate government employees including public school teachers *(Desierto vs. Espitola, GR No. 161425, 11/23/2016).*

Jurisdiction of the Regional Trial Courts

(1) Exclusive original jurisdiction
   (a) Matters incapable of pecuniary estimation, such as rescission of contract;
   (b) Civil actions in which involve title to, possession of, or interest in, real property where the assessed value exceeds P20,000 or, for civil actions in Metro Manila, where such value exceeds P50,000 except actions for forcible entry into and unlawful detainer of lands or buildings;
   (c) Probate proceedings where the gross value of the estate exceeds P300,000 outside Metro Manila or exceeds P400,000 in Metro Manila;
   (d) Admiralty or maritime cases where the demand or claim exceeds P300,000 outside Metro Manila or exceeds P400,000 in Metro Manila;
   (e) All actions involving the contract of marriage and marital relations;
   (f) All cases not within the exclusive jurisdiction of any court, tribunal, person or body exercising judicial or quasi-judicial functions;
   (g) All civil actions and special proceedings falling within the exclusive original jurisdiction of a Juvenile and Domestic Relations Court and of the Court of Agrarian Relations as now provided by law; and
   (h) In all other cases in which the demand, exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs or the value of the property in controversy exceeds P300,000 (outside Metro Manila) or P400,000 (Metro Manila).

(2) Original exclusive jurisdiction over cases not falling within the jurisdiction of any court, tribunal, person or body exercising judicial or quasi-judicial functions

(3) Original and exclusive jurisdiction to hear and decide intra-corporate controversies:
   (a) Cases involving devises or schemes employed by or any acts, of the board of directors, business associates, its officers or partnership, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholders, partners, members of associations or organizations registered with the SEC
   (b) Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation , partnership or association and the state insofar as it concerns their individual franchise or right to exist as such entity
   (c) Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations
   (d) Petitions of corporations, partnerships or associations to be declared in the state of suspension of payments in cases where the corporation, partnership of association possesses sufficient property to cover all its debts but foresees the impossibility of meeting them when they respectively fall due or in cases where the corporation, partnership of association has no sufficient assets to cover its liabilities, but is under the management of a Rehabilitation Receiver or Management Committee.

(4) Concurrent/Coordinate/Confluent and original jurisdiction

(a) with the Supreme Court in actions affecting ambassadors, other public ministers and consuls

(b) with the SC and CA in petitions for certiorari, prohibition and mandamus against lower courts and bodies in petitions for quo warranto, habeas corpus, and writ of continuing mandamus on environmental cases

(c) with the SC, CA and Sandigabayan in petitions for writs of habeas data and amparo

(5) Appellate jurisdiction over cases decided by lower courts in their respective territorial jurisdictions; annulment of judgment from MTC *(Rule 47, Sec. 10).*

(6) Special jurisdiction over JDRC, agrarian and urban land reform cases not within the exclusive jurisdiction of quasi-judicial agencies when so designated by the SC.

(7) Ancillary jurisdiction: Issue hold-departure orders.

(8) This case is a precise illustration as to how an intra-corporate controversy may be classified as an action whose subject matter is incapable of pecuniary estimation. A cursory perusal of Harvest All, et al.'s Complaint and Amended Complaint reveals that its main purpose is to have Alliance hold its 2015 ASM on the date set in the corporation's by-laws, or at the time when Alliance's SRO has yet to fully materialize, so that their voting interest with the corporation would somehow be preserved. Thus, Harvest All, et al. sought for the nullity of the Alliance Board Resolution passed on May 29, 2015 which indefinitely postponed the corporation's 2015 ASM pending completion of subscription to the SR0. Certainly, Harvest All, et al.'s prayer for nullity, as well as the concomitant relief of holding the 2015 ASM as scheduled in the by-laws, do not involve the recovery of sum of money. The mere mention of Alliance's impending SRO valued at P1 Billion cannot transform the nature of Harvest All, et al.'s action to one capable of pecuniary estimation, considering that: (a) Harvest All, et al. do not claim ownership of, or much less entitlement to, the shares subject of the SRO; and (b) such mention was merely narrative or descriptive in order to emphasize the severe dilution that their voting interest as minority shareholders would suffer if the 2015 ASM were to be held after the SRO was completed. If, in the end, a sum of money or anything capable of pecuniary estimation would be recovered by virtue of Harvest All, et al.'s complaint, then it would simply be the consequence of their principal action. Clearly therefore, Harvest All, et al.'s action was one incapable of pecuniary estimation.

At this juncture, it should be mentioned that the Court passed *A.M. No. 04-02-04-SC* dated October 5, 2016, which introduced amendments to the schedule of legal fees to be collected in various commercial cases, including those involving intra-corporate controversies *(Dee vs. Harvest All Investment Limited, GR No. 224834 and 224871, 03/15/2017).*

(9) As an action to revive judgment raises issues of whether the petitioner has a right to have the final and executory judgment revived and to have that judgment enforced and does not involve recovery of a sum of money, we rule that jurisdiction over a petition to revive judgment is properly with the RTCs. Thus, the CA is correct in holding that it does not have jurisdiction to hear and decide Anama's action for revival of judgment *(Anama vs. Citibank, GR No.192048, 12/13/2017).*

(10) **2008 Bar**: Jose, Alberto and Romeo were charged with murder. Upon filing of the information, the RTC judge issued the warrants for their arrest. Learning of the issuance of the warrants, the three accused jointly filed a motion for reinvestigation and for the recall of the warrants of arrest. On the date set for hearing of their motion, none of the accused showed up in court for fear of being arrested. The RTC judge denied their motion because the RTC did not acquire jurisdiction over the persons of the movants. Did the RTC rule correctly? (4%)

Answer: The RTC was not entirely correct in stating that it had no jurisdiction over the persons of the accused. By filing motions and seeking affirmative reliefs from the court,

the accused voluntarily submitted themselves to the jurisdiction of the court. However, the RTC correctly denied the motion for reinvestigation. Before an accused can move for reinvestigation and the recall of his warrant of arrest, he must first surrender his person to the court *(Miranda vs. Tuliao, GR No. 158763, 03/31/2006).*

Jurisdiction of Family Courts

(1) Under RA 8369, Family Courts shall have exclusive original jurisdiction over the following cases, whether civil or criminal:

(a) Petitions for guardianship, custody of children and habeas corpus involving children
(b) Petitions for adoption of children and the revocation thereof
(c) Complaints for annulment of marriage, declaration of nullity of marriage and those relating to status and property relations of husband and wife or those living together under different status and agreements, and petitions for dissolution of conjugal partnership of gains
(d) Petitions for support and/or acknowledgment
(e) Summary judicial proceedings brought under the provisions of EO 209 *(Family Code)*
(f) Petitions for declaration of status of children as abandoned, dependent or neglected children, petitions for voluntary or involuntary commitment of children, the suspension, termination or restoration of parental authority and other cases cognizable under PD 603, EO 56 (1986) and other related laws
(g) Petitions for the constitution of the family home

In areas where there are no Family Courts, the above-enumerated cases shall be adjudicated by the RTC (RA 8369).

(2) **2001 Bar**: How should the records of child and family cases in the Family Courts or Regional Trial Court designated by the Supreme Court to handle Family Court cases be treated and dealt with? (3%)

Under what conditions the identity of the parties in child and family cases may be divulged? (2%)

Answer: The records of the child and family cases in the Family Courts or Regional Trial Court designated by the Supreme Court cases shall be dealt with utmost confidentiality *(Sec. 12, Family Courts Act of 1997).*
The identity of the parties in child and family cases shall not be divulged unless necessary and with authority of the judge.

Jurisdiction of Metropolitan Trial Courts / Municipal Trial Courts

(1) Criminal cases

(a) Exclusive original jurisdiction

1. Summary procedure for violations of city or municipal ordinances committed within their respective territorial jurisdiction, including traffic laws
2. Offenses punishable with imprisonment not exceeding six (6) years irrespective of the amount of fine, and regardless of other imposable accessory or other penalties, including the civil liability arising from such offenses or predicated thereon, irrespective of the kind, nature, value or amount thereof; provided however, that in offenses involving damage to property through criminal negligence, they shall have exclusive original jurisdiction thereof (Sec. 2, RA 7691).

(2) Civil actions

(a) Exclusive original jurisdiction

1. Civil actions and probate proceedings, testate and intestate, including the grant of provisional remedies in proper cases, where the gross value of the personal property, estate, or amount the demand does not exceed P300,000 outside Metro Manila or does not exceed P400,000 in Metro Manila, exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs.
2. Summary procedure of forcible entry and unlawful detainer, violation of rental law
3. Title to, or possession of, real property, or any interest therein where the assessed value of the property or interest therein does not exceed P20,000 outside Metro Manila or does not exceed P50,000 in Metro Manila.
4. Admiralty or maritime cases where the demand or claim is below P300,000 outside Metro Manila or below P400,000 in Metro Manila

(3) Special jurisdiction over petition for writ of habeas corpus and application for bail if the RTC Judge in the area is not available

(4) Delegated jurisdiction to hear and decide cadastral and land registration cases where there is no controversy and there are no oppositors provided the value of the land to be ascertained by the claimant does not exceed P100,000.

(5) The MeTC can now assume jurisdiction over *accion publiciana* cases. Under BP 129, the plenary action of *accion publiciana* must be brought before the regional trial courts *(Bernardo vs. Heirs of Villegas, GR No. 183357, 03/15/2010)*. However, with the modifications introduced by RA 7691, the jurisdiction of the RTC has been limited to real actions where the assessed value exceeds P20,000 or P50,000 if the action is filed in Metro Manila. If the assessed value is below the said amounts, the action must be brought before the first level courts *(BF Citiland Corp. vs. Otake, GR No. 173351, 07/29/2010)*.

(6) **1998 Bar**: In an action for unlawful detainer in the MTC, defendant X raised in his answer the defense that plaintiff A is not the real owner of the house subject of the suit. X filed a counterclaim against A for the collection of a debt of P80,000 plus accrued interest of P15,000 and attorney's fees of P20,000. Does the MTC have jurisdiction over the counterclaim? (2%)

Answer: The counterclaim is within the jurisdiction of the MTC which does not exceed P100,000, because the principal demand is P80,000 exclusive of interest and attorney's fees *(Sec. 33, BP 129, as amended)*. However, inasmuch as actions for forcible entry and unlawful detainer are subject to summary procedure and since the counterclaim is only permissive, it cannot be entertained by the MTC *(Sec. 1A[1] and 3A, RSP)*.

(7) **2004 Bar**: Plaintiff filed a complaint for a sum of money against defendant with the MeTC-Makati, the total amount of the demand, exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and cost, being P1,000,000. In due time, defendant filed a motion to dismiss the complaint on the ground of the MeTC's lack of jurisdiction over the subject matter. After due hearing, the MeTC (1) ruled that the court indeed lacked jurisdiction over the subject matter of the complaint; (2) ordered that the case therefore should be forwarded to the proper RTC immediately.

Was the court's ruling concerning jurisdiction correct? Was the court's order to forward the case proper? Explain briefly. (5%)

Answer: Yes. The MeTC did not have jurisdiction over the case because the total amount of the demand exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and cost was P1M. its jurisdictional amount at this time should not exceed P400,000 *(Sec. 33, BP 129, as amended by RA 7691)*.

The court's order to forward the case to the RTC is not proper. It should merely dismiss the complaint. Under Sec. 3 of Rule 16, the court may dismiss the action or claim, deny

the motion or order the amendment of the pleading but not to forward the case to another court.

(8) **2004 Bar**: Filomeno brought an action in the Metropolitan Trial Court (MeTC) of Pasay City against Marcelino pleading two causes of action. The first was a demand for the recovery of physical possession of a parcel of land situated in Pasay City with an assessed value of P40,000; the second was a claim for damages of P500,000 for Marcelino's unlawful retention of the property. Marcelino filed a motion to dismiss on the ground that the total amount involved, which is P540,000, is beyond the jurisdiction of the MeTC. Is Marcelino correct/ (4%)

Answer: No. Metropolitan Trial Courts (MeTCs) have exclusive original jurisdiction over a complaint for forcible entry and unlawful detainer regardless of the amount of the claim for damages *(Sec. 33[2], BP 129).* Also, Sec. 3, Rule 70 gives jurisdiction to the said courts irrespective of the amount of damages. This is the same provision in the Revised Rules of Summary Procedure (RRSP) that governs all ejectment cases *(Sec. 1[A][1], RRSP).*

(9) **2001 Bar**: Josefa filed in the Municipal Circuit Trial Court (MCTC) of Alicia and Mabini, a petition for the probate of the will of her husband, Martin, who died in the Municipality of Alicia, the residence of the spouses. The probate value of the estate which consisted mainly of a house and lot was placed at P95,000.00 and in the petition for the allowance of the will, attorney's fees in the amount of P10,000, litigation expenses in the amount of P5,000.00 and costs were included. Pedro, the next kin of Martin, filed an opposition to the probate of the will on the ground that the total amount included in the relief of the petition is more than P100,000.00, the maximum jurisdictional amount for municipal circuit trial courts. The court overruled the opposition and proceeded to hear the case. Was the municipal trial court correct in its ruling? Why? (5%)

Answer: Yes, the Municipal Circuit Trial Court (MCTC) was correct in proceeding to hear the case. It has exclusive jurisdiction in all matters of probate, both testate and intestate, where the value of the estate does not exceed P100,000.00 (now P200,000.00). the value in this case of P95,000.00 is within its jurisdiction. In determining the jurisdictional amount, excluded are attorney's fees, litigation expenses and costs; these are considered only for determining the filing fees *(Sec. 33, BP 129, as amended).*

(10) **2007 Bar**: X files an unlawful detainer case against Y before the appropriate Metropolitan Trial Court. In his answer, Y avers as a special and affirmative defense that he is a tenant of X's deceased father in whose name the property remains registered. What should the court do? Explain briefly. (5%)

Answer: The court should proceed to hear the case under the Rules on Summary Procedure. Unlawful detainer refers to actual physical possession, not ownership. Defendant Y who is in actual possession is the real party in interest. It does not matter if he is a tenant of the deceased father of the plaintiff, X or that X's father is the registered owner of the property. His term has expired. He merely continues to occupy the property by mere tolerance and he can be evicted upon mere demand *(Lao v. Lao, GR No. 149599, 05/11/2005).*

Jurisdiction of Shari'a Courts *(PD 1083)*

(1) Article 143 of the Muslim Code would reveal that Sharia courts have jurisdiction over real actions when the parties are both Muslims. The fact that the Shari'a courts have concurrent jurisdiction with the regular courts in cases of actions involving real property means that jurisdiction may only be exercised by the said courts when the action involves parties who are both Muslims. In cases where one of the parties is a non-Muslim, the Shari'a Courts cannot exercise jurisdiction over it. It would immediately divest the Shari'a

court jurisdiction over the subject matter *(Villagracia vs. Fifth Shari'a District Court and Mala, GR No. 188832, April 23, 2014).*

(2) Shari'a courts have three levels: district, *en banc*, and appellate.

Jurisdiction over Small Claims cases

(1) MTCs, MeTCs and MCTCs shall have jurisdiction over actions for payment of money where the value of the claim does not exceed P300,000 (outside Metro Manila) or P400,000 (within Metro Manila) exclusive of interest and costs *(Sec. 2, AM 08-8-7-SC, Oct. 27, 2009, as amended beginning April 1, 2019).*

(2) Actions covered are (a) purely civil in nature where the claim or relief prayed for by the plaintiff is solely for payment or reimbursement of sum of money, and (b) the civil aspect of criminal actions, either filed before the institution of the criminal action, or reserved upon the filing of the criminal action in court, pursuant to Rule 111 (Sec. 4, AM 08-8-7-SC). These claims may be:

   (a) For money owed under the contracts of lease, loan, services, sale, or mortgage;
   (b) For damages arising from fault or negligence, quasi-contract, or contract; and
   (c) The enforcement of a barangay amicable settlement or an arbitration award involving a money claim pursuant to Sec. 417 of RA 7160 *(LGC).*

(3) Collection of P50,000 mediation fee for small claims cases has been discontinued by OCA Circ. 149-2019, effective September 2, 2019.

Cases covered by Rules on Summary Procedure *(Sec. 1, RSP)*

(1) Civil Cases

   (a) All cases of forcible entry and unlawful detainer, irrespective of the amount of damages or unpaid rentals sought to be recovered. Where attorney's fees are awarded, the same shall not exceed P20,000;
   (b) All other cases, except probate proceedings where the total amount of the plaintiff's claim does not exceed P100,000 (outside MM) or P200,000 (in MM), exclusive of interest and costs.

(2) Criminal Cases

   (a) Violations of traffic law, rules and regulations;
   (b) Violation of the rental law;
   (c) All other criminal cases where the penalty prescribed is imprisonment not exceeding six (6) months, or fine not exceeding P1,000, or both, irrespective of other imposable penalties, accessory or otherwise, or of the civil liability arising therefrom, provided, that in offenses involving damage to property through criminal negligence, RSP shall govern where the imposable fine does not exceed P10,000.

(3) The RSP does not apply to a civil case where the plaintiff's cause of action is pleaded in the same complaint with another cause of action subject to the ordinary procedure; nor to a criminal case where the offense charged is necessarily related to another criminal case subject to the ordinary procedure.

Cases covered by the Rules on Barangay Conciliation *(Sec. 408, RA 7160)*

(1) The Lupon of each barangay shall have the authority to bring together the parties actually residing in the same municipality or city for amicable settlement of all disputes except:

(a) Where one party is the government or any subdivision or instrumentality thereof
(b) Where one party is a public officer or employee, and the dispute relates to the performance of his official functions
(c) Offenses punishable by imprisonment exceeding one (1) year or a fine exceeding P5,000
(d) Offenses where there is no private offended party
(e) Where the dispute involves real properties located in different cities or municipalities unless the parties thereto agree to submit their differences to amicable settlement by an appropriate lupon
(f) Disputes involving parties who actually reside in barangays of different cities or municipalities, except where such barangay units adjoin each other and the parties thereto agree to submit their differences to amicable settlement by an appropriate lupon
(g) Such other classes of disputes which the President may determine in the interest of justice or upon the recommendation of the Secretary of Justice
(h) Any complaint by or against corporations, partnerships, or juridical entities. The reason is that only individuals shall be parties to barangay conciliation proceedings either as complainants or respondents
(i) Disputes where urgent legal action is necessary to prevent injustice from being committed or further continued, specifically:
    1. A criminal case where the accused is under police custody or detention
    2. A petition for habeas corpus by a person illegally detained or deprived of his liberty or one acting in his behalf
    3. Actions coupled with provisional remedies, such as preliminary injunction, attachment, replevin and support *pendente lite*
    4. Where the action may be barred by statute of limitations
(j) Labor disputes or controversies arising from employer-employee relationship
(k) Where the dispute arises from the CARL
(l) Actions to annul judgment upon a compromise which can be directly filed in court.

(2) **1999 Bar**: What is the difference, if any, between the conciliation proceeding under the Katarungang Pambarangay Law and the negotiations for an amicable settlement during the pre-trial conference under the Rules of Court? (2%)

Answer: The difference between the conciliation proceeding under the Katarungang Pambarangay Law and the negotiations for an amicable settlement during the pre-trial conference under the Rules of Court is that in the former, lawyers are prohibited from appearing for the parties. Parties must appear in person only except minors or incompetent persons who may be assisted by their next of kin who are not lawyers *(now Sec. 415, RA 7160)*. No such prohibition exists in the pre-trial negotiations under the Rules of Court.

(3) **1999 Bar**: What is the object of the Katarungang Pambarangay Law? (2%)

Answer: The object of the Katarungang Pambarangay Law is to effect an amicable settlement of disputes among family and barangay members at the barangay level without judicial recourse and consequently help relieve the court of docket congestion *(Preamble, PD 1508)*.

Totality Rule

(1) Where the claims in all the causes of action are principally for recovery of money, the aggregate amount claimed shall be the test of jurisdiction *(Sec. 5, Rule 2, Rules on Civil Procedure).*

(2) Where there are several claims or causes of actions between the same or different parties, embodied in the same complaint, the amount of the demand shall be the totality of the claims in all the claims of action, irrespective of whether the causes of action arose out of the same or different transactions *(Sec. 33[1], BP 129).*

(3) This applies only in cases involving sum of money. *(Relate with the provisions of RA 7691).*

(4) **2008 Bar**: Fe filed a suit for collection of P387,000 against Ramon in the RTC of Davao City. Aside from alleging payment as a defense, Ramon in his answer set up counterclaims for P100,000 as damages and P30,000 as attorney's fees as a result of the baseless filing of the complaint, as well as for P250,000 as the balance of the purchase price of the 30 units of air conditioners he sold to Fe.

Does the RTC have jurisdiction over Ramon's counterclaims, and if so, does he have to pay docket fees therefor? (3%)

Answer: Yes, applying the totality rule which sums up the total amount of claims of the parties, the RTC has jurisdiction over the counter-claims.

Unlike in the case of compulsory counterclaims, a defendant who raises a permissive counterclaim must first pay docket fees before the court can validly acquire jurisdiction. One compelling test of compulsoriness is the logical relation between the claim alleged in the complaint and that in the counterclaim. Ramon does not have to pay docket fees for his compulsory counterclaims. Ramon is liable for docket fees only on his permissive counterclaim for the balance of the purchase price of 30 units of air conditioners in the sum of P250,000, as neither arises out of nor is it connected with the transaction or occurrence constituting Fe's claim *(Sec. 19[8] and 33[1], BP 129; AO 04-94 implementing RA 7691, 03/25/1994; Alday vs. FGU Insurance Corp., GR No. 138822, 01/23/2001; Bayer Phil., Inc. vs. CA, GR No. 109269, 09/15/2000).*

(5) Lender extended to Borrower a P100,000.00 loan covered by a promissory note. Later, Borrower obtained another P100,000.00 loan again covered by a promissory note. Still later, Borrower obtained a P300,000.00 loan secured by a real estate mortgage on his land valued at P500,000.00. Borrower defaulted on his payments when the loans matured. Despite demand to pay the P500,000.00 loan, Borrower refused to pay. Lender, applying the totality rule, filed against Borrower with the Regional Trial Court (RTC) of Manila, a collection suit for P500,000.00.

(A) Did Lender correctly apply the totality rule and the rule on joinder of causes of action? (2%)

At the trial, Brrower's laywer, while cross-examining Lender, successfully elicited an admission from the latter that the two promissory notes have been paid. Thereafter, Borrower's lawyer filed a motion to dismiss the case on the ground that as proven only P300,000.00 was the amout due to Lender and which claim is within the exclusive original jurisdiction of the Metropolitan Trial Court. He further argued that lack of jurisdiction over the subject matter can be raised at any stage of the proceedings.

(B) Should the court dismiss the case? (3%)

Answer:

(A) Yes. Lender correctly applied the totality rule and the rule on joinder of causes of action because where the claims in all the causes of action are principally for recovery of money, the aggregate amount of the claim shall be the test of jurisdiction *(Section 5 [d], Rule 2).*

Here, the total amount of the claim is P500,000.00. Hence, the Regional Trial Court (RTC) of Manila has jurisdiction over the suit. At any rate, it is immaterial that one of the loans is secured by a real estate mortgage because the Lender opted to file a collection of sum of money instead of foreclosure of the said mortgage.

(B) No. The court should not dismiss the case. What determines the jurisdiction of the court is the nature of the action pleaded as appearing from the allegations in the complaint. The averments therein and the character of the relief sought are the ones to be consulted *(Navida vs. Judge Dizon, Jr., GR No. 125078, 03/30/2011)*.

Accordingly, even if the defendant is able to prove in the course of the trial that a lesser amount is due, the court does not lose jurisdiction and a dismissal of the case is not in order *(Paadlan vs. Dinglasan, GR No. 180321, 03/20/2013)*.

PART II

RULES OF CIVIL PROCEDURE

Rules 1 - 71

A. ACTIONS *(Rule 1)*

(1) Action (synonymous with "suit") is the legal and formal demand of one's right from another person made and insisted upon in a court of justice *(Bouvier's Law Dictionary)*.

(2) The kinds of actions are ordinary and special, civil and criminal, *ex contractu* and *ex delicto*, penal and remedial, real, personal, and mixed action, action *in personam*, *in rem*, and *quasi in rem*.

Ordinary Civil Actions, Special Civil Actions, Criminal Actions

(1) Ordinary civil action is one by which one party sues another, based on a cause of action, to enforce or protect a right, or to prevent or redress a wrong, whereby the defendant has performed an act or omitted to do an act in violation of the rights of the plaintiff *(Sec. 3 a)*. The purpose is primarily compensatory.

(2) Special civil action is also one by which one party sues another to enforce or protect a right, or to prevent or redress a wrong.

(3) A criminal action is one by which the State prosecutes a person for an act or omission punishable by law *(Sec. 3[b], Rule 1)*. The purpose is primarily punishment.

Civil Actions versus Special Proceedings

(1) The purpose of an action is either to protect a right or prevent or redress a wrong. The purpose of special proceeding is to establish a status, a right or a particular fact.

(2) **1998 Bar**: Distinguish civil actions from special proceedings. (3%)

A civil action is one by which a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong *(Sec. 3[a], Rule 1)*, while a special proceeding is a remedy by which a party seeks to establish a status, a right, or a particular fact *(Sec. 3[c], Rule 1)*.

Personal Actions and Real Actions

(1) An action is real when it affects title to or possession of real property, or an interest therein. All other actions are personal actions.

(2) An action is real when it is founded upon the privity of real estate, which means that the realty or an interest therein is the subject matter of the action. The issues involved in real actions are title to, ownership, possession, partition, foreclosure of mortgage or condemnation of real property.

(3) Not every action involving real property is a real action because the realty may only be incidental to the subject matter of the suit. Example is an action for damages to real property, while involving realty is a personal action because although it involves real property, it does not involve any of the issues mentioned.

(4) Real actions are based on the privity of real estates; while personal actions are based on privity of contracts or for the recovery of sums of money.

(5) The distinction between real action and personal action is important for the purpose of determining the venue of the action. A real action is "local", which means that its venue

depends upon the location of the property involved in the litigation. A personal action is "transitory", which means that its venue depends upon the residence of the plaintiff or the defendant at the option of the plaintiff.

(6) In 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, GR No. 154096, 08/22/2008)*.

(7) **2006 Bar**: What do you mean by a) real action; and b) personal action? (2%)

Answer: Real actions are actions affecting title to or possession of real property or an interest therein *(Fortune Motors, Inc. vs. CA, GR No. 76431, 10/16/1989; Rule 4, Sec. 1)*. All other actions are personal actions which include those arising from privity of contract.

Local and Transitory Actions

(1) A local action is one founded on privity of estates only and there is no privity of contracts. A real action is a local action; its venue depends upon the location of the property involved in litigation. "Actions affecting title to or possession of real property, or interest therein, shall be commenced and tried in the proper court which has jurisdiction over the area wherein the real property involved, or a portion thereof is situated" *(Sec. 1, Rule 4)*.

(2) Transitory action is one founded on privity of contracts between the parties. A personal action is transitory; its venue depends upon the residence of the plaintiff or the defendant at the option of the plaintiff. A personal action "may be commenced and tried where the plaintiff or any of the principal plaintiffs resides or where the defendant or any of the principal defendants resides, or in the case of non-resident defendant, where he may be found, at the election of the plaintiff" *(Sec. 2, Rule 4)*.

Actions *In Rem*, *In Personam* and *Quasi in Rem*

(1) An action *in rem* is one instituted and enforced against the whole world.

(2) An action *in personam* is one filed against a definite defendant. It is intended to subject the interest of defendant on a property to an obligation or lien. Jurisdiction over the person (defendant) is required. It is a proceeding to enforce personal rights and obligations brought against the person, and is based on the jurisdiction of the person, although it may involve his right to, or the exercise of ownership of, specific property, or seek to compel him to control or dispose of it in accordance with the mandate of the court. The purpose is to impose through the judgment of a court, some responsibility or liability directly upon the person of the defendant. No other than the defendant is liable, not the whole world, as in an action for a sum of money or an action for damages.

(3) An action *quasi in rem*, also brought against the whole world, is one brought against persons seeking to subject the property of such persons to the discharge of the claims assailed. An individual is named as defendant and the purpose of the proceeding is to subject his interests therein to the obligation or loan burdening the property. It deals with status, ownership or liability of a particular property but which are intended to operate on these questions only as between the particular parties to the proceedings and not to ascertain or cut off the rights or interests of all possible claimants. Examples of actions *quasi in rem* are action for partition, action for accounting, attachment, foreclosure of mortgage.

(4) An action *in personam* is not necessarily a personal action. Nor is a real action necessarily an action *in rem*. An *in personam* or an *in rem* action is a classification of actions

according to foundation. For instance, an action to recover title to or possession of real property is a real action, but it is an action *in personam*, not brought against the whole world but against the person upon whom the claim is made.

(5) The distinction is important to determine whether or not jurisdiction over the person of the defendant is required and consequently to determine the type of summons to be employed. Jurisdiction over the person of the defendant is necessary for the court to validly try and decide a case against said defendant where the action is one *in personam* but not where the action is *in rem* or *quasi in rem*.

(6) The Supreme Court sums up the basic rules in *Biaco vs. Philippine Countryside Rural Bank, GR 161417, 02/08/2007*:

The question of whether the trial court has jurisdiction depends on the nature of the action – whether the action is *in personam*, *in rem*, or *quasi in rem*. The rules on service of summons under Rule 14 likewise apply according to the nature of the action.

An action *in personam* is an action against a person on the basis of his personal liability. An action *in rem* is an action against the thing itself instead of against the person. An action *quasi in rem* is one wherein an individual is named as defendant and the purpose of the proceeding is to subject his interest therein to the obligation or lien burdening the property.

In an action *in personam*, jurisdiction over the person of the defendant is necessary for the court to validly try and decide the case, as well as to determine what summons to serve. In a proceeding *in rem* or *quasi in rem*, jurisdiction over the person of the defendant is not a prerequisite to confer jurisdiction over the *res*. Jurisdiction over the *res* is acquired either (1) by the seizure of the property under legal process, whereby it is brought into actual custody of the law; or (2) as a result of the institution of legal proceedings, in which the power of the court is recognized and made effective.

Nonetheless, summons must be served upon the defendant not for the purpose of vesting the court with jurisdiction but merely for satisfying the due process requirements.

(7) 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, GR No. 190710, 06/06/2011)*.

(8) An action for injunction is *in personam* since it can be enforced only against the defendant therein *(Dial Corp. vs. Soriano, GR No. 82330, 05/31/1988)*.

(9) An action for the declaration of nullity of title and recovery of ownership of real property, or reconveyance, is a real action but it is an action *in personam*, for it binds a particular individual only although it concerns the right to a tangible thing. Any judgment therein is binding only upon the parties properly impleaded *(Heirs of Eugenio Lopez, Sr. vs. Enriquez* cited in *Muñoz vs. Atty. Yabut, GR No. 142676, 06/06/2011)*.

B. CAUSE OF ACTIONS *(Rule 2)*

Meaning of Cause of Action

(1) A cause of action is the act or omission by which a party (defendant) violates the rights of another (plaintiff). It is the delict or wrongful act or omission committed by the defendant in violation of the primary rights of the plaintiff *(Chua vs. Metrobank, GR No. 182311, 08/19/2009)*.

(2) It is the delict or wrong by which the defendant violates the right or rights of the plaintiff *(Ma-ao Sugar Central v. Barrios, 76 Phil. 666)*.

(3) The elements are:

(a) A right in favor of the plaintiff by whatever means and under whatever law it arises or is created;

(b) An obligation on the part of the named defendant to respect or not to violate such right; and

(c) Act or omission on the part of such defendant in violation of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages or other appropriate relief.

(4) The determination of the nature of an action or proceeding is controlled by the averments and character of the relief sought in the complaint or petition *(Vda. De Manalo vs. CA, 402 Phil. 152, 161 [2001])*. The designation given by the parties to their own pleadings does not necessarily bind the courts to treat it according to the said designation. Rather than rely on a "*falsa descripto*" or defective caption, courts are guided by the substantive averments of the pleadings *(Montañer vs. Shari'a District Court, GR No. 174975, 01/20/2009)*.

(5) There is no cause of action in special proceedings. Every civil action if based on a cause of action.

Right of Action versus Cause of Action

(1) A cause of action refers to the delict or wrong committed by the defendants, whereas right of action refers to the right of the plaintiff to institute the action;

(2) A cause of action is determined by the pleadings; whereas a right of action is determined by the substantive law;

(3) A right of action may be taken away by the running of the statute of limitations, by estoppels or other circumstances which do not at all affect the cause of action *(Marquez vs. Varela, 92 Phil. 373)*.

(4) **1999 Bar**: Distinguish action from cause of action. (2%)

An action is one by which a party sues another for the enforcement of protection of a right, or the prevention or redress of a wrong *(Sec. 3[a], Rule 1)*. A cause of action is the act or omission by which a party violates a right of another *(Sec. 2, Rule 2)*. An action must be based on a cause of action *(Sec. 1, Rule 2)*.

Failure to State Cause of Action

(1) The mere existence of a cause of action is not sufficient for a complaint to prosper. Even if in reality the plaintiff has a cause of action against the defendant, the complaint may be dismissed if the complaint or the pleading asserting the claim "states no cause of action".

This means that the cause of action must unmistakably be stated or alleged in the complaint or that all the elements of the cause of action required by substantive law must clearly appear from the mere reading of the complaint. To avoid an early dismissal of the complaint, the simple dictum to be followed is: "If you have a cause of action, then by all means, state it." Where there is a defect or an insufficiency in the statement of the cause of action, a complaint may be dismissed not because of an absence or a lack of cause of action but because the complaint states no cause of action. The dismissal will therefore, be anchored on a "failure to state a cause of action".

(2) It doesn't mean that the plaintiff has no cause of action. It only means that the plaintiff's allegations are insufficient for the court to know that the rights of the plaintiff were violated by the defendant. Thus, even if indeed the plaintiff suffered injury, if the same is not set forth in the complaint, the pleading will state no cause of action even if in reality the plaintiff has a cause of action against the defendant.

(3) The elementary test for failure to state a cause of action is whether the complaint alleges facts which if true would justify the relief demanded. Stated otherwise, may the court render a valid judgment upon the facts alleged therein? The inquiry is into the sufficiency, not the veracity of the material allegations. If the allegations in the complaint furnish sufficient basis on which it can be maintained, it should not be dismissed regardless of the defense that may be presented by the defendants *(Hongkong Shanghai Banking Corporation Limited vs. Catalan, GR Nos. 159590-91, 10/18/2004).*

(4) In a Motion to Dismiss a complaint based on lack of cause of action (failure to state cause of action), the question submitted to the court for determination is the sufficiency of the allegations made in the complaint to constitute a cause of action and not whether those allegations of fact are true, for said motion must hypothetically admit the truth of the facts alleged in the complaint. The inquiry is confirmed to the four corners of the complaint, and not other. The test of the sufficiency of the facts alleged in the complaint is whether or not, admitting the facts alleged, the court could render a valid judgment upon the same in accordance with the prayer of the complaint *(Lucas vs. Lucas, GR No. 190710, 06/06/2011).*

(5) Failure to state a cause of action refers to the insufficiency of the pleading. A complaint states a cause of action if it avers the existence of the three essential elements: (a) a legal right of the plaintiff; (b) a correlative obligation of the defendant; and (c) an act or omission of the defendant in violation of said right.

The infirmity in this case is not a failure to state a cause of action but a non-joinder of an indispensable party. The non-joinder of indispensable parties is not a ground for the dismissal of an action. At any stage of a judicial proceeding and/or at such times as are just, parties may be added on the motion of a party or on the initiative of the tribunal concerned. If the plaintiff refuses to implead an indispensable party despite the order of the court, that court may dismiss the complaint for the plaintiff's failure to comply with the order. Respondent's remedy is to implead the non-party claimed to be indispensable and not a motion to dismiss. Therefore, the non-joinder of indispensable parties is not failure to state a cause of action and the complaint should not have been dismissed by the trial court upon such ground *(Heirs of Mesina v. Heirs of Fian, GR No. 201816, 04/08/2013).*

(6) Failure to state a cause of action and lack of cause of action are really different from each other. On the one hand, 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 [of] action refers to a situation where the evidence does not prove the cause of action alleged in the pleading *(Lourdes Suites [Crown Hotel Management Corporation] vs. Binaro, GR No. 204729, 08/06/2014).*

(7) There is a difference between failure to state a cause of action, and lack of cause of action. These legal concepts are distinct and separate from each other.

Section 2, Rule 2 of the Revised Rules of Civil Procedure defines a cause of action as the act or omission by which a party violates a right of another. Its elements are as follows:

1) A right in favor of the plaintiff by whatever means and under whatever law it arises or is created;
2) An obligation on the part of the named defendant to respect or not to violate such right; and
3) Act or omission on the part of such defendant in violation of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages or other appropriate relief.

Lack of cause of action refers to the insufficiency of the factual basis for the action. Dismissal due to lack of cause of action may be raised any time after the questions of fact have been resolved on the basis of stipulations, admissions or evidence presented by the plaintiff. It is a proper ground for a demurrer to evidence under Rule 33 of the Revised Rules of Civil Procedure, xxx

In this case, the RTC could not have dismissed the Complaint due to lack of cause of action for as stated above, such ground may only be raised after the plaintiff has completed the presentation of his evidence.

If the allegations of the complaint do not state the concurrence of the above elements, the complaint becomes vulnerable to a motion to dismiss on the ground of failure to state a cause of action which is the proper remedy under Section 1 (g) of Rule 16 xxx *(Philippine National Bank vs. Sps. Rivera, GR No. 189577, 04/20/2016)*.

Test of the Sufficiency of a Cause of Action

(1) The test is whether or not admitting the facts alleged, the court could render a valid verdict in accordance with the prayer of the complaint *(Misamis Occidental II Cooperative, Inc. vs. David, 468 SCRA 63; Santos vs. de Leon, 470 SCRA 455)*.

(2) To be taken into account are only the material allegations in the complaint; extraneous facts and circumstances or other matters *aliunde* are not considered but the court may consider in addition to the complaint the appended annexes or documents, other pleadings of the plaintiff, or admissions in the records *(Zepeda vs. China Banking Corp., GR 172175, 10/09/2006)*.

(3) In determining whether or not a cause of action is sufficiently stated in the complaint, the statements in the complaint may be properly considered. It is error for the court to take cognizance of external facts or to hold preliminary hearings to determine its existence *(Diaz vs. Diaz, 331 SCRA 302)*. The sufficiency of the statement of the cause of action must appear on the face of the complaint and its existence may be determined only by the allegations of the complaint, consideration of other facts being proscribed and any attempt to prove extraneous circumstances not being allowed *(Viewmaster Construction Corp. vs. Roxas, 335 SCRA 540)*.

(4) The test of sufficiency of a complaint is whether or not, assuming the truth of the facts that plaintiff alleges in it, the court can render judgment granting him the judicial assistance he seeks. Judgment would be right only if the facts he alleges constitute a cause of action that consists of three elements:

(a) The plaintiff's legal right in the matter;
(b) The defendant's corresponding obligation to honor or respect such right; and
(c) The defendant's subsequent violation of the right.

Statements of mere conclusions of law expose the complaint to a motion to dismiss on the ground of failure to state a cause of action *(Del Rosario vs. Donato, GR No. 180595, 03/05/2010)*.

(5) A complaint states a cause of action if it sufficiently avers the existence of the three (3) essential elements of a cause of action, namely: (a) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (b) an obligation on the

part of the named defendant to respect or not to violate such right; and (c) an act or omission on the part of the named defendant violative of the right of the plaintiff or constituting a breach of the obligation of defendant to the plaintiff for which the latter may maintain an action for recovery of damages. If the allegations of the complaint do not state 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. It is well to point out that the plaintiff's cause of action should not merely be "stated" but, importantly, the statement thereof should be "sufficient." This is why the elementary test in a motion to dismiss on such ground is whether or not the complaint alleges facts which if true would justify the relief demanded. As a corollary, it has been held that only ultimate facts and not legal conclusions or evidentiary facts are considered for purposes of applying the test. This is consistent with Section 1, Rule 8 of the Rules of Court which states that the complaint need only allege the ultimate facts or the essential facts constituting the plaintiff's cause of action. A fact is essential if they cannot be stricken out without leaving the statement of the cause of action inadequate. Since the inquiry is into the sufficiency, not the veracity, of the material allegations, it follows that the analysis should be confined to the four corners of the complaint, and no other *(Zuñiga-Santos v. Santos-Gran and Register of Deeds of Marikina, GR No. 197380, 10/08/2014).*

(6) 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. Petitioners are pushing the case too far ahead of its limits. They are themselves determining what the issue is whether the properties of the corporation can be included in the inventory of the estate of the decedent when the only question to be resolved in a demurrer to evidence is whether based on the evidence, respondents, as already well put in the prior Chua Suy Phen case, have a right to share in the ownership of the corporation *(Capitol Sawmill Corporation v. Chua Gaw, GR No. 187843, 06/09/2014).*

Doctrine of Anticipatory Breach

(1) The doctrine of anticipatory breach refers to an unqualified and positive refusal to perform a contract, though the performance thereof is not yet due, may, if the renunciation goes into the whole contract, be treated as a complete breach which will entitle the injured party to bring his action at once *(Blossom Co. vs. Manila Gas Corp., GR No. 32958, 11/08/1930).*

Splitting a Single Cause of Action and Its Effects

(1) It is the act of instituting two or more suits for the same cause of action *(Sec. 4, Rule 2).* It is the practice of dividing one cause of action into different parts and making each part the subject of a separate complaint *(Bachrach vs. Icaringal, 68 SCRA 287).* In splitting a cause of action, the pleader divides a single cause of action, claim or demand into two or more parts, brings a suit for one of such parts with the intent to reserve the rest for another separate action *(Quadra vs. CA, GR 147593, 07/31/2006).* This practice is not allowed by the Rules because it breeds multiplicity of suits, clogs the court dockets, leads to vexatious litigation, operates as an instrument of harassment, and generates unnecessary expenses to the parties.

(2) The filing of the first may be pleaded in abatement of the other or others and a judgment upon the merits in any one is available as a bar to, or a ground for dismissal of, the others *(Sec. 4, Rule 2; Bacolod City vs. San Miguel, Inc., L-2513, 10/30/1969).* The remedy of the defendant

is to file a motion to dismiss on the ground of *litis pendencia*, *res judicata*, or forum shopping. Hence, if the first action is pending when the second action is filed, the latter may be dismissed based on *litis pendencia*, that there is another action pending between the same parties for the same cause. If a final judgment had been rendered in the first action when the second action is filed, the latter may be dismissed based on *res judicata*, that the cause of action is barred by prior judgment. As to which action should be dismissed would depend upon judicial discretion and the prevailing circumstances of the case.

(3) **1999 Bar**: What is the rule against splitting a cause of action and its effect on the respective rights of the parties for failure to comply with the same? (2%)

The rule against splitting a cause of action and its effect is that if two or more suits are instituted on the basis of the same cause of action, the filing of one or a judgment on the merits in any one is available as a ground for the dismissal of the others *(Sec. 4, Rule 2)*.

(4) **2005 Bar**: Raphael, a warehouseman, filed a complaint against Y Corporation, X Corporation and Y Corporation to compel them to interplead. He alleged therein that the three corporations claimed title and right of possession over the goods deposited in his warehouse and that he was uncertain which of them was entitled to the goods. After due proceedings, judgment was rendered by the court declaring that X Corporation was entitled to the goods. The decision became final and executory.

Raphael filed a complaint against X Corporation for the payment of P100,000.00 for storage charges and other advances for the goods. X Corporation filed a motion to dismiss the complaint on the ground of *res judicata*. X Corporation alleged that Raphael should have incorporated in his complaint for interpleader his claim for storage fees and advances and that for his failure he was barred from interposing his claim. Raphael replied that he could not have claimed storage fees and other advances in his complaint for interpleader because he was not yet certain as to who was liable therefor.

Resolve the motion with reasons. (4%)

Answer: The motion to dismiss should be granted. Raphael should have incorporated in his complaint for interpleader his claim for storage fees and advances. They are part of Raphael's cause of action which he may not split. The filing of the interpleader is available as a ground for the dismissal of the second case *(Sec. 4, Rule 2)*. It is akin to a compulsory counterclaim which, if not set up, is barred *(Sec. 2, Rule 9)*. The law also abhors the multiplicity of suits, hence, the claim for storage fees should have been made part of his cause of action in the interest of complete adjudication of the controversy and its incidents *(Arreza vs. Diaz, 364 SCRA 88 [2001])*.

Joinder and Misjoinder of Causes of Actions *(Secs. 5 and 6, Rule 2)*

(1) Joinder of causes of action is the assertion of as many causes of action as a party may have against another in one pleading alone *(Sec. 5, Rule 2)*. It is the process of uniting two or more demands or rights of action in one action, subject to the following conditions:
   (a) The party joining the causes of action shall comply with the rules on joinder of parties;
   (b) The joinder shall not include special civil actions governed by special rules;
   (c) Where the cause of action are between the same parties but pertain to different venues or jurisdictions, the joinder may be allowed in the RTC provided one of the causes of action falls within the jurisdiction of said court and the venue lies therein; and
   (d) Where the claims in all the causes of action are principally for recovery of money, the aggregate amount claimed shall be the test of jurisdiction ***(totality rule).***

(2) Restrictions on joinder of causes of action are: jurisdiction, venue, and joinder of parties. The joinder shall not include special civil actions or actions governed by special rules.

(3) When there is a misjoinder of causes of action, the erroneously joined cause of action can be severed or separated from the other cause of action upon motion by a party or upon the court's own initiative. Misjoinder of causes of action is not a ground for the dismissal of the case.

(4) Another noticeable area of stumble for the petitioners related to their having joined two causes of action, i.e., injunction and quieting of title, despite the first being an ordinary suit and the latter a special civil action under Rule 63, Section 5. Rule 2 of the Rules of Court disallowed the joinder, viz: xxx

(b) The joinder shall not include special civil actions or actions governed by special rules.

Consequently, the RTC should have severed the causes of action, either upon motion or *motu proprio*, and tried them separately, assuming it had jurisdiction over both. Such severance was pursuant to Section 6, Rule 2 of the Rules of Court, which expressly provides [that misjoinder of causes of action is not a ground for dismissal of an action. A misjoined cause of action may, on motion of a party or on the initiative of the court, be severed and proceeded with separately.]

The refusal of the petitioners to accept the severance would have led to the dismissal of the case conformably with the mandate of Section 3, Rule 17 *(Salvador vs. Patricia, Inc., GR No. 195834, 11/09/2016).*

(5) **1999 Bar**: What is the rule on the joinder of causes of action? (2%)

Answer: The rule on joinder of causes of action is that a party may in one pleading assert, in the alternative or otherwise, as many causes of action as he may have against an opposing party, provided that the rule on joinder of parties is complied with; the joinder shall not include special civil actions or actions governed by special rules, but may include causes of action pertaining to different venues or jurisdictions, provided, one cause of action falls within the jurisdiction of the Regional Trial Court and venue lies therein; and the aggregate amount claimed shall be the test of jurisdiction where the claims in all the causes of action are principally for the recovery of money. *(Sec. 5, Rule 2)*.

(6) **1999 Bar**: A secured two loans from B, one for P500,000.00 and the other for P1,000,000.00, payable on different dates. Both have fallen due. Is B obliged to file only one complaint against A for the recovery of both loans? Explain. (2%)

Answer: No. Joinder is only permissive since the loans are separate loans which may be governed by the different terms and conditions. The two loans give rise to two separate causes of action and may be the basis of two separate complaints.

(7) **2005 Bar**: Perry is a resident of Manila, while Ricky and Marvin are residents of Batangas City. They are the co-owners of a parcel of residential land located in Pasay City with an assessed value of P100,000.00. Perry borrowed P100,000.00 from Ricky which he promised to pay on or before December 1, 2004. However, Perry failed to pay his loan. Perry also rejected Ricky and Marvin's proposal to partition the property.

Ricky filed a complaint against Perry and Marvin in the Regional Trial Court of Pasay City for the partition of the property. He also incorporated in his complaint his action against Perry for the collection of the latter's P100,000.00 loan, plus interests and attorney's fees.

State with reasons whether it was proper for Ricky to join his causes of action in his complaint for partition against Perry and Marvin in the Regional Trial Court of Pasay City. (5%)

Answer: It was not proper for Ricky to join his causes of action against Perry in his complaint for partition against Perry and Marvin. The causes of action may be between the same parties, Ricky and Perry, with respect to the loan but not with respect to the

partition which includes Marvin. The joinder is between a partition and a sum of money, but the partition is a special civil action under Rule 69, which cannot be joined. Also, the causes of action pertains to different venues and jurisdictions. The case for a sum of money pertains to the municipal court and cannot be filed in Pasay City because the plaintiff is from Manila while Ricky and Marvin are from Batangas City *(Sec.5, Rule 2).*

C. PARTIES TO CIVIL ACTIONS *(Rule 3)*

Real parties in interest; indispensable parties; representatives as parties; necessary parties; indigent parties; alternative defendants

(1) **Real Party-in-Interest** is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit *(Sec. 2, Rule 3).* The interest must be real, which is a present substantial interest as distinguished from a mere expectancy or a future, contingent subordinate or consequential interest *(Fortich vs. Corona, 289 SCRA 624).* It is an interest that is material and direct, as distinguished from a mere incidental interest in question *(Samaniego vs. Aguila, 334 SCRA 438).* While ordinarily one who is not a privy to a contract may not bring an action to enforce it, there are recognized exceptions to this rule:

(a) Contracts containing stipulations *pour atrui* or stipulations expressly conferring benefits to a non-party may sue under the contract provided such benefits have been accepted by the beneficiary prior to its revocation by the contracting parties *(Art. 1311, Civil Code).*

(b) Those who are not principally or subsidiarily obligated in the contract, in which they had no intervention, may show their detriment that could result from it. For instance, Art. 1313, NCC, provides that "creditors are protected in cases of contracts intended to defraud them." Further, Art. 1318, NCC, provides that contracts entered into in fraud of creditors may be rescinded when the creditors cannot in any manner collect the claims due them. Thus, a creditor who is not a party to a contract can sue to rescind the contract to redress the fraud committed upon him.

(2) **Indispensable Party** is a real party-in-interest without whom no final determination can be had of an action *(Sec. 7, Rule 3).* Without the presence of his party the judgment of a court cannot attain real finality *(De Castro vs. CA, 384 SCRA 607).* The presence of indispensable parties is a condition for the exercise of juridical power and when an indispensable party is not before the court, the action should be dismissed. The absence of indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only to the absent parties but even as to those present.

Two essential tests of an indispensable party (IP): (a) Can a relief be afforded to the plaintiff without the presence of the other party; and (b) Can the case be decided on its merits without prejudicing the rights of the other party?

(a) A person is not an indispensable party (IP) if his interest in the controversy or subject matter is separable from the interest of the other parties, so that it will not necessarily be directly or injuriously affected by a decree which does complete justice between them. Also, a person is not an IP if his presence would merely permit complete relief between him and those already parties to the action, or if he has no interest in the subject matter of the action.

(b) Although normally a joinder of action is permissive *(Sec. 6, Rule 3)*, the joinder of a party becomes compulsory when the one involved is an indispensable party. Clearly, the rule directs a compulsory joinder of indispensable party *(Sec. 7, Rule 3)*.

(3) **Necessary Party** is one who is not indispensable but ought to be joined as a party if complete relief is to be accorded as to those already parties, or for a complete determination or settlement of the claim subject of the action. But a necessary party ought to be joined as a party if complete relief is to be accorded as to those already parties *(Sec. 8, Rule 3)*. The non-inclusion of a necessary party does not prevent the court from proceeding in the action, and the judgment rendered therein shall be without prejudice to the rights of such necessary party *(Sec. 9, Rule 3)*.

(4) **Indigent party** is one who is allowed by the court to litigate his claim, action or defense upon *ex parte* application and hearing, when the court is satisfied that such party has no money or property sufficient and available for food, shelter, basic necessities for himself and his family *(Sec. 21, Rule 3)*. If one is authorized to litigate as an indigent, such authority shall include an exemption from the payment of docket fee, and of transcripts of stenographic notes, which the court may order to be furnished by him. However, the amount of the docket and other fees, which the indigent was exempt from paying, shall be lien on the judgment rendered in the case favorable to the indigent. A lien on the judgment shall arise if the court provides otherwise *(Sec. 21, Rule 3)*.

(5) **Representatives as parties** pertain to the parties allowed by the court as substitute parties to an action whereby the original parties become incapacitated or incompetent *(Sec. 16, Rule 3)*. The substitution of a party depends on the nature of the action. If the action is personal, and a party dies *pendente lite*, such action does not survive, and such party cannot be substituted. If the action is real, death of the defendant survives the action, and the heirs will substitute the dead. A favorable judgment obtained by the plaintiff therein may be enforced against the estate of the deceased defendant *(Sec. 1, Rule 87)*. The original party must be included in the pleading.

(a) In case a party becomes incapacitated or incompetent during the pendency of the action, the court, upon motion, may allow the action to be continued by or against the incapacitated or incompetent party with the assistance of his legal guardian or guardian *ad litem* *(Sec. 18, Rule 20)*.

(b) In case of transfer, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party *(Sec. 19, Rule 3)*.

(6) **Alternative defendants** are those who may be joined as such in the alternative by the plaintiff who is uncertain from whom among them he is entitled to a relief, regardless of whether or not a right to a relief against one is inconsistent with that against the other. Where the plaintiff cannot definitely identify who among two or more persons should be impleaded as a defendant, he may join all of them as defendants in the alternative. Under Sec. 13, Rule 3, "where the plaintiff is uncertain against who of several persons he is entitled to relief, he may join any or all of them as defendants in the alternative, although a right to relief against one may be inconsistent with a right of relief against the other." Just as the rule allows a suit against defendants in the alternative, the rule also allows alternative causes of action *(Sec. 2, Rule 8)* and alternative defenses *(Sec. 5[b], Rule 6)*.

(7) The RTC issued an order denying the petitioners' motion for leave to litigate as indigents. Petitioners argue that respondent judge did not conduct the proper hearing as prescribed under Section 21, Rule 3 of the Rules of Court. They claimed that private respondents neither submitted evidence nor were they required by respondent judge to submit evidence in support of their motions on the issue of indigency of petitioners. The Supreme Court ruled that the hearing requirement, contrary to petitioners' claim, was complied with during the hearings on the motions to dismiss filed by respondents. In said hearings, petitioners' counsel was present and they were given the opportunity to prove their

indigency. Clearly, their non-payment of docket fees is one of the grounds raised by respondents in their motions to dismiss and the hearings on the motions were indeed the perfect opportunity for petitioners to prove that they are entitled to be treated as indigent litigants and thus exempted from the payment of docket fees as initially found by the Executive Judge *(Frias vs. Judge Sorongon and First Asia Realty Development Corp., GR No. 184827, 02/11/2015).*

(8) An indispensable party is one who has an interest in the controversy or subject matter and in whose absence there cannot be a determination between the parties already before the court which is effective, complete or equitable. Such that, when the facilities of a corporation, including its nationwide franchise, had been transferred to another corporation by operation of law during the time of the alleged delinquency, the former cannot be ordered to pay as it is not the proper party to the case. In this case, the transferees are certainly the indispensable parties to the case that must be necessarily included before it may properly go forward *(National Power Corporation vs. Provincial Government of Bataan, GR No. 180654, 04/212014).*

(9) It should be borne in mind that the action for revival of judgment is a totally separate and distinct case from the original civil case for partition. As explained in *Saligumba v. Palanog*, "An action for revival of judgment is no more than a procedural means of securing the execution of a previous judgment which has become dormant after the passage of five years without it being executed upon motion of the prevailing party. It is not intended to re-open any issue affecting the merits of the judgment debtor's case nor the propriety or correctness of the first judgment. An action for revival of judgment is a new and independent action, different and distinct from either the recovery of property case or the reconstitution case [in this case, the original action for partition], wherein the cause of action is the decision itself and not the merits of the action upon which the judgment sought to be enforced is rendered." With the foregoing in mind, it is understandable that there would be instances where the parties in the original case and in the subsequent action for revival of judgment would not be exactly the same. The mere fact that the names appearing as parties in the complaint for revival of judgment are different from the names of the parties in the original case would not necessarily mean that they are not the real parties-in-interest. What is important is that, as provided in Section 1, Rule 3 of the Rules of Court, they are "the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit." Definitely, as the prevailing parties in the previous case for partition, the plaintiffs in the case for revival of judgment would be benefited by the enforcement of the decision in the partition case *(Clidorio vs. Almanzar, GR No. 176598, 07/09/2014).*

(10) Under Section 1, Rule 45 of the Rules of Court, only real parties-in-interest who participated in the litigation of the case before the CA can avail of an appeal by certiorari. The Secretary of Labor is not the real party-in-interest vested with personality to file the present petitions. A real party-in-interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. As thus defined, the real parties-in-interest in these cases would have been PALCEA-SUPER and PJWU-SUPER. It would have been their duty to appear and defend the ruling of the Secretary of Labor for they are the ones who were interested that the same be sustained. As to the Secretary of Labor, she was impleaded in the Petitions for Certiorari filed before the CA as a nominal party because one of the issues involved therein was whether she committed an error of jurisdiction. But that does not make her a real party-in-interest or vests her with authority to appeal the Decisions of the CA in case it reverses her ruling *(Republic vs. Namboku Peak, GR No. 169745, 07/18/2014).*

(11) Under Sections 1 and 2 of Rule 3 of the Rules of Court, only natural and juridical persons or entities authorized by law may be parties to a civil action, which must be prosecuted and defended by a real party-in-interest. A real party-in-interest is the person who stands benefitted or injured to the outcome of the case or is entitled to the avails of the suit.

Moreover, under Section 4, Rule 8 of the Rules of Court the facts showing the capacity of a party to sue or be sued or the authority of the party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, must be averred *(Association of Flood Victims vs. COMELEC, et al., GR No. 203775, 08/05/2014).*

(12) The admission of a third-party complaint lies within the sound discretion of the trial court. If leave to file a third-party complaint is denied, then the proper remedy is to file a separate case, not to insist on the admission of the third-party complaint all the way up to this Court *(Development Bank of the Philippines vs. Clarges Realty Corporation, GR No. 170060, 08/17/2016).*

(13) Section 2, Rule 3 of the Revised Rules of Court provides:

> Sec. 2. *Parties in interest.* - A real party in interest is the party who stands to be benefited or irtjured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

"Interest," within the meaning of the rule, means material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest *(Spouses Ibañez vs. Harper, GR No. 194272, 02/15/2017).*

Compulsory and permissive joinder of parties

(1) Joinder of parties is compulsory if there are parties without whom no final determination can be had of an action *(Sec. 7, Rule 3).*

(2) Joinder of parties is permissive when there is a right of relief in favor of or against the parties joined in respect to or arising out of the same transaction or series of transactions, and there is a question of law or fact common to the parties joined in the action *(Sec. 6, Rule 3).*

(3) **1998 Bar**: Give the effects of the following: Non-joinder of a necessary party. (2%)

Answer: The effect of the non-joinder of a necessary party may be stated as follows:

The court may order the inclusion of an omitted necessary party if jurisdiction over his person may be obtained. The failure to comply with the order for his inclusion without justifiable cause is a waiver of the claim against such party. The court may proceed with the action but the judgment rendered shall be without prejudice to the rights of such necessary party *(Sec. 9, Rule 3).*

(4) **2002 Bar**: P sued A and B in one complaint in the RTC-Manila, the cause of action against A being on an overdue promissory note for P300,000.00 and that against B on an alleged balance of P300,000.00 on the purchase price of goods sold on credit. Does the RTC-Manila have jurisdiction over the case? Explain. (3%)

Answer: No, the RTC-Manila has no jurisdiction over the case. A and B could not be joined as defendants in one complaint because the right to relief against both defendants do not arise out of the same transaction or series of transactions and there is no common question of law or fact common to both *(Sec. 6, Rule 3).* Hence, separate complaints will have to be filed and they would fall under the jurisdiction of the Metropolitan Trial Courts *(Flores vs. Mallare-Phillips, 144 SCRA 377 [1988]).*

Misjoinder and non-joinder of parties

(1) A party is misjoined when he is made a party to the action although he should not be impleaded. A party is not joined when he is supposed to be joined but is not impleaded in the action.

(2) Under the rules, neither misjoinder nor non-joinder of parties is a ground for the dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or on its own initiative at any stage of the action and on such terms as are just *(Sec. 11, Rule 3).* Misjoinder of parties does not involve questions of jurisdiction and not a ground for dismissal *(Republic vs. Herbieto, 459 SCRA 183).*

(3) Even if neither misjoinder nor non-joinder of parties is a ground for dismissal of the action, the failure to obey the order of the court to drop or add a party is a ground for the dismissal of the complaint under Sec. 3, Rule 17.

(4) The rule does not comprehend whimsical and irrational dropping or adding of parties in a complaint. What it really contemplates is erroneous or mistaken non-joinder and misjoinder of parties. No one is free to join anybody in a complaint in court only to drop him unceremoniously later at the option of the plaintiff. The rule presupposes that the original inclusion had been made in the honest conviction that it was proper and the subsequent dropping is requested because it has turned out that such inclusion was a mistake. And this is the reason why the rule ordains that the dropping is "on such terms as are just" *(Lim Tan Hu vs. Ramolete, 66 SCRA 425).*

(5) In instances of non-joinder of indispensable parties, the proper remedy is to implead them and not to dismiss the case. The non-joinder of indispensable parties is not a ground for the dismissal of an action *(Divinagracia v. Parilla, et al, GR No. 196750, 03/11/2015).*

(6) Here, as correctly held by the MCTC and the RTC, it is indisputable that BIRI is an indispensable party, being the registered owner of the property and at whose behest the petitioner-employees acted. Thus, without the participation of BIRI, there could be no full determination of the issues in this case considering that it was sufficiently established that petitioners did not take possession of the property for their own use but for that of BIRI's. Contrary to the CA's opinion, the joinder of indispensable parties is not a mere technicality.

We have ruled that the joinder of indispensable parties is mandatory and the responsibility of impleading all the indispensable parties rests on the plaintiff. In *Domingo v. Scheer,* we ruled that without the presence of indispensable parties to the suit, the judgment of the court cannot attain real finality. Otherwise stated, the absence of an indispensable party renders all subsequent actions of the court **null** and void for want of authority to act not only as to the absent party but even as to those present.

In this case, while the CA correctly pointed out that under Rule 3, Section 11 of the Rules of Court, failure to implead an indispensable party is not a ground for the dismissal of an action, it failed to take into account that it remains essential that any indispensable party be impleaded in the proceedings *before the court renders judgment.*

Here, the CA simply proceeded to discuss the merits of the case and rule in Mariam's favor, recognizing her prior physical possession of the subject property. This is not correct. The Decision and Resolution of the CA in this case is, therefore, null and void for want of jurisdiction, having been rendered in the absence of an indispensable party, BIRI.

Nonetheless, while a remand of the case to the MCTC for the inclusion of BIRI, the non-party claimed to be indispensable, seems to be a possible solution, a review of the records reveals that the remand to the MCTC is not warranted considering that the MCTC itself did not acquire jurisdiction over Mariam's complaint for forcible entry *(Tumagan vs. Kairuz, GR No. 198124, 09/12/2018).*

(1) **2008 Bar**: Half-brothers Roscoe and Salvio inherited from their father a vast tract of unregistered land. Roscoe succeeded in gaining possession of the parcel of land in its entirety and transferring the tax declaration thereon in his name. Roscoe sold the northern half to Bono, Salvio's cousin. Upon learning of the sale, Salvio asked Roscoe to convey the southern half to him. Roscoe refused as he even sold one-third of the southern half along the West to Carlo. Thereupon, Salvio filed an action for the

reconveyance of the southern half against Roscoe only. Carlo was not impleaded. After filing his answer, Roscoe sold the middle third of the southern half to Nina. Salvio did not amend the complaint to implead Nina.

After trial, the court rendered judgment ordering Roscoe to reconvey the entire southern half to Salvio. The judgment became final and executory. A writ of execution having been issued, the Sheriff required Roscoe, Carlo and Nina to vacate the southern half and yield possession thereof to Salvio as the prevailing party. Carlo and Nina refused, contending that they are not bound by the judgment as they are not parties to the case. Is the contention tenable? Explain fully. (4%)

Answer: As a general rule, no stranger should be bound to a judgment where he is not included as a party. The rule on transfer of interest pending litigation is found in Sec. 19, Rule 3. The action may continue unless the court, upon motion, directs a person to be substituted in the action or joined with the original party. Carlo is not bound by the judgment. He became a co-owner before the case was filed *(Asset Privatization Trust vs. CA, GR No. 121171, 12/29/1998)*.

However, Nina is a privy or a successor in interest and is bound by the judgment even if she is not a party to the case *(Sec. 19, Rule 3)*. A judgment is conclusive between the parties and their successors-in-interest by title subsequent to the case *(Sec. 47, Rule 39; Cabresos v. Tiro, 166 SCRA 400 [1988])*.

(2) **Bar**: Strauss filed a complaint against Wagner for cancellation of title. Wagner moved to dismiss the complaint because Grieg, to whom he mortgaged the property as duly annonated in the TCT, was not impleaded as defendant.

(A) Should the complaint be dismissed? (3%)

(B) If the case should proceed to trial without Grieg being impleaded as a party to the case, what is his remedy to protect his interest? (2%)

Answer:

(A) The complaint should not be dismissed because the mere non-joinder of an indispensable party is not a ground for the dismissal of the action *(Section 11, Rule 3; Republic vs. Hon. Mangotara, GR No. 170375, 07/07/2010)*.

(B) If the case should proceed to trial without Greg being impleaded as a party, he may intervene in the action *(Section 1, Rule 19)*. He may also file a petition for annulment of judgment *(Rule 47)*.

In a suit to nullify an existing Torrens Certificate of Title (TCT) in which a real estate mortgage is annotated, the mortgagee is an indispensable party. In such suit, a decision cancelling the TCT and the mortgage annotation is subject to petition for annulment of judgment, because the non-joinder of the mortgagee deprived the court of jurisdiction to pass upon the controversy *(Metrobank vs. Hon. Flora Alejo, GR No. 141970, 09/10/2001)*.

Class suit

(1) A class suit is an action where one or more parties may sue for the benefit of all if the requisites for said action are complied with.

(2) An action does not become a class suit merely because it is designated as such in the pleadings. Whether the suit is or is not a class suit depends upon the attendant facts. A class suit does not require commonality of interest in the questions involved in the suit. What is required by the Rules is a common or general interest in the subject matter of the litigation. The subject matter of the action means the physical, the things real or personal, the money, lands, chattels, and the like, in relation to the suit which is prosecuted and not the direct wrong committed by the defendant. It is not also a common question of law that

sustains a class suit but a common interest in the subject matter of the controversy *(Mathay vs. Consolidated Bank & Trust Co., 58 SCRA 559)*. There is no class suit when interests are conflicting.

(3) For a class suit to prosper, the following requisites must concur:
   (a) The subject matter of the controversy must be of common or general interest to many persons;
   (b) The persons are so numerous that it is impracticable to join all as parties;
   (c) The parties actually before the court are sufficiently numerous and representative as to fully protect the interests of all concerned; and
   (d) The representatives sue or defend for the benefit of all *(Sec.12, Rule 3)*.

(4) **2005 Bar**: Distinguish derivative suit from a class suit.

Answer: A derivative suit is a suit in equity that is filed by a minority shareholder in behalf of a corporation to redress wrongs committed against it, for which the directors refuse to sue, the real party in interest being the corporation itself *(Lim vs. Lim-Yu, 352 SCRA 216 [2001])*. A class suit is filed in behalf of several persons so numerous that it is impracticable to join all parties *(Sec. 12, Rule 3)*.

Suits against entities without juridical personality

(1) A corporation being an entity separate and distinct from its members has no interest in the individual property of its members unless transferred to the corporation. Absent any showing of interests, a corporation has no personality to bring an action for the purpose of recovering the property, which belongs to the members in their personal capacities.

(2) An entity without juridical personality may be sued under a common name by which it is commonly known when it represents to the plaintiff under a common name, and the latter relies on such representation *(Lapanday vs. Estita, 449 SCRA 240)*.

(3) If the sole proprietorship has no juridical personality, the suit shall be filed against the sole proprietor.

Effect of death of party litigant

(1) The death of the client extinguishes the attorney-client relationship and divests a counsel of his authority to represent the client. Accordingly, a dead client has no personality and cannot be represented by an attorney *(Laviña vs. CA, 171 SCRA 691)*. Neither does he become the counsel of the heirs of the deceased unless his services are engaged by said heirs *(Lawas vs. CA, 146 SCRA 173)*.

(2) Upon the receipt of the notice of death, the court shall order the legal representative or representatives of the deceased to appear and be substituted for the deceased within thirty (30) days from notice *(Sec. 16, Rule 3)*. The substitution of the deceased would not be ordered by the court in cases where the death of the party would extinguish the action because substitution is proper only when the action survives *(Aguas vs. Llamas, 5 SCRA 959)*.

(3) Where the deceased has no heirs, the court shall require the appointment of an executor or administrator. This appointment is not required where the deceased left an heir because the heir under the new rule, may be allowed to be substituted for the deceased. If there is an heir but the heir is a minor, the court may appoint a guardian *ad litem* for said minor heir *(Sec. 13, Rule 3)*.

(4) The court may appoint an executor or administrator when:
   (a) the counsel for the deceased does not name a legal representative; or

(b) there is a representative named but he failed to appear within the specified period *(Sec. 16, Rule 3).*

(5) *Death or separation of a party who is a public officer.* – When a public officer is a party in an action in his official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action may be continued and maintained by or against his successor if, within thirty (30) days after the successor takes office or such time as may be granted by the court, it is satisfactorily shown to the court by any party that there is a substantial need for continuing or mainataining it and that the successor adopts or continues or threatens to adopt or continue the action of his predecessor. Before a substitution is made, the party or officer to be affected, unless expressly assenting thereto, shall be given reasonable notice of the application therefor and accorded an opportunity to be heard *(Section 17).*

(6) **Section 16.** *Death of party; duty of counsel.* - Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with his duty shall be a ground for disciplinary action.

The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian *ad litem* for the minor heirs.

The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.

If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time, to procure the appointment of an executor or administrator for the estate of the deceased and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs.

The purpose behind the rule on substitution is the protection of the right of every party to due process. It is to ensure that the deceased party would continue to be properly represented in the suit through the duly appointed legal representative of his estate. Non-compliance with the rule on substitution would render the proceedings and the judgment of the trial court infirm because the court acquires no jurisdiction over the persons of the legal representatives or of the heirs on whom the trial and the judgment would be binding.

In the case at bar, we find that no right to procedural due process was violated when the counsel for the respondents failed to notify the court of the fact of death of Simplicia Aguilar and even if no formal substitution of parties was affected after such death. xxx In *Vda. De Salazar vs. CA (GR No. 121510, 11/23/1995)*, We ruled that a formal substitution of the heirs in place of the deceased is no longer necessary if the heirs continued to appear and participated in the proceedings of the case *(Cardenas vs. Heirs of Sps. Aguilar, GR No. 191079, 03/02/2016).*

(7) The rationale behind the rule on substitution *[Section 16, Rule 3]* is to apprise the heir or the substitute that he is being brought to the jurisdiction of the court in lieu of the deceased party by operation of law. It serves to protect the right of every party to due process. It is to ensure that the deceased party would continue to be properly represented in the suit through the duly appointed legal representative of his estate. Non-compliance with the rule on substitution would render the proceedings and the judgment of the trial court infinn because the court acquires no jurisdiction over the persons of the legal representatives or of the heirs on whom the trial and the judgment would be binding.

Nevertheless, there are instances when formal substitution may be dispensed with. In *Vda. de Salazar v. Court of Appeals,* We ruled that the defendant's failure to effect a formal substitution of heirs before the rendition of judgment does not invalidate the court's judgment where the heirs themselves appeared before the trial court, participated in the proceedings, and presented evidence in defense of the deceased defendant. The court there found it undeniably evident that the heirs themselves sought their day in court and exercised their right to due process.

Similarly, in *Berot v. Siapno,* we ruled that the continued appearance and participation of Rodolfo, the estate's representative, in the proceedings of the case dispensed with the formal substitution of the heirs in place of the deceased *(Spouses Ibañez vs. Harper, GR No. 194272, 02/15/2017).*

(8) **1999 Bar**: What is the effect of the death of a party upon a pending action? (2%)

Answer: When the claim in a pending action is purely personal, the death of either of the parties extinguishes the claims and the action is dismissed. When the claim is not purely personal and is not thereby extinguished, the party should be substituted by his heirs or his executor or administrator *(Sec. 16, Rule 3).* If the action is for recovery of money arising from contract express or implied, and the defendant dies before entry of judgment in the court in which the action was pending at the time of such death, it shall not be dismissed but shall instead be allowed to continue until entry of final judgment. A favorable judgment obtained by the plaintiff shall be enforced in the manner provided in the rules of prosecuting claims against the estate of a deceased person *(Sec. 20, Rule 3).*

(9) **2000 Bar**: PJ engaged the services of Atty. ST to represent him in a civil case filed by OP against him which was docketed as Civil Case No. 123. A retainership agreement was executed between PJ and Atty. ST whereby PJ promised to pay Atty. ST a retainer sum of P24,000.00 a year and to transfer ownership of a parcel of land to Atty. ST after presentation of PJ's evidence. PJ did not comply with his undertaking. Atty. ST filed a case against PJ which was docketed as Civil Case No. 456. During the trial of Civil Case No. 456, PJ died.

Is the death of PJ a valid ground to dismiss the money claim of Atty. ST in Civil Case No. 456? Explain. (2%)

Answer: No. Under Sec. 20, Rule 3, when an action is for the recovery of money arising from contract, express or implied, and the defendant dies before entry of final judgment in the court in which the action is pending at the time of such death, it shall not be dismissed but it shall instead be allowed to continue until entry of the final judgment. A favorable judgment obtained by the plaintiff shall be enforced in the manner specifically provided in the Rules for prosecuting claims against the estate of deceased person.

D. VENUE *(Rule 4)*

(1) Venue is the place or the geographical area where an action is to be filed and tried. In civil cases, it relates only to the place of the suit and not to the jurisdiction of the court *(Manila Railroad Company vs. Attorney General, 20 Phil. 523).*

Venue versus Jurisdiction

Jurisdiction	Venue
Treats of the power of the Court to decide a case on the merits	The place where the suit may be filed.
A matter of substantive law	A matter of procedural law
May not be conferred by consent through waiver upon a court	May be waived, except in criminal cases
Establishes a relation between the court and the subject matter	Establishes a relation between plaintiff and defendant, or petitioner and respondent
Fixed by law and cannot be conferred by the parties	May be conferred by the act or agreement of the parties
Lack of jurisdiction over the subject matter is a ground for a *motu propio* dismissal	Not a ground for a *motu proprio* dismissal except in cases subject to summary procedure. In criminal cases, wrong venue is a ground for motion to quash.

(1) **2006 Bar**: Distinguish jurisdiction from venue. (2%)

Jurisdiction treats of the power of the Court to decide a case on the merits, while venue refers to the place where the suit may be filed. In criminal actions, however, venue is jurisdictional. Jurisdiction is a matter of substantive law; venue, of procedural law. Jurisdiction may not be conferred by consent through waiver upon a court, but venue may be waived, except in criminal cases *(Nocum, et al. vs. Tan, GR No. 145022, 09/23/2005; Santos III vs. Northwest Airlines, GR No. 101538, 9/23/1992).*

(2) However, venue and jurisdiction are entirely distinct matters. Jurisdiction may not be conferred by consent or waiver upon a court which otherwise would have no jurisdiction over the subject matter of an action; but the venue of an action as fixed by statute may be changed by the consent of the parties and an objection that the plaintiff brought his suit in the wrong county may be waived by the failure of the defendant to make a timely objection. In either case, the court may render a valid judgment. Rules as to jurisdiction can never be left to the consent or agreement of the parties, whether or not a prohibition exists against their alteration. Venue is procedural, not jurisdictional, and hence may be waived *(Anama vs. Citibank, GR No. 192048, 12/13/2017).*

Venue of real actions

(1) Actions affecting title to or possession of real property, or interest therein, shall be commenced and tried in the proper court which has jurisdiction over the area wherein the

real property involved or a portion thereof is situated. Forcible entry and detainer actions shall be commenced and tried in the municipal trial court of the municipality or city wherein the real property involved, or a portion thereof, is situated *(Sec. 1, Rule 4)*.

(2) **2008 Bar**: (a) Angela, a resident of Quezon City, sued Antonio, a resident of Makati City before the RTC of Quezon City for the reconveyance of two parcels of land situated in Tarlac and Nueva Ecija, respectively. May her action prosper? (3%)

(b) Assuming that the action was for foreclosure on the mortgage of the same parcels of land, what is the proper venue for the action? (3%)

Answer: (a) No. The action will not prosper because it was filed in the wrong venue. Since the action for reconveyance is a real action, it should have been filed separately in Tarlac and Nueva Ecija, where the parcels of land are located *(Sec. 1, Rule 4)*. However, an improperly laid venue may be waived, if not pleaded in a timely motion to dismiss *(Sec. 4, Rule 4)*. Without a motion to dismiss on the ground of improperly laid venue, it would be incorrect for the court to dismiss the action for improper venue *(United Overseas Bank Philippines vs. Roosemore Mining & Development Corp., GR Nos. 159669 and 163521, 03/12/2007)*.

(b) The action must be filed in any province where any of the lands involved lies–whether in Tarlac or in Nueva Ecija, because the action is a real action. However, an improperly laid venue may be waived if not pleaded as a ground for dismissal *(Sec. 4, Rule 4; Bank of America v. American Realty Corp., GR No. 133876, 12/29/1999)*.

(3) **2016 Bar**: Eduardo, a resident of the City of Manila, filed before the Regional Trial Court (RTC) of Manila a complaint for the annulment of a Deed of Real Estate Mortgage he signed in favor of Galaxy Bank (Galaxy), and the consequent foreclosure and auction sale on his mortgaged Makati property. Galaxy filed a Motion to Dismiss on the ground of improper venue alleging that the complaint should be filed with the RTC of Makati since the complaint involves the ownership and possession of Eduardo's lot. Resolve the motion with reasons. (5%)

Answer:

The Motion to Dismiss should be granted. An action for nullification of the mortgage documents and foreclosure of the mortgaged property is a real action that affects the title to the property thus, venue of the real action is before the court having jurisdiction over the territory in which the property lies *(Go vs. United Coconut Plantes Bank, GR No. 156187, 11/11/2004; Chua vs. Total Office Products & Services, GR No. 152808, 09/30/2005)*.

In *Fortune Motors vs. CA (GR No. 112191, 02/07/1997)*, the Supreme Court also held that an action to annul a foreclosure sale of a real estate mortgage is no different from an action to annul a private sale or real property. While it is true that petitioner does not directly seek the recovery of title to or possession of the property in question, his action for annulment of sale and his claim for damages are closely intertwined with the issue of ownership of the building which, under the law, is considered immovable property, the recovery of which is petitioner's primary objective. The prevalent doctrine is that an action for the annulment for rescission of a sale of real preoperty does not operate to efface the fundamental and prime obnjective and nature of the case, which is to recover said real property. It is a real action *(Paglaum Management & Development Corporation vs. Union Bank of the Philippines, GR No. 179018, 06/18/2012)*.

Being a real action, it shall be commenced and tried in the proper court which has jurisdiction over the area where the real property involved, or a portion thereof, is situated *(Section 1, Rule 4)*. The complaint should be filed in the RTC of Makati where the mortgaged property is situated.

Venue of personal actions

(1) All other actions may be commenced and tried where the plaintiff or any of the principal plaintiff resides, or where the defendant or any of the principal defendants resides, all at the option of the plaintiff *(Sec. 2, Rule 4)*.

(2) The venue for the collection of sum of money is governed by Rule 2, Section 2 of the rules of Court. Unless the parties enter into a written agreement on their preferred venue before an action is instituted, the plaintiff may commence his or her action before the trial court of the province or city either where he or she resides, or where the defendant resides. If the party is a corporation, its residence is the province or city where its principal place of business is situated as recorded in its Articles of Incorporation *(Hygienic Packaging Corporation vs. Nutri-Asia, Inc., GR No. 201302, 01/23/2019)*.

Venue of actions against non-residents

(1) If any of the defendants does not reside and is not found in the Philippines, and the action affects the personal status of the plaintiff, or any property of said defendant located in the Philippines, the action may be commenced and tried in the court of the place where the plaintiff resides, or where the property or any portion thereof is situated or found *(Sec. 3, Rule 4)*, or at the place where the defendant may be found, at the option of the plaintiff *(Sec. 2)*.

When the Rules on Venue do not apply

(1) The Rules do not apply (a) in those cases where a specific rule or law provides otherwise; or (b) where the parties have validly agreed in writing before the filing of the action on the exclusive venue thereof *(Sec. 4, Rule 4)*.

Effects of stipulations on venue

(1) The parties may stipulate on the venue as long as the agreement is (a) in writing, (b) made before the filing of the action, and (3) exclusive as to the venue *(Sec. 4[b], Rule 4)*.

(2) The settled rule on stipulations regarding venue is that while they are considered valid and enforceable, venue stipulations in a contract do not, as a rule, supersede the general rule set forth in Rule 4 in the absence of qualifying or restrictive words. They should be considered merely as an agreement or additional forum, not as limiting venue to the specified place. They are not exclusive but rather permissive. If the intention of the parties were to restrict venue, there must be accompanying language clearly and categorically expressing their purpose and design that actions between them be litigated only at the place named by them.

(3) In interpreting stipulations as to venue, there is a need to inquire as to whether the agreement is restrictive or not. If the stipulation is *restrictive*, the suit may be filed only in the place agreed upon by the parties. It must be reiterated and made clear that under Rule 4, the general rules on venue of actions shall not apply where the parties, before the filing of the action, have validly agreed in writing on an *exclusive* venue. The mere stipulation on the venue of an action, however, is not enough to preclude parties from bringing a case in other venues. The parties must be able to show that such stipulation is exclusive. In the absence of qualifying or restrictive words, the stipulation should be

deemed as merely an agreement on an additional forum, not as limiting venue to the specified place *(Spouses Lantin vs. Lantin, GR 160053, 08/28/2006)*. This exclusivity must be couched in words of exclusivity ***(Schonfield doctrine).***

(4) Venue stipulation does not apply to foreclosure of real estate mortgage.

E. PLEADINGS *(Rules 6 - 11)*

(1) Pleadings are written statements of the respective claims and defenses of the parties submitted to the court for appropriate judgment *(Sec. 1, Rule 6)*. Pleadings aim to define the issues and foundation of proof to be submitted during the trial, and to apprise the court of the rival claims of the parties.

(2) Pleadings are either initiatory or responsive.

Kinds of Pleadings *(Rule 6)*

Complaint

(1) Complaint is the pleading alleging the plaintiff's cause or causes of action, stating therein the names and residences of the plaintiff and defendant *(Sec. 3, Rule 6)*.

Answer

(1) An answer is a pleading in which a defending party sets forth his defenses *(Sec. 3, Rule 6)*. It may allege legal provisions relied upon for defense *(Sec. 1, Rule 8)*.

Negative Defenses

(1) Negative defenses are the specific denials of the material fact or facts alleged in the pleading of the claimant essential to his cause or causes of action *(Sec. 5[a], Rule 6)*.

(2) When the answer sets forth negative defenses, the burden of proof rests upon the plaintiff, and when the answer alleges affirmative defenses, the burden of proof devolves upon the defendant.

(3) The three modes of specific denials are:

(a) Absolute Denial – where the defendant specifies each material allegations of fact, the truth of which he does not admit and whenever practicable sets forth the substance of the matters upon which he relies to support such denial.

(b) Partial Denial – where the defendant does not make a total denial of the material allegations in a specific paragraph, denying only a part of the averment. In doing so, he specifies that part the truth of which he admits and denies only the remainder.

(c) Denial by Disavowal of Knowledge – where the defendant alleges having no knowledge or information sufficient to form a belief as to the truth of a material averment made in the complaint. Such denial must be made in good faith.

Negative Pregnant

(1) Negative pregnant is an admission in avoidance which does not qualify as a specific denial.

(2) It is a form of negative expression which carries with it an affirmation or at least an implication of some kind favorable to the adverse party. It is a denial pregnant with an admission of the substantial facts alleged in the pleading. Where a fact is alleged with qualifying or modifying language and the words of the allegation as so qualified or modified are literally denied, the qualifying circumstances alone are denied while the fact itself is admitted *(Republic vs. Sandiganbayan, GR 1512154, 07/15/2003).*

Affirmative Defenses

(1) Affirmative defenses are allegations of new matters which, while hypothetically admitting the material allegations in the pleading of the claimant, would nevertheless prevent or bar recovery by him. Affirmative defenses include:
   (a) Fraud
   (b) Statute of limitations
   (c) Release
   (d) Payment
   (e) Illegality
   (f) Statute of frauds
   (g) Estoppel
   (h) Former recovery
   (i) Discharge in bankruptcy
   (j) Any other matter by way of confession and avoidance *(Sec. 5[b], Rule 6).*

(2) Affirmative defenses hypothetically admit the material allegations in the pleading of the claimant, but nevertheless interpose new matter.

Counterclaim

(1) A counterclaim is any claim which a defending party may have against an opposing party *(Sec. 6, Rule 6).* It is in itself a claim or cause of action interposed in an answer. It is either compulsory or permissive.

(2) **1999 Bar**: Distinguish a counterclaim from a cross-claim. (2%)

Answer: A counterclaim is distinguished from a cross-claim in that a cross-clam is any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein. A counterclaim is against a co-party *(Sec. 6, Rule 6).*

Compulsory Counterclaim

(1) A compulsory counterclaim is one which, being cognizable by the regular courts of justice, arises out of or is connected with the transaction or occurrence constituting the subject matter of the opposing party's claim and does not require for its adjudication, the presence

of third parties of whom the court cannot acquire jurisdiction. Such a counterclaim must be within the jurisdiction of the court, both as to the amount and the nature thereof, except that in an original action before the RTC, the counterclaim may be considered compulsory regardless of the amount *(Sec. 7, Rule 6)*.

(2) It is compulsory where:
   (a) It arises out of, or is necessarily connected with the transaction or occurrence that is the subject matter of the opposing party's claim;
   (b) It does not require jurisdiction; and
   (c) The trial court has jurisdiction to entertain the claim.

(3) The tests to determine whether or not a counterclaim is compulsory are:
   (a) Are the issues of fact or law raised by the counterclaim largely the same?
   (b) Would *res judicata* bar a subsequent suit on defendant's claims absent the compulsory counterclaim rule?
   (c) Will substantially the same evidence support or refute plaintiff's claim as well as the defendant's counterclaim? and
   (d) Is there any logical relation between the claim and the counterclaim? *(Financial Building Corp. vs. Forbes Park Assn. Inc., 338 SCRA 811)*.

(4) **1998 Bar**: A, a resident of Lingayen, Pangasinan, sued X a resident of San Fernando, La Union in the Regional Trial Court (RTC) of Quezon City for the collection of a debt of P1 million.

X did not file a motion to dismiss for improper venue but filed his answer raising therein improper venue as an affirmative defense. He also filed a counterclaim for P80,000 against A for Attorney's fees and expenses for litigation. X moved for a preliminary hearing on said affirmative defense. For his part, A filed a motion to dismiss the counterclaim for lack of jurisdiction.

Rule on the motion to dismiss the counterclaim on the ground of lack of jurisdiction over the subject matter. (2%)

Answer: The motion to dismiss on the ground of lack of jurisdiction over the subject matter should be denied. The counterclaim for attorney's fees and expenses of litigation is a compulsory counterclaim because it necessarily arose out of and is connected with the complaint. In an original action before the RTC, the counterclaim may be considered compulsory regardless of the amount *(Sec. 7, Rule 6)*.

(5) **2004 Bar**: PX filed a suit for damages against DY. In his answer, DY incorporated a counterclaim for damages against PX and AC , counsel for plaintiff in said suit, alleging in said counterclaim, *inter alia*, that AC, as such counsel, maliciously included PX to bring the suits against DY despite AC's knowledge of its utter lack of factual and legal basis. In due time, AC filed a motion to dismiss the counterclaim as against him on the ground that he is not a proper party to the case, he being merely plaintiff's counsel.

Is the counterclaim of DY compulsory or not? Should AC's motion to dismiss the counterclaim be granted or not? Reason. (5%)

Answer: Yes. The counterclaim of DY is compulsory because it is one which arises out of or is connected with the transaction or occurrence constituting the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court acquire jurisdiction *(Sec. 7, Rule 6)*.

The motion to dismiss of plaintiff's counsel should not be granted because bringing in plaintiff's counsel as a defendant in the counterclaim is authorized by the Rules. Where it is required for the grant of complete relief in the determination of the counterclaim, the court shall order the defendant's counsel to be brought in since jurisdiction over him can be obtained *(Sec. 12, Rule 6)*. Here, the counterclaim was against both the plaintiff and his lawyer who allegedly maliciously induced the plaintiff to file the suit *(Aurello v. Court of Appeals, 196 SCRA 674 [1994])*.

(6) **2007 Bar**: RC filed a complaint for annulment of the foreclosure sale against Bank V. In its answer, Bank V set up a counterclaim for actual damages and litigation expenses. RC filed a motion to dismiss the counterclaim on the ground that Bank V's Answer with Counterclaim was not accompanied by a certification against forum shopping. Rule. (5%)

Answer: The motion to dismiss the counterclaim should be denied. A certification against forum shopping should not be required in a compulsory counterclaim because it is not an initiatory pleading *(Sec. 5, Rule 7; Carpio vs. Rural Bank of Sto. Tomas Batangas, Inc., GR No. 153171, 05/04/2006).*

(7) **2008 Bar**: Fe filed a suit for collection of P387,000 against Ramon in the RTC of Davao City. Aside from alleging payment as a defense, Ramon in his answer set up counterclaims for P100,000 as damages and P30,000 as attorney's fees as a result of the baseless filing of the complaint, as well as P250,000 as the balance of the purchase price of the 30 units of air conditioners he sold to Fe.

(a) Does the RTC have jurisdiction over Ramon's counterclaims, and if so, does he have to pay docket fees therefor?

Answer: Ramon has to pay docket fees for his counterclaims whether the counterclaim is compulsory or permissive in nature. Rule 141 of the Rules has been amended to require payment of docket fees for counterclaims and cross-claims whether compulsory or permissive.

(b) Suppose Ramon's counterclaim for the unpaid balance is P310,000, what will happen to his counterclaim if the court dismisses the complaint after holding a preliminary hearing on Ramon's affirmative defenses? (3%)

Answer: The dismissal of the complaint is without prejudice to the right of the defendant (Ramon) to prosecute his counterclaim in the same or in a separate action *(Sec. 6, Rule 16; Pinga v. Heirs of Santiago, GR No. 170354, 06/30/206).*

(c) Under the same premise as paragraph (b) above, suppose that instead of alleging payment as a defense in his answer, Ramon filed a motion to dismiss on that ground, at the same time setting up his counterclaims, and the court grants his motion. What will happen to his counterclaims? (3%)

Answer: His counterclaims can continue to be prosecuted or may be pursued separately at his option *(Sec. 6, Rule 16; Pinga vs. Heirs of Santiago, supra.).*

Permissive Counterclaim

(1) Permissive counterclaim is a counterclaim which does not arise out of nor is it necessarily connected with the subject matter of the opposing party's claim. It is not barred even if not set up in the action.

(2) The requirements of a permissive counterclaim are:
- (a) It does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction;
- (b) It must be within the jurisdiction of the court wherein the case is pending and is cognizable by the regular courts of justice; and
- (c) It does not arise out of the same transaction or series of transactions subject of the complaint.
- (d) Payment of correct docket fee.

Effect on the Counterclaim when the complaint is dismissed

(1) If a counterclaim has already been pleaded by the defendant prior to the service upon him of the plaintiff's motion to dismiss, and the court grants the said motion to dismiss, the dismissal shall be limited to the complaint *(Sec. 2, Rule 17)*. The dismissal upon motion of plaintiff shall be without prejudice to the right of the defendant to prosecute the counterclaim. The defendant if he so desires may prosecute his counterclaim either in a separate action or in the same action. Should he choose to have his counterclaim resolved in the same action, he must notify the court of his preference within 15 days from notice of the plaintiff's motion to dismiss. Should he opt to prosecute his counterclaim in a separate action, the court should render the corresponding order granting and reserving his right to prosecute his claim in a separate complaint. A class suit shall not be dismissed or compromised without the approval of the court.

(2) The dismissal of the complaint under Sec. 3 (due to fault of plaintiff) is without prejudice to the right of the defendant to prosecute his counterclaim in the same action or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court. The dismissal of the main action does not carry with it the dismissal of the counterclaim *(Sec. 6, Rule 16)*.

(3) As the rule now stands, the nature of the counterclaim notwithstanding, the dismissal of the complaint does not *ipso jure* result in the dismissal of the counterclaim, and the latter may remain for independent adjudication of the court, provided that such counterclaim, states a sufficient cause of action and does not labor under any infirmity that may warrant its outright dismissal. Stated differently, the jurisdiction of the court over the counterclaim that appears to be valid on its face, including the grant of any relief thereunder, is not abated by the dismissal of the main action. The court's authority to proceed with the disposition of the counterclaim independent of the main action is premised on the fact that the counterclaim, on its own, raises a novel question which may be aptly adjudicated by the court based on its own merits and evidentiary support *(Dio and H.S. Equities, Ltd. vs. Subic Bay Marine Exploration, Inc., GR No. 189532, 09/11/2014)*.

(4) Under the 1997 Rules of Civil Procedure, it is now explicitly provided that the dismissal of the complaint due to failure of the plaintiff to prosecute his case is "without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action." Since petitioner's counterclaim is compulsory in nature and its cause of action survives that of the dismissal of respondent's complaint, then it should be resolved based on its own merits and evidentiary support *(Padilla v. Globe Asiatique Realty Holdings Corporation, GR No. 207376, 08/06/2014)*.

Cross-claims

(1) A cross-claim is any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all of part of a claim asserted in the action against the cross-claimant *(Sec. 8, Rule 6)*.

Third (fourth, etc.) party complaints

(1) It is a claim that a defending party may, with leave of court, file against a person not a party to the action, called the third (fourth, etc.)-party defendant, for contribution, indemnity, subrogation or any other relief, in respect of his opponent's claim.

(2) The admission of a third-party complaint lies within the sound discretion of the trial court. If leave to file a third-party complaint is denied, then the proper remedy is to file a separate case, not to insist on the admission of the third-party complaint all the way up to this Court *(Development Bank of the Philippines vs. Clarges Realty Corporation, GR No. 170060, 08/17/2016)*.

Complaint-in-intervention

(1) Complaint-in-intervention is a pleading whereby a third party asserts a claim against either or all of the original parties. If the pleading seeks to unite with the defending party in resisting a claim against the latter, he shall file an answer-in-intervention.

(2) If at any time before judgment, a person not a party to the action believes that he has a legal interest in the matter in litigation in a case in which he is not a party, he may, with leave of court, file a complaint-in-intervention in the action if he asserts a claim against one or all of the parties.

Reply

(1) Reply is a pleading, the office or function of which is to deny, or allege facts in denial or avoidance of new matters alleged by way of defense in the answer and thereby join or make issue as to such matters. If a party does not file such reply, all the new matters alleged in the answer are deemed controverted *(Sec. 10, Rule 6)*.

(2) Reply is necessary when an actionable document is in issue.

Pleadings allowed in Small Claim cases and cases covered by the Rules on Summary Procedure

(1) The only pleadings allowed under the Rules on Summary Procedure are complaint, compulsory counterclaim, cross-claim, pleaded in the answer, and answers thereto *(Sec. 3[A])*. These pleadings must be verified *(Sec. 3[B])*.

(2) The only pleadings allowed under small claim cases are:

(a) Statement of claim
(b) Reply
(c) Counterclaim in the response

Parts of a Pleading *(Rule 7)*

(1) The parts of a pleading under Rule 7 are: the caption *(Sec. 1)*, the text or the body *(Sec. 2)*, the signature and address *(Sec. 3)*, the verification *(Sec. 4)*, and the certification against forum shopping *(Sec. 5)*.

Caption

(1) The caption must set forth the name of the court, the title of the action, and the docket number if assigned. The title of the action indicates the names of the parties. They shall all be named in the original complaint or petition; but in subsequent pleadings, it shall be sufficient if the name of the first party on each side be stated with an appropriate indication when there are other parties. Their respective participation in the case shall be indicated.

Signature and address

(1) Every pleading must be signed by the party or counsel representing him, stating in either case his address which should not be a post office box.

(2) The signature of counsel constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay.

(3) An unsigned pleading produces no legal effect. However, the court may, in its discretion, allow such deficiency to be remedied if it shall appear that the same was due to mere inadvertence and not intended for delay. Counsel who deliberately files an unsigned pleading, or signs a pleading in violation of the Rule, or alleges scandalous or indecent matter therein, or fails to promptly report to the court a change of his address, shall be subject to appropriate disciplinary action.

(4) In every pleading, counsel has to indicate his professional tax receipt (PTR), IBP receipt, the purpose of which is to see to it that he pays his tax and membership due regularly, MCLE compliance, and Roll number; plus contact number, and disc for Supreme Court-bound petitions,

Verification

(1) A verification of a pleading is an affirmation under oath by the party making the pleading that he is prepared to establish the truthfulness of the facts which he has pleaded based on his own personal knowledge.

(2) The general rule under Sec. 4. Rule 7 is that pleading needs not be under oath. This means that a pleading need not be verified. A pleading will be verified only when a verification is required by a law or by a rule.

(3) A pleading is verified by an affidavit, which declares that: (a) the affiant has read the pleading, and (b) the allegations therein are true and correct to his personal knowledge or based on authentic records.

(4) The verification requirement is significant, as it is intended to secure an assurance that the allegations in a pleading are true and correct and not the product of the imagination

or a matter of speculation, and that the pleading is filed in good faith. The absence of proper verification is cause to treat the pleading as unsigned and dismissible.

(5) It has, however, been held that the absence of a verification or the non-compliance with the verification requirement does not necessarily render the pleading defective. It is only a formal and not a jurisdictional requirement. The requirement is a condition affecting only the form of the pleading *(Sarmiento vs. Zaratain, GR 167471, 02/05/2007)*. The absence of a verification may be corrected by requiring an oath. The rule is in keeping with the principle that rules of procedure are established to secure substantial justice and that technical requirements may be dispensed with in meritorious cases *(Pampanga Development Sugar Co. vs. NLRC, 272 SCRA 737)*. The court may order the correction of the pleading or act on an unverified pleading if the attending circumstances are such that strict compliance would not fully serve substantial justice, which after all, is the basic aim for the rules of procedure *(Robert Development Corp. vs. Quitain, 315 SCRA 150)*.

Certification against Forum-Shopping

(1) The certification against forum shopping is a sworn statement certifying to the following matters:
   (a) That the party has not commenced or filed any claim involving the same issues in any court, tribunal, or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending;
   (b) That if there is such other pending action or claim, a complete statement of the present status thereof; and
   (c) That if he should therefore learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

(2) The certification is mandatory under Sec. 5, Rule 7, but not jurisdictional *(Robert Development Corp. vs. Quitain, 315 SCRA 150)*.

(3) There is forum shopping when, as a result of an adverse opinion in one forum, a party seeks a favorable opinion, other than by appeal or *certiorari* in another. There can also be forum shopping when a party institutes two or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on the same or related causes and/or to grant the same or substantially the same reliefs on the supposition that one or the other court would make a favorable disposition or increase a party's chances of obtaining a favorable decision or action *(Huibonhoa vs. Concepcion, GR 153785, 08/03/2006)*.

(4) It is an act of malpractice, as the litigants trifle with the courts and abuse their processes. It is improper conduct and degrades the administration of justice. If the act of the party or its counsel clearly constitutes willful and deliberate forum-shopping, the same shall constitute direct contempt, and a cause for administrative sanctions, as well as a ground for the summary dismissal of the case with prejudice *(Montes vs. CA, GR 143797, 05/04/2006)*. Forum shopping exists when the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another.

(5) It is the plaintiff or principal party who executes the certification under oath, and not the attorney. It must be signed by the party himself and cannot be signed by his counsels. As a general and prevailing rule, a certification signed by counsel is a defective certification and is a valid cause for dismissal *(Far Eastern Shipping Co. vs. CA, 297 SCRA 30)*.

(6) This certification is not necessary when what is filed is a mere motion for extension, or in criminal cases and distinct causes of action.

(7) Certification against forum-shopping is required only in initiatory pleadings.

(8) For *litis pendentia* under Rule 16, Sec. 1(f) to exist, the following requisites or elements must concur: (a) identity of parties, or at least such parties who represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) identity with respect to the two (2) preceding particulars in the two (2) cases is such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case *(Subic Telecommunications Company, Inc. v. SBMA, GR No. 185159, 10/12/2009).*

(9) The test for determining whether a litigant violated the rule against forum shopping is where the elements of *litis pendentia* are present, that is: (1) identity of parties, or at least such parties as representing the same interests in both actions; (2) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (3) the identity of the two proceeding particulars is such that any judgment rendered in the pending case, regardless of which pary is successful would amount to *res judicata* in the other *(Brown-Araneta vs. Araneta, GR No. 190814, 10/09/2013).*

(10) To determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another; otherwise stated, the test for determining forum shopping is whether in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought. In turn, prior judgment or *res judicata* bars a subsequent case when the following requisites concur: (1) the former judgment is final; (2) it is rendered by a court having jurisdiction over the subject matter and the parties; (3) it is a judgment or an order on the merits; (4) there is – between the first and the second actions – identity of parties, of subject matter, and of causes of action. As to the third requisite, it has been settled that the dismissal for failure to state a cause of action may very well be considered a judgment on the merits and, thereby, operate as *res judicata* on a subsequent case *(Aboitiz Equity Ventures, Inc. vs. Chiongbian, GR No. 197530, 07/09/2014).*

(11) The test for determining the existence of forum shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case amounts to *res judicata* in another. Thus, there is forum shopping when the following elements are present: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration; said requisites are also constitutive of the requisites for *auter action pendant* or *lis pendens* *(Garcia vs. Ferro Chemicals, Inc., GR No. 172505, 10/01/2014).*

(12) The submission of an SPA authorizing an attorney-in-fact to sign the verification and certification against forum-shopping in behalf of the principal party is considered as substantial compliance with the Rules. At the very least, the SPA should have granted the attorneys-in-fact the power and authority to institute civil and criminal actions which would necessarily include the signing of the verification and certification against forum-shopping. Hence, there is lack of authority to sign the verification and certification of non-forum shopping in the petition filed before the Court of Appeals when the SPA reveals that the powers conferred to attorneys-in-fact only pertain to administrative matters *(Zarsona Medical Clinic v. Philippine Health Insurance Corporation, GR No. 191225, 10/13/2014).*

(13) There is forum shopping when as a result of an adverse opinion in one forum, a party seeks a favorable opinion (other than by appeal or *certiorari*) in another. The Rules of Court mandates petitioner to submit a Certification against Forum Shopping and promptly inform the court about the pendency of any similar action or proceeding before other courts or tribunals. Failure to comply with the rule is a sufficient ground for the dismissal of the petition *(Stronghold Insurance Company, Inc. v. Sps. Stroem, GR No. 204689, 01/21/2015).*

(14) Forum shopping exists when the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another. *Litis pendentia* requires the concurrence of the following requisites: (1) identity of parties, or at least such parties as those representing the same interests in both actions; (2) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and (3) identity with respect to the two preceding particulars in the two cases, such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case. What is pivotal in determining whether forum shopping exists or not is the vexation caused the courts and parties-litigants by a party who asks different courts and/or administrative agencies to rule on the same or related cases and/or grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different courts and/or administrative agencies upon the same issues *(HGL Development Corporation vs. Judge Penuela, GR No. 181353, 06/06/2016).*

(15) Generally, the rule on forum shopping applies only to judicial cases or proceedings, and not to administrative cases. Nonetheless, A.O. No. 07, as amended by A.O. No. 17, explicitly removed from the ambit of the rule the administrative cases filed before it when it required the inclusion of a Certificate of Non-Forum Shopping in complaints filed before it.

The respondents in this case attached a Certificate of Non-Forum Shopping to their separate Affidavit-Complaints, which amounts to an express admission on their part of the applicability of the rule in the administrative cases they filed against the petitioners. But compliance with the certification requirement is separate from, and independent of, the avoidance of forum shopping itself. Both constitute grounds for the dismissal of the case, in that non-compliance with the certification requirement constitutes sufficient cause for the dismissal without prejudice to the filing of the complaint or initiatory pleading upon motion and after hearing, while the violation of the prohibition is a ground for summary dismissal thereof and for direct contempt. The respondents' compliance, thus, does not exculpate them from violating the prohibition against forum shopping.

The rule against forum shopping prohibits the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively for the purpose of obtaining a favorable judgment. Forum shopping may be committed in three ways: (1) through *litis pendentia* - filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet; (2) through *res judicata* - filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved; and 3) splitting of causes of action - filing multiple cases based on the same cause of action but with different prayers - the ground to dismiss being either *litis pendentia* or *res judicata.* Common in these is the identity of causes of action. Cause of action has been defined as "the act or omission by which a party violates the right of another."

In this case, a review of the Affidavit-Complaints separately filed by the respondents in OMB-M-A-05-104-C and OMB-M-A-05-093-C reveals the respondents' violation of the prohibition *via* the first mode, that is, through *litis pendentia.* The requisites of *litis pendentia* are: (a) the identity of parties, or at least such as representing the same interests 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.

The administrative complaint filed in OMB-M-A-05-093-C was based on the criminal complaint filed in OMB-M-C-05-0051-A for the VES 21 Project. On the other hand, the administrative complaint filed in OMBM-A-05-104-C was based on the criminal complaint filed in OMB-M-C-05-0054-A for the VES 15 Project. These two criminal complaints alleged exactly the same set of antecedent facts and circumstances *(Yamson vs. Castro, GR No. 194763-64, 07/20/2016).*

(16) Petitioner-appellant is guilty of forum shopping.

On numerous occasions, this Court has held that "a circumstance of forum shopping occurs when, as a result or in anticipation of an adverse decision in one forum, a party seeks a favorable opinion in another forum through means other than appeal or certiorari by raising identical causes of action, subject matter and issues. Stated a bit differently, forum shopping is the institution of two or more actions involving the same parties for the same cause of action, either simultaneously or successively, on the supposition that one or the other court would come out with a favorable disposition.

A persusal of the Complaint filed by the petitioner-appellant before the MCTC, four months after the NCIP-RHO had dismissed his case without prejudice, reveals no mention whatsoever of the initial NCIP-RHO proceedings. Xxx

As We held in *Brown-Araneta v. Araneta (GR No. 190814, 10/09/2013),* "(t)he evil sought to be avoided by the rule against forum shopping is the rendition by two competent tribunals of two separate and contradictory decisions. Unscrupulous party litigants, taking advantage of a variety of competent tribunals, may repeatedly try their luck in several different fora until a favorable result is reached. To avoid the resultant confusion, the Court adheres to the rules against forum shopping, and a breach of these rules results in the dismissal of the case" *(Begnaen vs. Sps. Caligtan, GR No. 189852, 08/17/2016).*

(17) We affirm the ruling of the CA that a certificate against forum shopping is not a requirement in an *ex parte* petition for the issuance of a writ of possession. An *ex parte* petition for the issuance of writ of possession is not a complaint or tother initiatory pleading as contemplated in Section 5, Rule 7.

The non-initiatory nature of an *ex parte* motion or petition for the issuance of a writ of possession is best explained in *Arquiza v. Court of Appeals*. In that case we ruled that the *ex parte* petition for the issuance of a writ of possession filed by the respondent is not an initiatory pleading. Although the private respondent denominated its pleading as a petition, it, nonetheless, a motion. What distinguishes a motion from a petition or other pleading is not its form or the title given by the party executing it, but rather its purpose. A petition for the issuance of a writ of possession does not aim to initiate new litigation, but rather issues as an incident or consequence of the original registration or cadastral proceedings. As such, the requirement for a forum shopping certification is dispelled.

Based on jurisprudence, a writ of possession may be issued in the following instances: (a) land registration proceedings under Section 17 of Act No. 496, otherwise known as The Land Registration Act; (b) judicial foreclosure, provided the debtor is in possession of the mortgaged realty and no third person, not a party to the foreclosure suit, had intervened; (c) extrajudicial foreclosure of real estate mortgage under Section 7 of Act No. 3135, as amended by Act No. 4118; and (d) in execution sales *(De Guzman vs. Chico, GR No. 195445, 12/07/2016).*

(18)The SPAs individually signed by the petitioners vested in their counsel the authority, among others, "to do and perform on my behalf any act and deed relating to the case, which it could legally do and perform, including any appeals or further legal proceedings." The authority was sufficiently broad to expressly and specially authorize their counsel, Atty. Ida Maureen V. Chao-Kho, to sign the verification/certification on their behalf.

… The tenor of the verification/certification indicated that the petitioners, not Atty. Chao-Kho, were certifying that the allegations were true and correct based on their knowledge and authentic records. At any rate, a finding that the verification was defective would not render the petition for review invalid. It is settled that the verification was merely a formal requirement whose defect did not negate the validity or efficacy of the verified pleading, or affect the jurisdiction of the court.

We also hold the efficacy of the certification on non-forum shopping executed by Atty. Chao-Kho on the basis of the authorization bestowed under the SPAs by the petitioners. The lawyer of the party, in order to validly execute the certification, must be "specifically

authorized" by the client for the purpose. With the petitioners being non-residents of the Philippines, the sworn certification on non-forum shopping by Atty. Chao-Kho sufficiently complied with the objective of ensuring that no similar action had been brought by them or the respondent against each other. . . .

In *Philippine Postal Corporation v. Court of Appeals, et al. (722 Phil. 860 [2013],* the Court explained settled parameters in determining whether the rule against forum shopping is breached, particularly:

> Forum shopping consists of filing multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment.
>
> There is forum shopping where there exist: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars is such that any judgment *rendered in the pending case, regardless of which party is successful would amount to res judicata.*

Applying the foregoing, the petitioners' claim of forum shopping necessarily fails.

Given the nature of the petition for *certiorari* and the challenged appeal, it is evident that the issues involved and reliefs sought by PSPC in the two actions were distinct. Even the R TC orders being challenged in the two cases were different. While the two actions may be related as they arose from the same prohibition case, the appeal was intended to assail the judgment on the injunction bonds, while the petition for *certiorari* was filed specifically to challenge only the ruling that granted an execution pending appeal.

Clearly, a judgment in one action would not necessarily affect the other. A nullification of the ruling to allow an execution pending appeal, for example, would not necessarily negate the right of the petitioners to still eventually claim for damages under the injunction bonds *(Abenion v. Pilipinas Shell Petroleum Corp., GR No. 200749, 02/06/2017).*

(19) This *ponente* has had the occasion to rule on a case where a party instituted two cases against the same set of defendants - one for the annulment of a real estate mortgage, and a second for injunction and nullification of the extrajudicial foreclosure and consolidation of title, rooted in the same real estate mortgage - who moved to dismiss the second case on the ground of forum shopping, claiming that both cases relied on a determination of the same issue: that is, the validity of the real estate mortgage. The trial court dismissed the second case, but the CA ordered its reinstatement. This *ponente* affirmed the trial court, declaring as follows:

> There is forum shopping 'when a party repetitively avails of several judicial remedies in different courts, simultmeously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court.' The different ways by which forum shopping may be committed were explained in *Chua v. Metropolitan Bank & Trust Company:*
>
> > Forum shopping can be committed in three ways: (1) 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) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata);* and (3) filing multiple cases based on the same cause of action but with different prayers (splitting causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata).*

Common in these types of forum shopping is the identity of the cause of action in the different cases filed. Cause of action is defined as 'the act or omission by which a party

violates the right of another *(FCD Pawnshop and Merchandising Company vs. Union Bank of the Philippines, GR No. 207914, 01/18/2017)*.

(20) The respondent insists that the verification/certification attached to the petition was defective because it was executed by the petitioners' counsel whose authority under the SPAs was only to execute the certification of non-forum shopping; and that the signing by the counsel of the certification could not also be allowed because the *Rules of Court* and the pertinent circulars and rulings of the Court require that the petitioners must themselves execute the same.

The insistence of the respondent is unwarranted. The SPAs individually signed by the petitioners vested in their counsel the authority, among others, *"to do and perform on my behalf any act and deed relating to the case, which it could legally do and perform, including any appeals or further legal proceedings."* The authority was sufficiently broad to expressly and specially authorize their counsel, Atty. Ida Maureen V. Chao-Kho, to sign the verification/certification on their behalf.

The purpose of the verification is to ensure that the allegations contained in the verified pleading are true and correct, and are not the product of the imagination or a matter of speculation; and that the pleading is filed in good faith.

… In this regard, we ought not to exact a literal compliance with Section 4, Rule 45, in relation to Section 2, Rule 42 of the *Rules of Court,* that only the party himself should execute the certification. After all, we have not been shown by the respondent any intention on the part of the petitioners and their counsel to circumvent the requirement for the verification and certification on non-forum shopping *(Fyfe vs. Philippine Airlines, Inc., GR No. 160071, 06/06/2016)*.

(21) While there is jurisprudence to the effect that "an irregular notarization merely reduces the evidentiary value of a document to that of a private document, which requires proof of its due execution and authenticity to be admissible as evidence," the same cannot be considered controlling in determining compliance with the requirements of Sections 1 and 2, Rule 65 of the Rules of Court. Both Sections 1 and 2 of Rule 65 require that the petitions for certiorari and prohibition must be verified and accompanied by a "sworn certificate of non-forum shopping."

In this regard, Section 4, Rule 7 of the Rules of Civil Procedure states that "[a] pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records." "A pleading required to be verified which x x x lacks a proper verification, shall be treated as an unsigned pleading." Meanwhile, Section 5, Rule 7 of the Rules of Civil Procedure provides that "[t]he plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed." "Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided x x x."

In this case, when petitioner De Lima failed to sign the Verification and Certification against Forum Shopping in the presence of the notary, she has likewise failed to properly swear under oath the contents thereof, thereby rendering false and null the *jurat* and invalidating the Verification and Certification against Forum Shopping.

Without the presence of the notary upon the signing of the Verification and Certification against Forum Shopping, there is no assurance that the petitioner swore under oath that the allegations in the petition have been made in good faith or are true and correct, and not merely speculative. It must be noted that verification is not an empty ritual or a meaningless formality. Its import must never be sacrificed in the name of mere expedience or sheer caprice, as what apparently happened in the present case. Similarly, the absence of the notary public when petitioner allegedly affixed her signature also negates a proper attestation that forum shopping has not been committed by the filing of the petition. Thus, the petition is, for all intents and purposes, an unsigned pleading that does not deserve the cognizance of this Court *(De Lima vs. Judge Guerrero, GR No. 229781, 10/10/2017).*

(22) The respondents undoubtedly committed forum shopping when they instituted a petition for certiorari before the CA in the guise of challenging the validity of the writ of execution pending appeal, despite knowledge that a petition to review the DARAB findings was pending in another division of the appellate court.

As regards the first requisite, in the petition for certiorari, the parties are the Intestate Estate of Magdalena R. Sangalang represented by its administratrix, Solita Jimenez, Angelo Jimenez, Jr., Jayson Jimenez, Solita Jimenez, and John Hermogenes as petitioners, and the petitioners herein as respondents. On the other hand, in the petition for review, Romulo S. Jimenez is the sole petitioner while the petitioners herein are the respondents. It has been consistently held that absolute identity of parties is not required. A substantial identity of parties is enough to qualify under the first requisite. Here, it is clear as daylight that the petitioners in both cases represent the same interest as they are all legal heirs of Magdalena Sangalang.

Xxx

In *Pentacapital Investment Corporation v. Mahinay (637 Phil. 283 [2010]),* the Court ruled that "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*) *(Heirs of Fermin Arania vs. Intestate Estate of Sangalang, GR No. 193208, 12/13/2017).*

(23) Forum shopping is the act of a litigant who repetitively availed of serveral judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transaction and the same essential facts and circumstances, and all raising substantially the same issues, either pending or is already resolved adversely by some other court, to increase his chances of obtaining a favorable decision if not in one court, then in another. Xxx At present, our jurisdiction has recognized several ways to commit forum shopping, to wit:

(1) 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) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata);* and

(3) 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)*

(Republic vs. Sereno, GR No. 237428, 05/11/2018).

(24) Thus, at the time of the filing of this petition, there is no pending impeachment case that would bar the *quo warranto* petition on the ground of forum shopping.

In fine, forum shopping and *litis pendentia* are not present and a final decision in one will not strictly constitute as *res judicata* to the other. A judgment in a *quo warranto* case detrermines the respondent's constitutional or legal authority to perform any act in, or exercise any function of the office to which he lays claim; meanwhile a judgment in an impeachment proceeding pertain to a respondent's "ifrness for public office" *(Republic vs. Sereno, GR No. 237438, 05/11/2018).*

(25) The test for determining whether a litigant violated the rule against forum shopping is where the elements of *litis pendentia* are present, that is: (1) identity of parties, or at least such parties as representing the same interests in both actions; (2) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (3) the identity of the two preceding particulars is such that any judgment rendered in the pending case, regardless or which party is successful would amount to *res judicata* in the other *(Brown-Araneta vs. Araneta, GR No. 190814, 10/09/2013; Benavidez vs. Salvador, 723 Phil. 332 [2013]; Republic vs. Sereno, GR No. 237428, 05/11/2018).*

(26) We find that the fact that the verification and certification of non-forum shopping accompanying the petition before the CA was signed by her sons and not by Ventura herself should not affect the substantive findings of the present case. It must be noted that at the time when the subject RTC Decision was rendered in violation of her.right to due process and when demands on her sons to vacate the premises, Ventura was already residing in the United States as stated in the Special Power of Attorney attached to the certification and petition filed before the CA. This constitutes justifiable reason for her sons to substitute her in the instant case. As We previously mentioned, rules of procedure are tools to facilitate and not hinder the administration of justice and, thus, for justifiable reasons, may adopt a liberal application thereof.

(27) **2000 Bar**: As counsel for A, B, C and D, Atty. XY prepared a complaint for recovery of possession of a parcel of land against Z. Before filing a complaint, XY discovered that his clients were not able to sign the certification of non-forum shopping. To avoid further delays in the filing of the complaint, XY signed the certification and immediately filed the complaint in court. Is XY justified in signing the certification? Why? (5%)

Answer: No, counsel cannot sign the anti-forum shopping certification because it must be executed by the plaintiff or principal party himself *(Sec. 5, Rule 7)* since the rule requires personal knowledge by the party executing the certification, unless counsel gives good reason why he is not able to secure his client's signatures and shows that his clients will be deprived of substantial justice or unless he is authorized to sign it by his clients through a special power of attorney *(Escorpizo v. University of Baguio, 306 SCRA 497 [1999]).*

(28) **2006 Bar**: Honey filed with the Regional Trial Court, Taal, Batangas, a complaint for specific performance against Bernie. For lack of certification against forum shopping, the judge dismissed the complaint. Honey's lawyer filed a motion for reconsideration, attaching thereto an amended complaint with the certification against forum shopping. If you were the judge, how will you resolve the motion? (5%)

Answer: If I were the judge, I would deny the motion after hearing because as expressly provided in the Rules, failure to comply with the requirement of certification against forum shopping is not curable by mere amendment of the complaint or other initiatory pleading, but shall be cause for the dismissal of the case, without prejudice, unless otherwise provided *(Sec. 5, Rule 7).* However, the trial court in the exercise of its sound discretion, may choose to be liberal and consider the amendment as substantial compliance *(Great Southern Maritime Services Corp. vs. Acuna, GR No. 140189, 02/28/2005).*

(29) **2015 Bar:** Aldrin entered into a contract to sell with Neil over a parcel of land. The contract stipulated a P500,000.00 downpayment upon signing and the balance payable in twelve (12) monthly installments of P100,000.00. Aldrin paid the down payment and had paid

three (3) monthly installments when he found out that Neil had sold the same property to Yuri for P1.5 million paid in cash. Aldrin sued Neil for specific performance with damages with the RTC. Yuri, with leave of court, filed an answer-in-intervention as he had already obtained a TCT in his name. After trial, the court rendered judgment ordering Aldrin to pay all the installments due, the cancellation of Yuri's title, and Neil to execute a deed of sale in favor of Aldrin. When the judgment became final and executor, Aldrin paid Neil all the installments but the latter refused to execute the deed of sale in favor of the former.

Aldrin filed a "Petition for the Issuance of a Writ of Execution" with proper notice of hearing. The petition alleged, among others, that the decision had become final and executory and he is entitled to the issuance of the writ of execution as a matter of right. Neil filed a motion to dismiss the petition on the ground that it lacked the required certification against forum shopping.

(A) Should the court grant Neil's Motion to Dismiss? (3%)

Despite the issuance of the writ of execution directing Neil to execute the deed of sale in favor of Aldrin, the former obstinately refused to execute the deed.

(B) What is Aldrin's remedy? (2%)

Answer:

(A) No. The motion to dismiss should be denied because certification against forum shopping is only required in a complaint or other initiatory pleading *(Section 5, Rule 7; Arquiza vs. CA, GR No. 160479, 06/08/2005)*. Since a petition for the issuance of a writ of execution is not an initiatory pleading, it does not require a certificate against forum shopping.

(B) Aldrin may move for the issuance of a court order directing the execution of the Deed of Sale by some other person appointed by it.

Under Section 10, Rule 39 of the Rules of Court, if a judgment directs a party to execute a conveyance of land or personal property, or to deliver deeds or other documents, or to perform, any other specific act in connection therewith, and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done shall have like effect as if done by the party. If real or personal property is situated within the Philippines, the court in lieu of directing a conveyance thereof may by any order divest the title of any party and vest in others, which shall have the force and effect of a conveyance in due form of law.

The phrase "some other person appointed by the court" may refer to the Branch Clerk Court, Sheriff or even the Register of Deeds, and their acts when done under such authority shall have the effect of having been done by Neil himself.

Requirements of a corporation executing the verification/certification on non-forum shopping

(1) A juridical entity, unlike a natural person, can only perform physical acts through properly delegated individuals. The certification against forum shopping where the plaintiff or a principal party is a juridical entity like a corporation may be executed by properly authorized persons. This person may be the lawyer of a corporation. As long as he is duly authorized by the corporation and has personal knowledge of the facts required to be disclosed in the certification against forum shopping, the certification may be signed by the authorized lawyer *(National Steel Corp. vs. CA, 388 SCRA 85)*.

Effect of the signature of counsel in a pleading

(1) A certification signed by a counsel is a defective certification and is a valid cause for dismissal *(Far Eastern Shipping Company vs. CA, 297 SCRA 30)*. This is the general and prevailing rule. A certification by counsel and not by the principal party himself is no certification at all. The reason for requiring that it must be signed by the principal party himself is that he has actual knowledge, or knows better than anyone else, whether he has initiated similar action/s in other courts, agencies or tribunals. Their lawyer's explanation that they were out of town at the time their petition was filed with the CA is bereft of basis. That explanation is an afterthought as it was not alleged by counsel in her certification against forum shopping *(Go vs. Rico, GR 140682, 04/25/2006)*.

Allegations in a pleading

(1) Every pleading shall contain in a mathematical and logical form, a plain, concise and direct statement of the ultimate facts on which the party relies for his claim and defense, as the case may be, containing the statement of mere evidenciary facts *(Sec. 1, Rule 8)*.

Manner of making allegations *(Rule 8)*

(1) **2004 Bar**: In his complaint for foreclosure of mortgage to which was duly attached a copy of the mortgage deed, plaintiff PP alleged *inter* alia as follows: (1) that the defendant DD duly executed the mortgage deed, copy of which is marked Annex "A" of the complaint and made an integral part thereof; and (2) that to prosecute his complaint, plaintiff contracted a lawyer, CC, for a fee of P50,000. In his answer, defendant alleged, inter alia, that he had no knowledge of the mortgage deed and he also denied any liability for plaintiff's contracting with a lawyer for a fee.

Does defendant's answer as to plaintiff's allegation no. 1 as well as no. 2 sufficiently raise an issue of fact? Reason briefly. (5%)

Answer: As to plaintiff's allegation no. 1, defendant does not sufficiently raise an issue of fact, because he cannot allege lack of knowledge of the mortgage deed since he should have personal knowledge as to whether he signed it or not and because he did not deny under oath the genuineness and due execution of the mortgage deed, which is an actionable document. As to plaintiff's allegation no. 2, defendant did not properly deny liability as to plaintiff's contracting with a lawyer for a fee. He did not even deny for a lack of knowledge *(Sec. 10, Rule 8)*.

Condition precedent

(1) Conditions precedent are matters which must be complied with before a cause of action arises. When a claim is subject to a condition precedent, the compliance of the same must be alleged in the pleading.

(2) Failure to comply with a condition precedent is an independent ground for a motion to dismiss: that a condition precedent for filing the claim has not been complied *(Sec. 1[j], Rule 16)*.

Fraud, mistake, malice, intent, knowledge and other condition of the mind, judgments, official documents or acts

(1) When making averments of fraud or mistake, the circumstances constituting such fraud or mistake must be stated with particularity *(Sec. 5, Rule 8)*. It is not enough therefore, for the complaint to allege that he was defrauded by the defendant. Under this provision, the complaint must state with particularity the fraudulent acts of the adverse party. These particulars would necessarily include the time, place and specific acts of fraud committed against him.

(2) Malice, intent, knowledge or other conditions of the mind of a person may be averred generally *(Sec. 5, Rule 8)*. Unlike in fraud or mistake, they need not be stated with particularity. The rule is borne out of human experience. It is difficult to state the particulars constituting these matters. Hence, a general averment is sufficient.

Pleading an actionable document

(1) An actionable document is a document relied upon by either the plaintiff or the defendant. A substantial number of complaints reaching the courts show that the plaintiff's cause of action of the defendant's defense is based upon a written instrument or a document.

(2) Whenever an actionable document is the basis of a pleading, the rule specifically directs the pleader to set forth in the pleading the substance of the instrument or the document, (a) and to attach the original or the copy of the document to the pleading as an exhibit and to be part of the pleading; or (b) with like effect, to set forth in the pleading said copy of the instrument or document *(Sec. 7, Rule 8)*. This manner of pleading a document applies only to one which is the basis of action or a defense. Hence, if the document does not have the character of an actionable document, as when it is merely evidentiary, it need not be pleaded strictly in the manner prescribed by Sec. 7, Rule 8.

(3) Failure to answer an actionable document amounts to an admission of the authenticity of its due execution.

Specific denials

(1) There are three modes of specific denial which are contemplated by the Rules, namely:

(a) Absolute denial – by specifying each material allegation of the fact in the complaint, the truth of which the defendant does not admit, and whenever practicable, setting forth the substance of the matter which he will rely upon to support his denial;

(b) Partial denial – by specifying so much of the averment in the complaint as is true and material and denying only the remainder;

(c) Denial by disavowal of knowledge – by stating that the defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment in the complaint, which has the effect of denial *(Gaza vs Lim, GR No. 126863, 01/16/2003)*.

(2) The purpose of requiring the defendant to make a specific denial is to make him disclose the matters alleged in the complaint which he succinctly intends to disprove at the trial, together with the matter which he relied upon to support the denial. The parties are compelled to lay their cards on the table *(Aquintey vs. Tibong, GR No. 166704, 12/20/2006)*.

Effect of failure to make specific denials

(1) If there are material averments in the complaint other than those as to the amount of unliquidated damages, these shall be deemed admitted when not specifically denied *(Sec. 11, Rule 8)*.

(2) Material allegations, except unliquidated damages, not specifically denied are deemed admitted. If the allegations are deemed admitted, there is no more triable issue between the parties and if the admissions appear in the answer of the defendant, the plaintiff may file a motion for judgment on the pleadings under Rule 34.

(3) An admission in a pleading cannot be controverted by the party making such admission because the admission is conclusive as to him. All proofs submitted by him contrary thereto or inconsistent therewith should be ignored whether an objection is interposed by a party or not *(Republic vs. Sarabia, GR 157847, 08/25/2005)*. Said admission is a judicial admission, having been made by a party in the course of the proceedings in the same case, and does not require proof. A party who desires to contradict his own judicial admission may do so only by either of two ways: (a) by showing that the admission was made through palpable mistake; or (b) that no such admission was made *(Sec. 4, Rule 129)*.

(4) The following are not deemed admitted by the failure to make a specific denial:
   (a) The amount of unliquidated damages;
   (b) Conclusions in a pleading which do not have to be denied at all because only ultimate facts need be alleged in a pleading;
   (c) Non-material allegations, because only material allegations need be denied.

When a specific denial requires an oath

(1) Specific denials which must be under oath to be sufficient are:
   (a) A denial of an actionable document *(Sec. 8, Rule 8)*;
   (b) A denial of allegations of usury in a complaint to recover usurious interest *(Sec. 11, Rule 8)*.

(2) Exceptions:
   (a) Adverse party does not appear to be a party to the instrument;
   (b) Compliance with order of inspection of original instrument is required *(Rule 8, Section 8)*.

Effect of failure to plead *(Rule 9)*

Failure to plead defenses and objections

(1) Defenses or objections not pleaded either in a motion to dismiss or in the answer are deemed waived. Except:
   (a) When it appears from the pleading or the pieces of evidence on record that the court has no jurisdiction over the subject matter;
   (b) That there is another action pending between the same parties for the same cause;
   (c) That the action is barred by the statute of limitations *(same as Sec. 8, Rule 117)*;
   (d) *Res judicata*.

   In all these cases, the court shall dismiss the claim *(Sec. 1, Rule 9)*.

(2) **2015 Bar:** A law was passed declaring Mt. Karbungko as a protected area since it was a major watershed. The protected area covered a portion in Municipality A of the Province I and a portion located in the City of Z of Province II. Maingat is the leader of Samahan ng Tagapag-ingat ng Karbungko (STK), a people's organization. He learned that a portion of the mountain located in the City of Z of Province II was extremely damaged when it was bulldozed and leveled to the ground, and several trees and plants were cut down and burned by workers of World Pleasure Resorts, Inc. (WPRI) for the construction of a hotel and golf course. Upon inquiry with the project site engineer if they had a permit for the project, Maingat was shown a copy of the Environmental Compliance Certificate (ECC) issued by the DENR-EMB, Regional Director (RD-DENR-EMB). Immediatlely, Maingat and STK filed a petition for the issuance of a writ of continuing mandamus against RD-DENR-EMB and WPRI with the RTC of Province I, a designated environmental court, as the RD-DENR-EMB negligently issued the ECC to WPRI.

On scrutiny of the petition, the court determined that the area where the alleged actionable neglect or omission subject of the petition took place in the City of Z of Province II, and therefore cognizable by the RTC of Province II. Thus, the court dismissed outright the petition for lack of jurisdiction.

(A) Was the court correct in motu proprio dismissing the petition? (3%)

Assuming that the court did not dismiss the petition, the RD-DENR-EMB in his Comment moved to dismiss the petition on the ground that petitioners failed to appeal the issuance of the ECC and to exhaust administrative remedies provided in the DENR Rules and Regulations.

(B) Should the court dismiss the petition? (3%)

Answer:

(A) No. The court was not correct in *motu propio* dismissing the petition. While it appears that the alleged actionable neglect or omission took place in the City of Z of Province II and, therefore, cognizable by the RTC of Province II; nonetheless, the venue is not jurisdictional, and it can be waived in a special civil action for continuing mandamus *(Dolot vs. paje, GR No. 199199, 08/27/2013)*.

Besides, under Section 1, Rule 9 of the Rules of Court, defenses and objections not pleaded in the answer or in the motion to dismiss are deemed waived. Hence, the court cannot *motu propio* dismiss the case on the ground of improper venue.

(B) Yes. The court should dismiss the petition because the proper procedure to question a defect in an ECC is to follow the DENR administive appeal process in accordance with tge doctrine of exhaustion of administrative remedies *(Dolor vs. Paje, GR No. 199199, 08/27/2013; Paje vs. Casiño, GR No. 207257, 02/03/2015)*.

Failure to plead a compulsory counterclaim and cross-claim

(1) A compulsory counterclaim or a cross-claim not set up shall be barred *(Sec. 2, Rule 9)*.

Default

(1) Default is a procedural concept that occurs when the defending party fails to file his answer within the reglementary period. It does not occur from the failure of the defendant to attend either the pre-trial or the trial.

(2) A judgment by default is based on an order of default.

(3) A default judgment is frowned upon because of the policy of the law to hear every litigated case on the merits. But the default judgment will not be vacated unless the defendant

satisfactorily explains the failure to file the answer, and show that it has a meritorious defense.

Under Section 3, Rule 9 of the *Rules of Court,* the three requirements to be complied with by the claiming party before the defending party can be declared in default are: (1) that the claiming party must file a motion praying that the court declare the defending party in default; (2) the defending party must be notified of the motion to declare it in default; (3) the claiming party must prove that the defending party failed to answer the complaint within the period provided by the rule. It is plain, therefore, that the default of the defending party cannot be declared *motu proprio.*

Although the respondent filed her motion to declare the petitioner in default with notice to the petitioner only on August 19, 1998, all the requisites for properly declaring the latter in default then existed. On October 15, 1998, therefore, the RTC appropriately directed the answer filed to be stricken from the records and declared the petitioner in default. It also received *ex parte* the respondent's evidence, pursuant to the relevant rule *(Momarco Import Company, Inc. vs. Villamena, GR No. 192477, 07/27/2016).*

(4) **1999 Bar**: When may a party be declared in default? (2%)

Answer: A party may be declared in default when he fails to answer within the time allowed therefor, and upon motion of the claiming party with notice to the defending party, and proof of such failure *(Sec. 3, Rule 9).*

(5) **1999 Bar**: What is the effect of an Order of Default? (2%)

Answer: The effect of an Order of Default is that the court may proceed to render judgment granting the claimant such relief as his pleading may warrant, unless the court in its discretion requires the claimant to submit evidence. The party in default cannot take part in the trial but shall be entitled to notice of subsequent proceedings *(Sec. 3[a], Rule 9).*

(6) **1999 Bar**: For failure to seasonably file his Answer despite due notice, A was declared in default in a case instituted against him by B. The following day, A's mistress who is working as a clerk in the sala of the Judge before whom his case is pending, informed him of the declaration of default. On the same day, A presented a motion under oath to set aside the order of default on the ground that his failure to answer was due to fraud and he has a meritorious defense. Thereafter he went abroad. After his return a week later, with the case still undecided, he received the order declaring him in default. The motion to set aside the default was opposed by B on the ground that it was filed before A received notice of his having been declared in default, citing the rule that the motion to set aside may be made at any time after notice but before judgment. Resolve the Motion. (2%)

Answer: Assuming that the motion to set aside complies with the other requirements of the rule, it should be granted. Although such a motion may be made after notice but before judgment *(Sec. 3[b], Rule 9),* with more reason that it may be filed after discovery even before receipt of the order of default.

(7) **2000 Bar**: For failure of KJ to file an answer within the reglementary period, the court upon motion of LM declared KJ in default. In due time, KJ filed an unverified motion to lift the order of default without an affidavit of merit attached to it. KJ however attached to the motion his answer under oath, stating in said answer his reason for his failure to file an answer on time as well as his defenses. Will the motion to lift the order of default prosper? Explain. (3%)

Answer: Yes. There is substantial compliance with the rule. Although the motion is unverified, the answer attached to the motion to lift the order of default and affidavit of merit should contain, which are reasons for movant's failure to answer as well as his defenses *(Sec. 3[b], Rule 9; Citibank vs. Court of Appeals, 304 SCRA 679 [1999]; Nasser vs. Court of Appeals, 191 SCRA 783 [1992]).*

(8) **2000 Bar**: Defendant was declared in default by the RTC. Plaintiff was allowed to present evidence in support of his complaint. Photocopies of official receipts and original copies of affidavits were presented in court, identified by the plaintiff on the witness stand and marked as exhibits. Said documents were offered by the plaintiff and admitted in evidence by the court on the basis of which the RTC rendered a judgment in favor of the plaintiff pursuant to the relief prayed for. Upon receipt of the judgment, defendant appeals to the CA claiming that the judgment is not valid because the RTC based its judgment on mere photocopies and affidavits of persons not presented in court. Is the claim of defendant valid?

Answer: The claim of the defendant is not valid because under the 1997 Rules, reception of evidence is not required. After the defendant is declared in default, the court shall proceed to render the judgment granting the claimant such relief as his pleading may warrant, unless the court in its discretion requires the claimant to submit the evidence, which may be delegated to the Clerk of Court *(Sec. 3, Rule 9).*

(9) **2001 Bar**: Mario was declared in default but before judgment was rendered, he decided to file a motion to set aside the order of default. What should Mario state in his motion in order to justify the setting aside of order of default? (3%)

Answer: In order to justify the setting aside of the order of default, Mario should state in his motion that his failure to answer was due to fraud, accident, mistake or excusable negligence and that he has a meritorious defense *(Sec. 3[b], Rule 9).*

(10) **2002 Bar**: The defendant was declared in default in the RTC for his failure to file an answer to a complaint for a sum of money. On the basis of the plaintiff's ex parte presentation of evidence, judgment by default was rendered against the defendant. The default judgment was served on the defendant on October 1, 2001. On October 10, 2001, he filed a verified motion to lift the order of default and to set aside the judgment. In his motion, the defendant alleged that, immediately upon receipt of the summons, he saw the plaintiff and confronted him with his receipt evidencing his payment and that the plaintiff assured him that he would instruct his lawyer to withdraw the complaint. The trial court denied the defendant's motion because it was accompanied by an affidavit of merit. The defendant filed a special civil action for certiorari under Rule 65 challenging the denial order.

Did the trial court abuse its discretion or act without or in excess of its jurisdiction in denying the defendant's motion to lift the order of default and to set aside the default judgment? Why? (3%)

Answer: Yes, the trial court gravely abused its discretion or acted without or in excess of its jurisdiction in denying the defendant's motion because it was not accompanied by a separate affidavit of merit. In his verified motion to set aside the judgment, the defendant alleged that immediately upon receipt of the summons, he saw the plaintiff and confronted him with his receipt showing payment and that the plaintiff assured him that he would instruct his lawyer to withdraw the complaint. Since the good defense of the defendant was already incorporated in the verified motion, there was no need for a separate affidavit of merit *(Capuz vs. Court of Appeals, 233 SCRA 471 [1994]; Mago vs. Court of Appeals, 303 SCRA 600 [1999]).*

When a declaration of default is proper

(1) If the defending party fails to answer within the time allowed therefor, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default *(Sec. 3, Rule 9).*

Effect of an order of default

(1) A party in default shall be entitled to notice of subsequent proceedings but not to take part in the trial *(Sec. 3[a], Rule 9).*

Relief from an order of default

(1) Remedy after notice of order and before judgment:

(a) Motion to set aside order of default, showing that (a) the failure to answer was due to fraud, accident, mistake, or excusable negligence, and (b) the defendant has a meritorious defense–there must be an affidavit of merit *(Sec. 3[b], Rule 9).*

(2) Remedy after judgment but before finality:

(b) Motion for new trial under Rule 37; or

(c) Appeal from the judgment as being contrary to the evidence or the law;

(3) Remedy after judgment becomes final and executor:

(d) Petition for relief from judgment under Rule 38;

(e) Action for nullity of judgment under Rule 47.

(4) If the order of default is valid, *Certiorari* is not available. If the default order was improvidently issued, that is, the defendant was declared in default, without a motion, or without having served with summons before the expiration of the reglementary period to answer, *Certiorari* is available as a remedy *(Matute vs. CS, 26 SCRA 798; Akut vs. CA, 116 SCRA 216).*

(5) The petitioner's logical remedy was to have moved for the lifting of the declaration of its default but despite notice it did not do the same before the RTC rendered the default judgment on August 23, 1999. Its motion for that purpose should have been under the oath of one who had knowledge of the facts, and should show that it had a meritorious defense, and that its failure to file the answer had been due to fraud, accident, mistake or excusable negligence. Its urgent purpose to move in the RTC is to avert the rendition of the default judgment. Instead, it was content to insist in its comment/opposition vis-a-vis the motion to declare it in default that: (1) it had already filed its answer; (2) the order of default was generally frowned upon by the courts; (3) technicalities should not be resorted to; and (4) it had a meritorious defense. It is notable that it tendered no substantiation of what was its meritorious defense, and did not specify the circumstances of fraud, accident, mistake, or excusable negligence that prevented the filing of the answer before the order of default issued - the crucial elements in asking the court to consider vacating its own order.

The sincerity of the petitioner's actions cannot be presumed. Hence, it behooves it to allege the suitable explanation for the failure or the delay to file the answer through a motion to lift the order of default before the default judgment is rendered. This duty to explain is called for by the philosophy underlying the doctrine of default in civil procedure, which Justice Narvasa eruditely discoursed on in *Gochangco v. CFI Negros Occidental, (157 SCRA 40, 01/15/1988)* to wit:

> Xxx On the other hand, if he did have good defenses, it would be unnatural for him not to set them up properly and timely, and if he did not in fact set them up, it must be presumed that some insuperable cause prevented him from doing so: fraud, accident, mistake, excusable negligence. In this event, the law will grant him relief; and the law is in truth quite liberal in the reliefs made available to him: a motion to set aside the order of default prior to judgment, a motion for new trial to set aside the default judgment; an appeal from the judgment, by default even if no motion to set aside the

order of default or motion for new trial had been previously presented; a special civil action for *certiorari* impugning the court's jurisdiction *(Mamorco Import Company, Inc. vs. Villamena, GR No. 192477, 07/27/2016).*

Effect of a partial default

(1) When a pleading asserting a claim states a common cause of action against several defending parties, some of whom answer and the others fail to do so, the court shall try the case against all upon the answers thus filed and render judgment upon the evidence presented *(Sec. 3[c], Rule 9).*

Extent of relief

(1) A judgment rendered against a party in default may not exceed the amount or be different from that prayed for nor include unliquidated damages which are not awarded *(Sec. 3[c], Rule 9)*. In fact, there can be no automatic grant of relief as the court has to weigh the evidence. Furthermore, there can be no award of unliquidated damages *(Gajudo vs. Traders Royal Bank, GR 151098, 03/31/2006).*

Actions where default are not allowed

(1) No judgment by default is allowed in actions for"
   (a) Annulment of marriage;
   (b) Declaration of nullity of marriage; and
   (c) Legal separation

(2) In the action above, the court shall order the prosecuting attorney to investigate whether or not a collusion between the parties exists, and if there is no collusion, to intervene for the State in order to see to it that the evidence submitted is not fabricated *(Sec. 3[e], Rule 9).*

Filing and Service of pleadings *(Rule 13)*

(1) Rule 13, Section 14 of the Rules of Court provides that a notice of *lis pendens* may be cancelled only upon order of the court, after proper showing that the notice is to molest the adverse party, or that it is not necessary to protect the right of the party who caused it to be recorded: xxx *The notice of lis pendens hereinabove mentioned may be cancelled only upon order of the court, after proper showing that the notice is for the purpose of molesting the adverse party, or that it is not necessary to protect the rights- of the party who caused it to be recorded.* (Emphasis supplied)

Although the Sandiganbayan found that the notice is not for the purpose of molesting the adverse party, it cancelled the notice of *lis pendens* as it was not necessary to protect the right of petitioner *(Republic vs. Sandiganbayan, Fourth Division, GR No. 195295, 10/05/2016).*

Payment of docket fees

(1) Upon the filing of the pleading or other application which initiates an action or proceeding, the fees prescribed therefor shall be paid in full *(Section 1, Rule 141).*

(2) The Republic of the Philippines, its agencies and instrumentalities are exempt from paying the legal fees provided in the rule. Local governments and government-owned or controlled corportions with or without independent charters are not exempt from paying such fees.

However, all court actions, criminal or civil, instituted at the instance of the provincial, city or municipal treasurer or assessor under Sec. 280 of the Local Government Code of 1991 shall be exempt from the payment of court abd sheriff's fee *(Sec. 22, Rule 141).*

(3) On acquisition of jurisdiction. It is not simply the filing of the complaint or appropriate initiatory pleading but the payments of the prescribed docket fee, that vests a trial court with jurisdiction over the subject matter or nature of the action *(Proton Pilipinas Corp. vs. Banque National de Paris, 460 SCRA 260).* In connection with the payment of docket fees, the court requires that all complaints, petitions, answers and similar pleadings must specify the amount of damages being prayed for both in the body of the pleading and in prayer therein and said damages shall be considered in the assessment of the filing fees; otherwise such pleading shall not be accepted for filing or shall be expunged from the record. Any defect in the original pleading resulting in underpayment of the docket fee cannot be cured by amendment, such as by the reduction of the claim as, for all legal purposes, there is no original complaint over which the court has acquired jurisdiction *(Manchester Development Corp. vs. CA, GR 75919, 05/07/1987).*

(4) The rule on payment of docket fee has, in some instances, been subject to the rule on liberal interpretation. Thus, in a case, it was held that while the payment of the required docket fee is a jurisdictional requirement, even its nonpayment at the time of filing does not automatically cause the dismissal of the case, as long as the fee is paid within the applicable prescriptive or reglementary period *(PAGCOR vs. Lopez, 474 SCRA 76; Sun Insurance Office vs. Asuncion, 170 SCRA 272).* Also, if the amount of docket fees is insufficient considering the amount of the claim, the party filing the case will be required to pay the deficiency, but jurisdiction is not automatically lost *(Rivera vs. Del Rosario, GR 144934, 01/15/2004).*

(5) On appeal. The Rules now requires that appellate docket and other lawful fees must be paid within the same period for taking an appeal. This is clear from the opening sentence of Sec. 4, Rule 41 of the same rules that, "Within the period for taking an appeal, the appellant shall pay to the clerk of court which rendered the judgment or final order appealed from, the full amount of the appellate court docket and other lawful fees."

(6) The Supreme Court has consistently held that payment of docket fee within the prescribed period is mandatory for the perfection of an appeal. Without such payment, the appellate court does not acquire jurisdiction over the subject matter of the action and the decision sought to be appealed from becomes final and executor *(Regalado vs. Go, GR 167988, 02/06/2007).* Hence, nonpayment is a valid ground for the dismissal of an appeal *(MA Santander Construction vs. Villanueva, GR 136477, 11/10/2004).* However, delay in the payment of the docket fees confers upon the court a discretionary, not a mandatory power to dismiss an appeal *(Villamor vs. CA, GR 136858, 01//21/2004).*

(7) The Court may only grant liberal application of technical rules to the party seeking the same only on meritorious grounds and upon proof. The full payment of docket fees is mandatory to perfect an appeal and the rules on payment may only be relaxed after the party has proven that a valid ground exists to warrant the liberal application of the rules; otherwise, the appeal shall be dismissed despite payment of a substantial amount *(Gipa, et al. vs. Southern Luzon Institute, GR No. 177425, 06/18/2014).*

(8) The rule in this jurisdiction is that when an action is filed in court, the complaint must be accompanied by the payment of the requisite docket and filing fees. Section 1, Rule 141 of the *Rules of Court* expressly requires that upon the filing of the pleading or other application that initiates an action or proceeding, the prescribed fees for such action or

proceeding shall be paid in full. If the complaint is filed but the prescribed fees are not paid at the time of filing, the courts acquire jurisdiction only upon the full payment of such fees wihin a reasonable time as the courts may grant, barring prescription.

This guarantee of free access to the courts is extended to litigants who may be indigent by exempting them from the obligation to pay docket and filing fees. But not everyone who claims to be indigent may demand free access to the courts. Xxx The Court has declared that the exemption may be extended only to natural party litigants; the exemption may not be extended to juridical persons even if they worked for indigent and underprivileged people because the Constitution has explicitly premised the free access clause on a person's poverty,' a condition that only a natural person can suffer. To prevent the abuse of the exemption, therefore, the Court has incorporated Section 21, Rule 3 and Section 19, Rule 141 in the *Rules of Court* in order to set the guidelines implementing as well as regulating the exercise of the right of free access to the courts. The procedure governing an application for authority to litigate as an indigent party as provided under Section 21, Rule 3 and Section 19, Rule 141 of the *Rules of Court* have been synthesized in *Algura vs. The Local Government Unit of the City of Naga (Maghuyop vs. Pangcatan, GR No. 194412, 11/16/2016).*

Filing versus service of pleadings

(1) Filing is the act of presenting the pleading or other paper to the clerk of court;

(2) Service is the act of providing a party with a copy of the pleading or paper concerned *(Sec. 2, Rule 13).*

Periods of filing of pleadings

(1) The date of the mailing of motions, pleadings, or any other papers or payments or deposits, as shown by the post office stamp on the envelope or the registry receipt, shall be considered as the date of their filing, payment, or deposit in court. The envelope shall be attached to the record of the case *(Sec. 3, Rule 13)*

(2) Answer to complaint: 15 days from service. Answer of defendant foreign juridical entity: 30 days from service.

Manner of filing

(1) By personal service or by registered mail. The filing of pleadings, appearances, motions, notices, orders, judgments and all other papers shall be made by presenting the original copies thereof, plainly indicated as such, personally to the clerk of court or by sending them by registered mail. In the first case, the clerk of court shall endorse on the pleading the date and hour of filing. In the second case, the date of the mailing of motions, pleadings, or any other papers or payments or deposits, as shown by the post office stamp on the envelope or the registry receipt, shall be considered as the date of their filing, payment, or deposit in court. The envelope shall be attached to the record of the case *(Sec. 3, Rule 13).*

(2) Rule 13, Section 2 of the Rules of Court states in part that “if any party has appeared by counsel, service upon him shall be made upon his counsel or one of them, unless service upon the party himself is ordered by the court." In the case at bar, Atty. Pilapil was furnished a copy of the motion for execution which states that the trial court rendered a decision, yet petitioner's counsel filed no opposition. At that time, he did not file any

motion asserting that he was not furnished a copy of the Decision. It was only when his client informed him of the Writ of Execution did petitioner's counsel file an Urgent Motion to Vacate the Writ of Execution on the ground that he did not receive a copy of the RTC decision. The receipt of Atty. Pilapil of a copy of the motion for execution amounts to effective official notice of the Regional Trial Court Decision albeit he was not furnished a copy of the Decision *(Bracero v. Arcelo and Heirs of Monisit, GR No. 212496, 03/18/2015).*

Modes of Service

(1) There are two modes of service of pleadings, judgments, motions, notices, orders, judgments and other papers: (a) personally, or (b) by mail. However, if personal service and serviced by mail cannot be made, service shall be done by 'substituted service'.

(2) Personal service is the preferred mode of service. If another mode of service is used other than personal service, the service must be accompanied by a written explanation why the service of filing was not done personally. Exempt from this explanation are papers emanating from the court. A violation of this requirement may be a cause for the paper to be considered as not having been filed *(Sec. 11, Rule 13).*

(3) Personal service is made by: (a) delivering a copy of the papers served personally to the party or his counsel, or (b) by leaving the papers in his office with his clerk or a person having charge thereof. If no person is found in the office, or his office is not known or he has no office, then by leaving a copy of the papers at the party's or counsel's residence, if known, with a person of sufficient age and discretion residing therein between eight in the morning and six in the evening *(Sec. 6, Rule 13).*

(4) Personal service of summons has nothing to do with the location where summons is served. A defendant's address is inconsequential. Rule 14, Section 6 of the 1997 Rules of Civil Procedure is clear in what it requires: personally handing the summons to the defendant. What is determinative of the validity of personal service is, therefore, the person of the defendant, not the locus of service *(Sps. Manuel vs. Ong, GR No. 205249, 10/15/2014).*

Service by Mail

(1) The preferred service by mail is by registered mail. Service by ordinary mail may be done only if no registry service is available in the locality of either the sender or the addressee *(Sec. 7, Rule 13).* It shall be done by depositing the copy in the post office, in a sealed envelope, plainly addressed to the party or his counsel at his office, if known, or otherwise at his residence, if known, with postage fully prepaid, and with instructions to the postmaster to return the mail to the sender after ten (10) days if not delivered.

(2) If the service is done by registered mail, proof of service shall consist of the affidavit of the person affecting the mailing and the registry receipt, both of which must be appended to the paper being served *(Lisondra vs. Megacraft International Corporation, GR No. 204275, 12/09/2015).*

(3) In some decided cases, the Court considered filing by private courier as equivalent to filing by ordinary mail. 16 The Court opines that this pronouncement equally applies to service of pleadings and motions. Hence, to prove service by a private courier or ordinary mail, a party must attach an affidavit of the person who mailed the motion or pleading.

Further, such affidavit must show compliance with Rule 13, Section 7 of the Rules of Court, which provides:

> Section 7. *Service by mail.* - Service by registered mail shall be made by depositing the copy in the post office in a sealed envelope, plainly addressed to the party or his counsel at his office, if known, otherwise at his residence, if known, with postage fully prepaid, and with instructions to the postmaster to return the mail to the sender after ten (10) days if undelivered. **If no registry service is available in the locality of either the senders or the addressee, service may be done by ordinary mail**. [emphasis supplied]

This requirement is logical as service by ordinary mail is allowed only in instances where no registry service exists either in the locality of the sender or the addressee. This is the only credible justification why resort to service by ordinary mail or private courier may be allowed.

In this case, PSB admits that it served the copy of the motion for reconsideration to Papa's counsel via private courier. However, said motion was not accompanied by an affidavit of the person who sent it through the said private messengerial service. Moreover, PSB's explanation why it resorted to private courier failed to show its compliance with Rule 13, Section 7. PSB's explanation merely states:

> Greetings:
>
> Kindly set the instant motion on 20 November 2009 at 8:30 o'clock in the morning or soon thereafter as matter and counsel may be heard. Copy of this pleading was served upon defendant's counsel by private registered mail for lack of material time and personnel to effect personal delivery.

Very clearly, PSB failed to comply with the requirements under Rule 13, Section 7 for an effective service by ordinary mail. While PSB explained that personal service was not effected due to lack of time and personnel constraints, it did not offer an acceptable reason why it resorted to "private registered mail" instead of by registered mail. In particular, PSB failed to indicate that no registry service was available in San Mateo, Rizal, where the office of Papa's counsel is situated, or in Makati City, where the office of PSB's counsel is located. Consequently, PSB failed to comply with the required proof of service by ordinary mail. Thus, the RTC is correct when it denied PSB's motion for reconsideration, which, for all intents and purposes, can be effectively considered as not filed *(Philippine Savings Bank vs. Papa, GR No. 200469, 01/15/2018)*.

Substituted Service

(1) This mode is availed of only when there is failure to effect service personally or by mail. This failure occurs when the office and residence of the party or counsel is unknown. Substituted service is effected by delivering the copy to the clerk of court, with proof of failure of both personal service and service by mail *(Sec. 8, Rule 13)*. Substituted service is complete at the time of delivery of the copy to the clerk of court.

(2) In actions in personam such as ejectment, the court acquires jurisdiction over the person of the defendant through personal or substituted service of summons. Before substituted service of summons is resorted to, the parties must: (a) indicate the impossibility of personal service of summons within a reasonable time; (b) specify the efforts exerted to locate the defendant; and (c) state that the summons was served upon a person of sufficient age and discretion who is residing in the address, or who is in charge of the office or regular place of business of the defendant. The readily acceptable conclusion in this case is that the process server at once resorted to substituted service of summons without exerting enough effort to personally serve summons on respondents. In the case

at bar, the Returns contained mere general statements that efforts at personal service were made. Not having specified the details of the attendant circumstances or of the efforts exerted to serve the summons, there was a failure to comply strictly with all the requirements of substituted service, and as a result the service of summons is rendered ineffective *(Prudential Bank [now BPI] vs. Magdamit, Jr., GR No. 183795, 11/12/2014).*

(3) Regardless of the type of action – whether it is *in personam, in rem* or *quasi in rem* – the preferred mode of service of summons is personal service. To avail themselves of substituted service, courts must rely on a detailed enumeration of the sheriff's actions and a showing that the defendant cannot be served despite diligent and reasonable efforts. The sheriff's return, which contains these details, is entitled to a presumption of regularity, and on this basis, the court may allow substituted service. Should the sheriff's return be wanting of these details, substituted service will be irregular if no other evidence of the efforts to serve summons was presented. Failure to serve summons will mean that the court failed to acquire jurisdiction over the person of the defendant. However, the filing of a motion for new trial or reconsideration is tantamount to voluntary appearance *(De Pedro vs. Romasan Development Corporation, GR No. 194751, 11/26/2014).*

(4) Substituted service of summons requires that the process server should first make several attempts on personal service. "Several attempts" means at least three (3) tries, preferably on at least two different dates. In addition, the sheriff must cite why such efforts were unsuccessful. The date and time of the attempts on personal service, the inquiries made to locate the defendant, the name/s of the occupants of the alleged residence or house of defendant and all other acts done, though futile, to serve the summons on defendant must be specified in the Return to justify substituted service. These matters must be clearly and specifically described in the Return of Summons. Thus, where the server's return utterly lacks sufficient detail of the attempts undertaken by the process server to personally serve the summons on Ong, a defendant in a case for nullity of marriage; that the return did not describe in detail the person who received the summons, on behalf of Ong, and that her husband, the respondent, failed to indicate any portion of the records which would describe the specific attempts to personally serve the summons, then the substituted service was invalid and the court did not acquire jurisdiction over the person of Ong. Co cannot rely on the presumption of regularity on the part of the process server when, like in the instant case, it is patent that the sheriff's or server's return is defective *(Yuk Ling Ong vs. Co, GR No. 206653, 02/25/2015).*

Service of judgments, final orders or resolutions

(1) Final orders or judgments shall be served either personally or by registered mail. When a party summoned by publication has failed to appear in the action, final orders or judgments against him shall be served upon him also by publication at the expense of the prevailing party *(Sec. 9).*

Priorities in modes of service and filing

(1) Personal service is the preferred mode of service.

(2) The preferred service by mail is by registered mail.

(3) The following papers are required to be filed in court and served upon the parties affected:
   (a) Judgments
   (b) Resolutions
   (c) Orders
   (d) Pleadings subsequent to the complaint

(e) Written motions
(f) Notices
(g) Appearances
(h) Demands
(i) Offers of judgment
(j) Similar papers *(Sec. 4, Rule 13).*

When service is deemed complete

(1) Personal service is deemed complete upon the actual delivery following the above procedure *(Sec. 10, Rule 13).*

(2) Service by ordinary mail is deemed complete upon the expiration of ten (10) days after mailing, unless the court otherwise provides. On the other hand, service by registered mail is complete upon actual receipt by the addressee, or after five (5) days from the date he received the first notice of the postmaster, whichever is earlier *(Sec. 8, Rule 13).*

(3) Substituted service is complete at the time of delivery of the copy to the clerk of court.

Proof of filing and service

(1) The filing of a pleading or paper shall be proved by its existence in the record of the case, if it is not in the record, but is claimed to have been filed personally, the filing shall be proved by the written or stamped acknowledgment of its filing by the clerk of court in a copy of the same *(Sec. 12, Rule 13).*

(2) If the filing or paper is filed by registered mail, proof of filing is by the registry receipt and by the affidavit of the person who did the mailing, containing a full statement of the date and place of depositing the mail in the post office in a sealed envelope addressed to the court, with postage fully prepaid, and with instructions to the postmaster to return the mail to the sender after ten (10) days if not delivered *(Sec. 12, Rule 13).*

(3) Proof of personal service shall consist of the written admission of the party served. It may also be proven by the official return of the server, or the affidavit of the party serving, containing full information of the date, place and manner of service *(Sec. 13, Rule 13).* If the service is by ordinary mail, proof thereof shall consist of the affidavit of the person mailing of the facts showing compliance with Sec. 7, Rule 13. If the service is by registered mail, the proof shall consist of such affidavit and the registry receipt issued by the mailing office. The registry return card is to be filed immediately upon its receipt by the sender, or in lieu thereof the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee *(Sec. 13, Rule 13).*

(1) Our rules of procedure allow a party in a civil action to amend his pleading as a matter of right, so long as the pleading is amended only once and before a responsive pleading is served (or, if the pleading sought to be amended is a reply, within ten days after it is served). Otherwise, a party can only amend his pleading upon prior leave of court.

As a matter of judicial policy, courts are impelled to treat motions for leave to file amended pleadings with liberality. This is especially true when a motion for leave is filed during the early stages of proceedings or, at least, before trial. Jurisprudence states that *bona fide* amendments to pleadings should be allowed in the interest of justice so that every case may, so far as possible, be determined on its real facts and the multiplicity of suits thus be prevented. Hence, as long as it does not appear that the motion for leave was made with bad faith or with intent to delay the proceedings, courts are justified to grant leave and allow the filing of an amended pleading. Once a court grants leave to file an amended pleading, the same becomes binding and will not be disturbed on appeal unless it appears that the court had abused its discretion *(Sps. Tatlonghari vs. Bangko Kabayan-Ibaan Rural Bank, Inc., GR No. 219783, 08/03/2016)*.

(2) The present issue could have been averted had the Sandiganbayan granted petitioner's Motion for Leave to Admit Fourth Amended Complaint. Unfortunately, petitioner inexplicably neither filed a motion for reconsideration to seek reversal of the Sandiganbayan's denial nor raised the issue in a petition for certiorari. Nonetheless, an examination of the denial of the Motion to admit the amended Complaint is necessary for a full and complete resolution of the issues raised in this Petition.

The Sandiganbayan's denial was primarily based on a purported failure to comply with a requirement under Rule 10, Section 7 of the Rules of Court, that amendments in a pleading be indicated by appropriate marks.

The procedural rule, which requires that amendments to a pleading be indicated with appropriate marks, has for its purpose the convenience of the Court and the parties. It allows the reader to be able to immediately see the modifications. However, failure to use the appropriate markings for the deletions and intercalations will not affect any substantive right. Certainly, its absence cannot cause the denial of any substantive right.

The Sandiganbayan's view that a motion for leave to amend should be denied on the basis of the rule on proper markings in an amended pleading displays an utter lack of understanding of the function of this procedural rule.

More importantly, a reading of the Fourth Amended Complaint reveals that the Sandiganbayan's observation was patently wrong. Petitioner did not fail to comply with Rule 10, Section 7 of the Rules of Court. There were no portions in the body of the Fourth Amended Complaint itself that needed to be underscored or marked, considering that the text was identical to the text of the admitted Complaint. Annex A to the Fourth Amended Complaint, the List of Assets and Other Properties of Ferdinand E. Marcos, Imelda R. Marcos and Immediate Family, reveals that it was amended to include the Cabuyao property in the list of assets. That entry was underscored to reflect the amendment.

This oversight is so palpable that it can reasonably be interpreted as grave and inexcusable arbitrariness on the part of the Sandiganbayan. Had the Sandiganbayan simply read the proposed amended pleading correctly, the inordinate time and resources expended by both parties in this case would have been avoided *(Republic vs. Sandiganbayan, Fourth Division, GR No. 195295, 10/05/2016)*.

Amendment as a Matter of Right

(1) A plaintiff has the right to amend his complaint once at any time before a responsive pleading is served by the other party or in case of a reply to which there is no responsive pleading, at any time within ten (10) days after it is served *(Sec. 2, Rule 10)*. Thus, before an answer is served on the plaintiff, the latter may amend his complaint as a matter of right. The defendant may also amend his answer, also as a matter of right, before a reply is served upon him. Sec. 2 refers to an amendment made before the trial court, not to amendments before the CA. The CA is vested with jurisdiction to admit or deny amended petitions filed before it *(Navarro Vda. De Taroma, 478 SCRA 336)*. Hence, even if no responsive pleading has yet been served, if the amendment is subsequent to a previous amendment made as a matter of right, the subsequent amendment must be with leave of court.

Amendments by Leave of Court

(1) Leave of court is required for substantial amendment made after service of a responsive pleading *(Sec. 3, Rule 10)*. The plaintiff, for example, cannot amend his complaint by changing his cause of action or adding a new one without leave of court *(Calo and San Jose vs. Roldan, 76 Phil. 445; Buenaventura vs. Buenaventura, 94 Phil. 193)*.

(2) After a responsive pleading is filed, an amendment to the complaint may be substantial and will correspondingly require a substantial alteration in the defenses of the adverse party. The amendment of the complaint is not only unfair to the defendant but will cause unnecessary delay in the proceedings. Leave of court is thus, required. On the other hand, where no responsive pleading has yet been served, no defenses would be altered. The amendment of the pleading will not then require leave of court *(Siasoco vs.CA, 303 SCRA 186)*.

Formal Amendment

(1) A defect in the designation of the parties and other clearly clerical or typographical errors may be summarily corrected by the court at any stage of the action, at its initiative or on motion, provided no prejudice is caused thereby to the adverse party *(Sec. 4, Rule 10)*.

Amendments to conform to or authorize presentation of evidence

(1) When issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so with liberality if the presentation of the merits of the action and the ends of substantial justice will be subserved thereby. The court may grant a continuance to enable the amendment to be made *(Sec. 5, Rule 10)*.

(2) **2004 Bar**: In a complaint for a sum of money filed before the MM Regional Trial Court, plaintiff did not mention or even just hint at any demand for payment made on defendant before commencing suit. During the trial, plaintiff duly offered Exh. "A" in evidence for the

stated purpose of proving the making of the extra judicial demand on defendant to pay P500,000, the subject of the suit. Exh. "a" was a letter of demand for defendant to pay said sum of money within 10 days from receipt, addressed to and served on defendant some two months before suit was begun. Without objection from defendant, the court admitted Exh. "A" in evidence. Was the court's admission of Exh. "A" in evidence erroneous or not? Reason. (5%)

Answer: The court's admission of Exh. "A" in evidence is not erroneous. It was admitted in evidence without objection on the part of the defendant. It should be treated as if it had been raised in the pleadings. The complaint may be amended to conform to the evidence, but if it is not amended, it does not affect the result of the trial on this issue *(Sec. 5, Rule 10)*.

Different from supplemental pleadings

(1) A supplemental pleading is one which sets forth transactions, occurrences, or events which have happened since the date of the pleading sought to be supplemented. The filing of supplemental pleadings requires leave of court. The court may allow the pleading only upon such terms as are just. This leave is sought by the filing of a motion with notice to all parties *(Sec. 6, Rule 10)*.

(2) A supplemental pleading does not extinguish the existence of the original pleading, while an amended pleading takes the place of the original pleading. A supplemental pleading exists side by side with the original; it does not replace that which it supplements; it does not supersede the original but assumes that the original pleading remain as the issues to be tried in the action. A supplemental pleading supplies the deficiencies in aid of an original pleading, not to entirely substitute the latter *(Sps. Caoili vs. CA, GR 128325, 09/14/1999)*.

(3) **2000 Bar**: X, an illegitimate child of Y, celebrated her 18th birthday on May 2, 1996. A month before her birthday, Y died. The legitimate family of Y refused to recognize X as an illegitimate child of Y. After countless efforts to convince them, X filed on April 25, 2000, an action for recognition against Z, wife of Y. After Z filed her answer on August 14, 2000, X filed a motion for leave to file amended complaint impleading the three (3) legitimate children of Y. The trial admitted the amended complaint on August 22, 2000. What is the effect of the admission of the amended complaint? Has the action of X prescribed? Explain. (5%)

Answer: No. The action filed on April 25, 2000 is still within the four-year prescriptive period which started to run on May 2, 1996. The amended complaint impleading the three legitimate children, though admitted on August 22, 2000 beyond the four-year prescriptive period, retroacts to the date of filing of the complaint because they do not constitute a new cause of action *(Versoza vs. Court of Appeals, 299 SCRA 100 [1998])*.

(4) **2008 Bar**: Arturo lent P1 million to his friend Robert on the condition that Robert execute a promissory note for the loan and a real estate mortgage over his property located in Tagaytay City. Robert complied. In his promissory note dated September 20, 2006, Robert undertook to pay the loan within a year from its date at 12% per annum interest. In June 2007, Arturo requested Robert to pay ahead of time but the latter refused and insisted on the agreement. Arturo issued a demand letter and when Robert did not comply, Arturo filed an action to foreclose the mortgage. Robert moved to dismiss the complaint for lack of cause of action as the debt was not yet due. The resolution of the motion to dismiss was delayed because of the retirement of the judge.

(a) On October 1, 2007, pending resolution of the motion to dismiss, Arturo filed an amended complaint alleging that Robert's debt had in the meantime become due but that Robert still refused to pay. Should the amended complaint be allowed considering that no answer has been filed? (3%)

(b) Would your answer be different had Arturo filed instead a supplemental complaint stating that the debt became due after the filing of the original complaint? 2%)

Answers:

(a) No. The complaint may not be amended under the circumstances. A complaint may be amended as a right before answer (Sec. 2, Rule 10)), but the amendment should refer to facts which occurred prior to the filing of the original complaint. It thus follows that a complaint whose cause of action has not yet accrued cannot be cured or remedied by an amended or supplemental pleading alleging the existence or accrual of a cause of action while the case is pending *(RCPI vs. CA, GR No. 121397, 04/17/1997); Swagman Hotels & Travel, Inc. vs. CA, GR No. 161135, 04/08/32005)).*

(b) A supplemental complaint may be filed with leave of court to allege an event that arose after the filing of the original complaint that should have already contained a cause of action *(Se. 6, Rule10).* However, If no cause of action is alleged in the original complaint, it cannot be cured by the filing of a supplemental or amendment to allege that subsequent acquisition of cause of action *(Swagman Hotels & Travel, Inc. v. CA, GR No. 161135, 04/08/32005)*).

Effect of amended pleading

(1) An amended pleading supersedes the original one which it amends *(Sec. 8, Rule 10).* The original pleading loses its status as a pleading, is deemed withdrawn and disappears from the record. It has been held that the original complaint is deemed superseded and abandoned by the amendatory complaint only if the latter introduces a new or different cause of action *(Versoza vs. CA, 299 SCRA 100).*

(2) The original pleading is superseded or disappears from the records. The defenses in the original pleadings not reproduced in the amended pleadings are waived *(Magaspi vs. Remolete, 115 SCRA 193).*

(3) However, admissions in the original pleading are not pleaded insofar as they become extrajudicial admissions – hence, need be proven, supported by evidence.

F. SUMMONS *(Rule 14)*

(1) Summons is a writ or process issued and served upon the defendant in a civil action for the purpose of securing his appearance therein – that is, of acquiring jurisdiction over the person of the defendant.

(2) The service of summons enables the court to acquire jurisdiction over the person of the defendant. If there is no service of summons, any judgment rendered or proceedings had in a case are null and void, except in case of voluntary appearance *(Echevarria vs. Parsons Hardware, 51 Phil. 980).* The law requiring the manner of service of summons in jurisdictional *(Toyota Cubao vs. CA, GR 126321, 10/23/1997).*

(3) In an action *in personam*, jurisdiction over the person of the defendant is necessary for the court to validly try and decide the case. Jurisdiction over the person of a resident defendant who does not voluntarily appear in court can be acquired by personal service of summons as provided under Section 7, Rule 14 of the Rules of Court. If he cannot be personally served with summons within a reasonable time, substituted service may be

made in accordance with Section 8 of the said Rule *(Sps. Belen vs. Hon. Chavez, GR No. 175334, 05/26/2008).*

(4) Under Section 11, Rule 14 of the 1997 Revised Rules of Civil Procedure, when the defendant is a corporation, partnership or association organized under the laws of the Philippines with a juridical personality, the service of summons may be made on the president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel. Jurisprudence is replete with prounouncements that such provision provides an *exclusive enumeration* of the persons authorized to receive summons for juridical entities.

The records of the case reveal that QSC was never shown to have been served with the summons through any of the enumerated authorized persons to receive such, namely: the president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel. Service of summons upon persons *other than those officers enumerated in Section 11 is invalid.*

Nevertheless, while proper service of summons is necessary to vest the court jurisdiction over the defendant, the same is merely procedural in nature and the lack of or defect in the service of summons may be cured by the defendant's subsequent voluntary submission to the court's jurisdiction through his filing a responsive pleadingsuch as an answer. In this case, it is not disputed that QSC filed its Answer despite the defective summons. Thus, jurisdiction over its persons was acquired through voluntary appearance *(Guy vs. Gacott, GR No. 206147, 01/13/2016).*

(5) In its classic formulation, due process means that any person with interest to the thing in litigation must be notified and given an opportunity to def end that interest. Thus, as the essence of due process lies in the reasonable opportunity to be heard and to submit any evidence the defendant may have in support of her defense, she must be properly served the summons of the court. In other words, the service of summons is a vital and indispensable ingredient of due process9 and compliance with the rules regarding the service of the summons is as much an issue of due process as it is of jurisdiction *(Borlongan vs. Banco De Oro, GR Nos. 217617 & 218549, 04/05/2017).*

(4) It is, therefore, proper to state that the hierarchy and rules in the service of summons are as follows:
[a] Personal service;
[b] Substituted service, if for justifiable causes the defendant cannot be served within a reasonable time; and
[c] Service by publication, whereabouts are unknown diligent inquiry. Whenever the defendant's and cannot be ascertained by

Simply put, personal service of summons is the preferred mode. And, the rules on the service of summons other than by personal service may be used *only* as prescribed and *only* in the circumstances authorized by statute. Thus, the *impossibility* of prompt personal service must be shown by stating that efforts have been made to find the defendant personally and that such efforts have failed before substituted service may be availed. Furthermore, their rules must be followed strictly, faithfully and fully as they are extraordinary in character and considered in derogation of the usual method of service *(Borlongan vs. Banco De Oro, GR Nos. 217617 & 218549, 04/05/2017).*

(5) It is axiomatic that a public official enjoys the presumption of regularity in the discharge of one's official duties and functions. Here, in the absence of clear indicia of partiality or malice, the service of Summons on petitioner Yap is perforce deemed regular and valid. Correspondingly, the Return of Service of Precioso as process server of the RTC constitutes *prima facie* evidence of the facts set out therein. . .

Hence, as far as the circumstances attendant to the service of Summons are concerned, the Court has the right to rely on the factual representation of Precioso that service had indeed been made on petitioner Yap in person. A contrary rule would reduce the Court to

a mere fact-finding tribunal at the expense of efficiency in the administration of justice, which, as mentioned earlier, is beyond the ambit of the Court's jurisdiction in a Rule 45 petition.

To successfully overcome such presumption of regularity, case law demands that the evidence against it must be *clear and convincing;* absent the requisite quantum of proof to the contrary, the presumption stands deserving of faith and credit. In this case, the burden of proof to discharge such presumption lay with petitioner Yap *(Yap vs. Lagtapon, GR No. 196347, 01/23/2017).*

(6) When a party's counsel serves a notice of change in address upon a court, and the court acknowledges this change, service of papers, processes, and pleadings upon the counsel's former address is ineffectual. Service is deemed completed only when made at the updated address. Proof, however, of ineffectual service at a counsel's former address is not necessarily proof of a party's claim of when service was made at the updated address. The burden of proving the affirmative allegation of when service was made is distinct from the burden of proving the allegation of where service was or was not made. A party who fails to discharge his or her burden of proof is not entitled to the relief prayed for *(Gatmaytan vs. Dolor, GR No. 198120, 02/20/2017).*

Nature and purpose of summons in relation to actions *in personam*, *in rem* and *quasi in rem*

(1) In an action *in personam*, the purpose of summons is not only to notify the defendant of the action against him but also to acquire jurisdiction over his person *(Umandap vs. Sabio, Jr., 339 SCRA 243).* The filing of the complaint does not enable the courts to acquire jurisdiction over the person of the defendant. By the filing of the complaint and the payment of the required filing and docket fees, the court acquires jurisdiction only over the person of the plaintiff, not over the person of the defendant. Acquisition of jurisdiction over the latter is accomplished by a valid service of summons upon him. Service of summons logically follows the filing of the complaint. Note further that the filing of the complaint tolls the running of the prescriptive period of the cause of action in accordance with Article 1155 of the Civil Code.

(2) In an action *in rem* or *quasi in rem*, jurisdiction over the defendant is not required and the court acquires jurisdiction over an action as long as it acquires jurisdiction over the res. The purpose of summons in these actions is not the acquisition of jurisdiction over the defendant but mainly to satisfy the constitutional requirement of due process *(Gomez vs. CA, 420 SCRA 98).*

Voluntary appearance

(1) Voluntary appearance is any appearance of the defendant in court, provided he does not raise the question of lack of jurisdiction of the court *(Flores vs. Zurbito, 37 Phil. 746; Carballo vs. Encarnacion, 92 Phil. 974).* It is equivalent to service of summons *(Sec. 20).*

(2) An appearance is whatever form, without explicitly objecting to the jurisdiction of the court over the person, is a submission to the jurisdiction of the court over the person. It may be made by simply filing a formal motion, or plea or answer. If his motion is for any other purpose than to object to the jurisdiction of the court over his person, he thereby submits himself to the jurisdiction of the court *(Busuego vs. CA, L-48955, June 30, 1987; La Naval Drug Corp. vs. CA, 54 SCAD 917).*

(3) Voluntary appearance may be in form of:
(a) Voluntary appearance of attorney;

(b) A motion, by answer, or simple manifestation *(Flores vs. Surbito)*;
(c) A telegraphic motion for postponement *(Punzalan vs. Papica, 02/29/1960)*;
(d) Filing a motion for dissolution of attachment;
(e) Failure to question the invalid service of summons *(Navale vs. CA, GR 109957, 02/20/1996)*;
(f) Filing a motion for extension of time to file an answer.

(4) While mindful of Our ruling in *La Naval Drug Corporation v. Court of Appeals, (306 Phil. 84 [1994])*, which pronounced that a party may file a Motion to Dismiss on the ground of lack of jurisdiction over its person, and at the same time raise affirmative defenses and pray for affirmative relief without waiving its objection to the acquisition of jurisdiction over its person, as well as Section 20, Rule [14], this Court, in several cases, ruled that seeking affirmative relief in a court is tantamount to voluntary appearance therein.

Thus, in *Philippine Commercial International Bank v. Dy Hong Pi, (606 Phil. 351 [2011])* cited in *NM Rotchschild & Sons (Australia) Limited v. LepantoConsolidated Mining Company, (677 Phil. 351 [2011])* wherein defendants filed a Motion for Inhibition without submitting themselves to the jurisdiction of this Court, We held:

> Besides, any lingering doubts on the issue of voluntary appearance dissipate when the respondents' motion for inhibition is considered. This motion seeks a sole relief: inhibition of Judge Napoleon Inoturan from further hearing the case. **Evidently, by seeking affirmative relief other than dismissal of the case, respondents manifested their voluntary submission to the court's jurisdiction**. It is well-settled that the active participation of a party in the proceedings is tantamount to an invocation of the court's jurisdiction and a willingness to abide by the resolution of the case, and will bar said party from later on impugning the court's jurisdiction. (Emphasis in the original)

Accordingly, We rule that respondent, by seeking affirmative relief, is deemed to have voluntarily submitted to the jurisdiction of the Court. Following settled principles, respondent cannot invoke the Court's jurisdiction on one hand to secure affirmative relief, and then repudiate that same jurisdiction after obtaining or failing to obtain such relief *(Republic vs. Sereno, GR No. 237438, 05/11/2018)*.

Service on the person of the defendant

(1) It shall be served by handling a copy to the defendant in person, or if he refuses it, by tendering it to him *(Sec. 6, Rule 14)*.

(2) **2002 Bar**: The plaintiff, a Manila resident, sued the defendant, a resident of Malolos, Bulacan, in the RTC-Manila for a sum of money. When the sheriff tried to serve the summons with a copy of the complaint on the defendant at this Bulacan residence, the sheriff was told that the defendant had gone to Manila for business and would not be back until the evening of that day. So, the sheriff served the summons, together with a copy of the complaint, on the defendant's 18-year-old daughter, who was a college student. For the defendant's failure to answer the complaint within the reglementary period, the trial court, on motion of the plaintiff, declared the defendant in default. A month later, the trial court rendered judgment holding the defendant liable for the entire amount prayed for in the complaint.

After the judgment had become final, a writ of execution was issued by the court. As the writ was returned unsatisfied, the plaintiff filed a motion for an order requiring the defendant to appear before it and to be examined regarding his property and income. How should the court resolve the motion? (2%)

Answer:

The RTC-Manila should deny the motion because it is the violation of the rule that no judgment obligor shall be required to appear before a court, for the purpose of

examination concerning his property and income, outside the province or city in which such obligor resides. In this case, the judgment obligor resides in Bulacan *(Sec. 36, Rule 39)*.

(3) **2004 Bar**: Summons was issued by the MM Regional Trial Court and actually received on time by the defendant from his wife at their residence. The sheriff's return of proof of service filed with the court in sum states that the summons, with attached copy of the complaints, was served on defendant at his residence thru his wife, a person of suitable age and discretion then residing therein. Defendant moved to dismiss on the ground that the court had no jurisdiction over his person as there was no valid service of summons on him because the sheriff's return of proof of service did not show that the sheriff first made a genuine attempt to serve the summons on defendant personally before serving it thru his wife. Is the motion to dismiss meritorious? What is the purpose of summons and by whom may it be served? Explain, (5%)

Answer:

The motion to dismiss is not meritorious because the defendant actually received the summons on time from his wife. Service on the wife was sufficient. It is the duty of the court to look in the sufficiency of the service. The sheriff's negligence is not stating in his return that he first made a genuine effort to serve the summons on the defendant, should not prejudice the plaintiff *(Mapa vs. CA, 214 SCRA 417 [1992])*.

The purpose of the summons is to inform the defendant of the complaint filed against him and to enable the court to acquire jurisdiction over his person. It may be served by the sheriff or his deputy or any person authorized by the court.

Substituted Service of Summons

(1) If the defendant cannot be served within a reasonable time, service may be effected:
   (a) By leaving copies of the summons at the defendant's dwelling house or residence with some person of suitable age and discretion then residing therein; or
   (b) By leaving copies at defendant's office or regular place of business with some competent person in charge thereof *(Sec. 7)*.

(2) It may be resorted to if there are justifiable causes, where the defendant cannot be served within a reasonable time *(Sec. 7)*. An example is when the defendant is in hiding and resorted to it intentionally to avoid service of summons, or when the defendant refuses without justifiable reason to receive the summons *(Navale vs. CA, 253 SCRA 705)*.

(3) In substituted service of summons, actual receipt of the summons by the defendant through the person served must be shown *(Millennium Industrial Commercial Corp. vs. Tan, 383 Phil. 468)*. It further requires that where there is substituted service, there should be a report indicating that the person who received the summons in defendant's behalf was one with whom petitioner had a relation of confidence ensuring that the latter would receive or would be notified of the summons issued in his name *(Ang Ping vs. CA, 369 Phil. 609; Casimina vs. Hon. Legaspi, GR 147530, 06/29/2005)*.

(4) Substituted service is not allowed in service of summons on domestic corporations *(Delta Motor Sales Corp. vs. Mangosing, 70 SCRA 598)*.

(5) We agree with the CA that substituted service is improper under the facts of this case. Substituted service presupposes that the place where the summons is being served is the defendant's current residence or office/regular place of business. Thus, where the defendant neither resides nor holds office in the address stated in the summons, substituted service cannot be resorted to.

Based on the sheriff's report, it is clear that Ocampo no longer resides in San Bernardo Village, Darasa, Tanauan, Batangas. The report categorically stated that "defendant

Helen M. Ocampo and her family were already in Italy," without, however, identifying any specific address. Even BDO Remittance itself admitted in its petition for recognition that Ocampo's "whereabouts in Italy are no longer certain." This, we note, is the reason why in alleging the two addresses of Ocampo, one in Italy and one in the Philippines, BDO Remittance used the phrase "last known [address]" instead of the usual "resident of." Not being a resident of the address where the summons was served, the substituted service of summons is ineffective. Accordingly, the RTC did not acquire jurisdiction over the person of Ocampo.

BDO Remittance's reliance on *Palma v. Galvez (615 SCRA 86 [2010])* is misplaced for the simple reason that the case involved service of summons to a person who is temporarily out of the country. In this case, however, Ocampo's sojourn in Italy cannot be classified as temporary considering that she already resides there, albeit her precise address was not known. Modes of service of summons must be strictly followed in order that the court may acquire jurisdiction over the person of the defendant. The purpose of this is to afford the defendant an opportunity to be heard on the claim against him. BDO Remittance is not totally without recourse, as the rules allow summons by publication and extraterritorial service. Unlike substituted service, however, these are extraordinary modes which require leave of court *(Express Padala (Italia) vs. Ocampo, GR 202505, 09/06/2017).*

Manotoc v. Court of Appeals (G.R. No. 130974, 08/16/2006) provides an exhaustive discussion on what constitutes valid resort to substituted service of summons:

(1) Impossibility of Prompt Personal Service

The party relying on substituted service or the sheriff must show that defendant cannot be served promptly or there is impossibility of prompt service. Section 8, Rule 14 provides that the plaintiff or the sheriff is given a "reasonable time" to serve the summons to the defendant in person, but no specific time frame is mentioned. "Reasonable time" is defined as "so much time as is necessary under the circumstances for a reasonably prudent and diligent man to do, conveniently, what the contract or duty requires that should be done, having a regard for the rights and possibility of loss, if any, to the other party." Under the Rules, the service of summons has no set period.

However, when the court, clerk of court, or the plaintiff asks thesheriff to make the return of the summons and the latter submits the return of summons, then the validity of the summons lapses. The plaintiff may then ask for an alias summons if the service of summons has failed. What then is a reasonable time for the sheriff to effect a personal service in order to demonstrate impossibility of prompt service? To the plaintiff, "reasonable time" means no more than seven (7) days since an expeditious processing of a complaint is what a plaintiff wants. To the sheriff, "reasonable time" means 15 to 30 days because at the end of the month, it is a practice for the branch clerk of court to require the sheriff to submit a return of the summons assigned to the sheriff for service. The Sheriffs Return provides data to the Clerk of Court, which the clerk uses in the Monthly Report of Cases to be submitted to the Office of the Court Administrator within the first ten (10) days of the succeeding month. Thus, one month from the issuance of summons can be considered "reasonable time" with regard to personal service on the defendant.

Sheriffs are asked to discharge their duties on the service of summons with due care, utmost diligence, and reasonable promptness and speed so as not to prejudice the expeditious dispensation of justice. Thus, they are enjoined to try their best efforts to accomplish personal service on defendant. On the other hand, since the defendant is expected to try to avoid and evade service of summons, the sheriff must be resourceful, persevering, canny, and diligent in serving the process on the defendant. For substituted service of summons to be available, there must be several attempts by the sheriff to personally serve the summons within a reasonable period [of one month] which eventually

resulted in failure to prove impossibility of prompt service. "Several attempts" means at least three (3) tries, preferably on at least two different dates. In addition, the sheriff must cite why such efforts were unsuccessful. It is only then that impossibility of service can be confirmed or accepted.

(2) Specific Details in the Return

The sheriff must describe in the Return of Summons the facts and circumstances surrounding the attempted personal service. The efforts made to find the defendant and the reasons behind the failure must be clearly narrated in detail in the Return. The date and time of the attempts on personal service, the inquiries made to locate the defendant, the name/s of the occupants of the alleged residence or house of defendant and all other acts done, though futile, to serve the summons on defendant must be specified in the Return to justify substituted service. The form on Sheriffs Return of Summons on Substituted Service prescribed in the Handbook for Sheriffs published by the Philippine Judicial Academy requires a narration of the efforts made to find the defendant personally and the fact of failure. Supreme Court Administrative Circular No. 5 dated November 9, 1989 requires that "impossibility of prompt service should be shown by stating the efforts made to find the defendant personally and the failure of such efforts," which should be made in the proof of service.

(3) A Person of Suitable Age and Discretion

If the substituted service will be effected at defendant's house or residence, it should be left with a person of "suitable age and discretion then residing therein." A person of suitable age and discretion is one who has attained the age of full legal capacity (18 years old) and is considered to have enough discernment to understand the importance of a summons. "Discretion" is defined as "the ability to make decisions which represent a responsible choice and for which an understanding of what is lawful, right or wise may be presupposed". Thus, to be of sufficient discretion, such person must know how to read and understand English to comprehend the import of the summons, and fully realize the need to deliver the summons and complaint to the defendant at the earliest possible time for the person to take appropriate action. Thus, the person must have the "relation of confidence" to the defendant, ensuring that the latter would receive or at least be notified of the receipt of the summons. The sheriff must therefore determine if the person found in the alleged dwelling or residence of defendant is of legal age, what the recipient's relationship with the defendant is, and whether said person comprehends the significance of the receipt of the summons and his duty to immediately deliver it to the defendant or at least notify the defendant of said receipt of summons. These matters must be clearly and specifically described in the Return of Summons.

(4) A Competent Person in Charge

If the substituted service will be done at defendant's office or regular place of business, then it should be served on a competent person in charge of the place. Thus, the peron on whom the substituted service will be made must be the one managing the office or business of defendant, such as the president or manager; and such individual must have sufficient knowledge to understand the obligation of the defendant in the summons, its importance, and the prejudicial effects arising from inaction on the summons. Again, these details must be contained in the Return *(Carson Realty & Management Corp. v. Red Robin Security Agency, GR No. 225035, 02/08/2017).*

(6) As a general rule, personal service is the preferred mode of service of summons. Substituted service is the exception to this general rule. For the sheriff to avail of substituted service, there must be a detailed enumeration of the sheriff's actions showing that a defendant cannot be served despite diligent and reasonable efforts. These details are contained in the sheriff's return. Thus, the sheriff's return is entitled to a presumption

of regularity. Courts may allow substituted service based on what the sheriff's return contains.

Failure to serve summons means that the court did not acquire jurisdiction over the person of the defendant. Absent proper service of summons, the court cannot acquire jurisdiction over the defendant unless there is voluntary appearance. The filing of an answer is tantamount to voluntary appearance *(People's General Insurance Corporation vs. Guansing, GR No. 204759, 11/14/2018)*.

(7) **2006 Bar**: Tina Guerrero filed with the Regional Trial Court of Biñan, Laguna, a complaint for sum of money amounting to P1 million against Carlos Corro. The complaint alleges, among others, that Carlos borrowed from Tina the said amount as evidenced by a promissory note signed by Carlos and his wife, jointly and severally. Carlos was served with summons which was received by Linda, his secretary. However, Carlos failed to file an answer to the complaint within the 15-day reglementary period. Hence, Tina filed with the court a motion to declare Carlos in default and to allow her to present evidence ex parte. Five days thereafter, Carlos filed his verified answer to the complaint, denying under oath the genuineness and due execution of the promissory note and contending that he has fully paid his loan with interest at 12% per annum.

(a) Was the summons validly served on Carlos? (2.5%)
(b) If you were the judge, will you grant Tina's motion to declare Carlos in default? (2.5%)

Answers:

(a) The summons was not validly served on Carlos because it was served on his secretary and the requirements for substituted service have not been followed, such as a showing that efforts have been exerted to serve the same on Carlos and such attempt has failed despite due diligence *(Manotoc vs. CA, GR No. 130974, 08/16/2006)*.

(b) If I were the judge, I would not grant Tina's motion to declare Carlos in default because summons was not properly served and, anyway, a verified answer to the complaint had already been filed. Moreover, it is better to decide a case on the merits rather than on technicality.

Constructive Service (by publication)

(1) As a rule, summons by publication is available only in actions *in rem* or *quasi in rem*. It is not available as a means of acquiring jurisdiction over the person of the defendant in an action *in personam*.

(2) Against a resident, the recognized mode of service is service in person on the defendant under Sec. 6 Rule 14. In a case where the defendant cannot be served within a reasonable time, substituted service will apply *(Sec. 7, Rule 14)*, but no summons by publication which is permissible however, under the conditions set forth in Sec. 14, Rule 14.

(3) Against a non-resident, jurisdiction is acquired over the defendant by service upon his person while said defendant is within the Philippines. As once held, when the defendant is a nonresident, personal service of summons in the state is essential to the acquisition of jurisdiction over him *(Banco Do Brasil, supra)*. This is in fact the only way of acquiring jurisdiction over his person if he does not voluntarily appear in the action. Summons by publication against a nonresident in an action *in personam* is not a proper mode of service.

(4) Publication is notice to the whole world that the proceeding has for its object to bar indefinitely all who might be minded to make an objection of any sort against the right sought to be established. It is the publication of such notice that brings the whole world

as a party in the case and vests the court with jurisdiction to hear and decide it *(Alaban vs. CA, GR 156021, 09/23/2005).*

(5) **2008 Bar:** Lani filed an action for partition and accounting in the Regional Trial Court (RTC) of Manila against her sister Mary Rose, who is a resident of Singapore and is not found in the Philippines. Upon motion, the court ordered the publication of the summons for three weeks in a local tabloid, Bulgar. Linda, an OFW vacationing in the Philippines, saw the summons in Bulgar and brought a copy of the tabloid when she returned to Singapore. Linda showed the tabloid and the page containing the summons to Mary Rose, who said, "Yes, I know, my kumare Anita scanned and e-mailed that page of Bulgar to me!"

Did the court acquire jurisdiction over Mary Rose? (4%)

Answer: Partition is an action *quasi in rem*. Summons by publication is proper when the defendant does not reside and is not found in he Philippines, provided that a copy of the summons and order of the court are sent by registered mail to the last known address of the defendant *(Sec. 15, Rule 14).* Publication of the notice in Bulgar, a newspaper of general circulation, satisfies the requirements of summons by publication.

Service upon domestic private juridical entity and public corporations

(1) When the defendant is a corporation, partnership or association organized under the laws of the Philippines with a juridical personality, service may be made on the president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel *(Section 11).*

(2) When the defendant is the Republic of the Philippines, service may be effected on the Solicitor General; in case of a province, city or municipality, or like public corporations, service may be effected on its executive head, or on such other officer or officers as the law or the court may direct *(Section 13).*

(3) Personal service is effected by handling a copy of the summons to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him. If the defendant is a domestic private juridical entity, service may be made on its president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel. It has been held that this enumeration is exclusive. Service on a domestic private juridical entity must, therefore, be made only on the person expressly listed in Section 11, the same is invalid.

There is no dispute that respondent Expressions is a domestic corporation duly existing under the laws of the Republic of the Philippines, and that respondent Bon Huan is its president. Thus, for the trial court to acquire jurisdiction, service of summons to it must be made to its president, Bon Huan, or to its managing partner, general manager, corporate secretary, treasurer, or in-house counsel. It is further undisputed that the questioned second service of summons was made upon Ochotorina, who was merely one of the secretaries of Bon Huan, and clearly, not among those officers enumerated under Section 11 of Rule 14. The service of summons upon Ochotorina is thus void and, therefore, does not vest upon the trial court jurisdiction over Expressions.

Even assuming *arguendo* that the second service of summons may be treated as a substituted service upon Bon Huan as the president of Expressions, the same did not have the effect of giving the trial court jurisdiction over the respondents *(Interlink Movie Houses, Inc. vs. Court of Appeals, GR No. 203298, 01/17/2018).*

Service upon foreign private juridical entity

(1) 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 *(Section 12)*.

Service upon a defendant where his identity is unknown or where his whereabouts are unknown

(1) Where the defendant is designated as unknown, or whenever his whereabouts are unknown and cannot be ascertained despite a diligent inquiry, service may, with prior leave of court, be effected upon the defendant, by publication in a newspaper of general circulation. The place and the frequency of the publication is a matter for the court to determine *(Sec. 14, Rule 14)*.

(2) The rule does not distinguish whether the action is *in personam*, *in rem* or *quasi in rem*. The tenor of the rule authorizes summons by publication whatever the action may be as long as the identity of the defendant is unknown or his whereabouts are unknown. Under the previous rulings, jurisdiction over the defendant in an action in personam cannot be acquired by the summons by publication *(Pantaleon vs. Asuncion, 105 Phil. 761; Consolidated Plyware Industries vs. Breva, 166 SCRA 516)*.

(3) Under Section 14, Rule 14, in 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, service may, by leave of court, be effected upon him by publication in a newspaper of general circulation and in such places and for such time as the court may order. This rule applies to any action, whether *in personam, in rem,* or *quasi in rem* *(Santos, Jr. vs. PNOC Exploration Corporation, GR No. 170943, 09/23/2008)*.

Service upon residents temporarily outside the Philippines

(1) Service of summons upon a resident of the Philippines who is temporarily out of the country, may, by leave of court be effected out of the Philippines as under the rules on extraterritorial service in Sec. 15, Rule 14 by any of the following modes: (a) by personal service as in Sec. 6, (b) by publication in a newspaper of general circulation together with a registered mailing of a copy of the summons and the order of the court to the last known address of the defendant, or (c) by any manner the court may deem sufficient under Sec. 16. Like in the case of an unknown defendant or one whose whereabouts are unknown, the rule affecting residents who are temporarily out of the Philippines applies in any action. Note also, that summons by publication may be effected against the defendant.

(2) The defendant may however, also be served by substituted service *(Montalban vs. Maximo, 22 SCRA 1070)*. This is because even if he is abroad, he has a residence in the Philippines or a place of business and surely, because of his absence, he cannot be served in person within a reasonable time.

Rules on Summons on Defendant

	Resident	Non-Resident
Present in the Philippines	1. Servie on the person of defendant 2. Substituted service 3. Publication *(in rem* and *quasi in rem)*	1. Servie on the person of defendant 2. Substituted service
Absent from the Philippines	1. Substituted service 2. Extraterritorial service *(in personam)*	1. Extraterritorial service *(in rem* and *quasi in rem)*

(1) Resident
  (a) Present in the Philippines
    1. Service on the person of the defendant *(Rule 14, Sec. 6)*
    2. Substituted service *(Rule 14, Sec. 7)*
    3. Publication, but only if
      a. his identity or whereabouts is unknown *(Rule 14, Sec. 14); and*
      b. the action is in rem or quasi in rem *(Citizen Surety v. Melencio-Herrera, 38 SCRA 369 [1971]).*
  (b) Absent from the Philippines
    1. Substituted service *(Rule 14, Sec. 7)*
    2. Extraterritorial service *(Rule 14, Sec. 16 and 15);* action need not be *in rem* or *quasi in rem (Valmonte v. CA, 252 SCRA 92 [1996])*

(2) Non-resident
    1. Present in the Philippines
      a. Service on the person of the defendant *(Sec. 6, Rule 14)*
      b. Substituted service *(Sec. 7, Rule 14)*
    2. Absent from the Philippines
      a. Action in rem or quasi in rem – only Extraterritorial service *(Rule 14, Sec. 15)*
      b. Action in personam, and judgment cannot be secured by attachment (e.g. action for injunction)
        i. Wait for the defendant to come to the Philippines and to serve summons then
        ii. Bait the defendant to voluntarily appear in court *(Rule 14, Sec. 20)*
        iii. Plaintiff cannot resort to extraterritorial service of summons (*Kawasaki Port Services vs. Amores, 199 SCRA 230 [1991]; Dial Corporation vs. Soriano, 161 SCRA 737 [1988]).*

Extra-territorial service, when allowed

(1) Under Sec. 15, Rule 14, extraterritorial service of summons is proper only in four (4) instances namely:
  (a) When the action affects the personal status of the plaintiffs;
  (b) When the action relates to, or the subject of which is, property within the Philippines, in which the defendant has or claims a lien or interest, actual or contingent;
  (c) When the relief demanded in such action consists, wholly or in part, in excluding the defendant from any interest in the property located in the Philippines; and
  (d) When the defendant non-resident's property has been attached within the Philippines.

(2) Extraterritorial service of summons applies when the following requisites concur:

(a) The defendant is nonresident;
(b) He is not found in the Philippines; and
(c) The action against him is either *in rem* or *quasi in rem*.

(3) If the action is *in personam*, this mode of service will not be available. There is no extraterritorial service of summons in an action *in personam*. Hence, extraterritorial service upon a nonresident in an action for injunction which is in personam is not proper *(Kawasaki Port Service Corp. vs. Amores, 199 SCRA 230; Banco Do Brasil vs. CA, 333 SCRA 545)*.

(4) In the present case, We find that Viveca was completely prevented from participating in the Declaration of Nullity case because of the fraudulent scheme employed by Philip insofar as the service of summons is concerned.

Summons is a writ by which the defendant is notified of the action brought against him. Through its service, the court acquires jurisdiction over his person. As a rule, Philippine courts cannot try any case against a defendant who does not reside and is not found in the Philippines because of the impossibility of acquiring jurisdiction over his person unless he voluntarily appears in court. Section 15, Rule 14 of the Rules of Court, however, enumerates the actions *in rem* or *quasi in rem* when Philippine courts have jurisdiction to hear and decide the case because they have jurisdiction over the *res,* and jurisdiction over the person of the non-resident defendant is not essential.

Thus, under Section 15 of Rule 14, a defendant who is a non-resident and is not found in the country may be served with summons by extraterritorial service in four instances: (1) *when the action affects the personal status of the plaintiff;* (2) when the action relates to, or the subject of which is property within the Philippines, in which the defendant has or claims a lien or interest, actual or contingent; (3) when the relief demanded consists, wholly or in part, in excluding the defendant from any interest in property located in the Philippines; or (4) when the property of the defendant has been attached within the Philippines.

In these instances, extraterritorial service of summons may be effected under any of three modes: (1) by personal service out of the country, with leave of comi; (2) *by publication and sending a copy of the summons and order of the court by registered mail to the defendant's last known address,* also with leave of court; or (3) by any other means the judge may consider sufficient.

In the present case, it is undisputed that when Philip filed the Petition for Declaration of Nullity of Marriage, an action which affects his personal status, Viveca was already residing in the United States of America. Thus, extraterritorial service of summons under Section 15, Rule 14 of the Rules of Court is the proper mode by which summons may be served on Viveca, a non-resident defendant who is not found in the Philippines *(Yu vs. Yu, GR No. 200072, 06/20/2016)*.

Service upon prisoners and minors

(1) On a minor. Service shall be made on him personally and on his legal guardian if he has one, or if none, upon his guardian *ad litem* whose appointment shall be applied for by the plaintiff, or upon a person exercising parental authority over him, but the court may order that service made on a minor of 15 or more years of age shall be sufficient *(Sec. 10)*;

(2) On prisoners. It shall be made upon him by serving on the officer having the management of the jail or institution who is deemed deputized as a special sheriff for said purpose *(Sec. 9)*.

Proof of service

(1) When the service has been completed, the server shall, within five (5) days therefrom, serve a copy of the return, personally or by registered mail, to the plaintiff's counsel, and shall return the summons to the clerk who issued it, accompanied by proof of service *(Sec. 4, Rule 14)*.

(2) After the completion of the service, a proof of service is required to be filed by the server of the summons. The proof of service of summons shall be made in writing by the server and shall set forth the manner, place and date of service; shall specify any papers which have been served with the process and the name of the person who received the same; and shall be sworn to when made by a person other than a sheriff or his deputy *(Sec. 18)*.

G. MOTIONS *(Rule 15)*

Definition of Motion

(1) A motion is an application for relief other than by a pleading *(Sec. 1, Rule 15)*.

Motions in general

(1) Motions are classified into six, namely:
   (a) **Motion *ex parte*** – a motion made without the presence of a notification to the other party because the question generally presented is not debatable. Sometime this kind of motion may be granted as when the motion asks for the correction of an evidently misspelled word, or obvious error in addition, or subtraction of an amount, or when a clarification is sought, or when the motion is one for extension of one or two days within which to file a pleading.
   (b) **Litigated motion** – one which is the opposite of a motion *ex parte*; hence, one made with notice to the adverse party so that an opposition thereto may be made, such as one where the court is requested by an administrator of an estate to allow sale of certain properties at certain prices.
   (c) **Motion of course** – a motion for a certain kind of relief or remedy to which the movant is entitled as a matter of right, and not as a matter of discretion on the part of the court. Moreover, the allegations contained in such a motion do not have to be investigated or verified. An example would be a motion filed out of time, because this motion may be disposed of the court on its own initiative. Another example would be a motion to sell certain property after the period given by the court to the debtor to pay has elapsed, and such previous order had specified that the property be sold in case of default *(Govt. vs. Delos Cajigas, 55 Phil. 669)*.
   (d) **Special motion** – the opposite of a motion of course, here the discretion of the court is involved; moreover, usually an investigation of the facts alleged is required *(60 CJS 5)*.
   (e) ***Omnibus* motion** – a motion which in broad sense combines different motions all filed at the same time either to save time or for convenience. In a strict sense, it is a motion attacking a proceeding, and containing all the objections available at said time, because all objections not so included shall be deemed waived.
   (f) **Motion to dismiss** – *(see Rule 16)*.

Motions versus Pleadings

(1) A pleading is a written statement of the respective claims and defenses of the parties submitted to the court for appropriate judgment *(Sec. 1, Rule 6)*. It may be in the form of a complaint, counterclaim, cross-claim, third-party complaint, or complaint-in-intervention, answer or reply *(Sec. 2, Rule 6)*.

(2) A motion on the other hand is an application for relief other than a pleading *(Sec. 1, Rule 15)*.

(3) A motion is not a pleading, even when reduced to writing; it relates generally to procedural matters, unlike pleadings which generally states substantial questions *(37 Am. Jur. 502)*. Moreover, a motion is not an independent remedy, and thus cannot replace an action to enforce a legal right *(Lyon vs. Smith, 66 Mich. 676)*.

Contents and form of motions

(1) A motion shall state the order sought to be obtained, and the grounds which it is based, and if necessary shall be accompanied by supporting affidavits and other papers *(Sec. 3)*.

(2) All motions must be in writing except those made in open court or in the course of a hearing or trial *(Sec. 2)*.

Notice of hearing and Hearing of motions

(1) Except for motions which the court may act upon without prejudicing the rights of the adverse party, every motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt of the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice *(Sec. 4, Rule 15)*.

(2) The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion *(Sec. 5, Rule 15)*.

(3) In every written motion, the three-day notice rule for hearing is not absolute. The purpose of the rule on hearing is to safeguard the adverse party's right to due process. Thus, if the adverse party was given a reasonable opportunity to study the motion and oppose it, then strict compliance with the three-day notice rule may be dispensed with. Under Section 1 of Rule 45 of the Rules of Court, petitions for review by certiorari "shall raise only questions of law." A question of fact exists when there is a doubt as to the truth of certain facts, and it can only be resolved through a reexamination of the body of evidence. Probable cause is dependent largely on the opinion and findings of the judge who conducted the examination and who had the opportunity to question the applicant and his witnesses. For this reason, the findings of the judge deserve great weight. In the instant case, when the court a quo ordered petitioners to submit their comment on the motion to quash, it was, in effect, giving petitioners their day in court. Thus, while the three-day notice rule was not strictly observed, its purpose was still satisfied when respondent judge did not immediately rule on the motion giving petitioners the opportunity to study and oppose the arguments stated in the motion *(Microsoft Corporation vs. Farajallah, GR No. 205800, 09/10/2014)*.

(4) Herein, it is clear that the notice of hearing in Consilium's motion for reconsideration failed to comply with the requisites set forth in the aforequoted rule. In fact, Consilium's counsel, Atty. Gaviola, admitted to purposely defying the 10-day requirement as he would not be available to attend any hearing within the 10-day period from the filing of said motion.

The Court has been categorical in treating a litigious motion without a valid notice of hearing as a mere scrap of paper. And "[t]he subsequent action of the court on a defective motion does not cure the flaw, for a motion with a fatally defective notice is a useless scrap of paper, and the court has no authority to act thereon."

In this case, therefore, the Court of Appeals erred in liberally applying the tenets of Section 5 of Rule 15 in the absence of a compelling or satisfactory reason, worse, in the face of an open defiance to the provisions of the Rules of Court, as amended.

To extricate Consilium from the effects of the mandatory application of the Rules of Court, as amended, would, again, give premium to the unbridled disregard by Atty. Gaviola of the most basic of procedural rules. Indeed, Consilium erred not once, but twice during the

course of the proceedings. The negligence is anything but excusable *(Zosa vs. Zosa, GR No. 196765, 09/19/2018)*.

(5) **2000 Bar**: The Regional Trial Court rendered a judgment against ST, copy of which was received by his counsel on February 28, 2000. On March 10, 2000, ST, through counsel, filed for a motion for reconsideration of the decision with notice to the Clerk of Court submitting the Motion for Reconsideration of the court. On March 15, 2000, realizing that the motion lacked a notice of hearing, ST's counsel filed a supplemental pleading. Was the Motion for Reconsideration filed within the reglementary period? (5%)
Answer: Yes, because the last day for filing a motion for reconsideration was March 15 if February had 28 days or March 16 if February had 29 days. Although the original Motion for Reconsideration was defective because it lacked a notice of hearing, the defect was cured on time by its filing on March 15 of a supplemental pleading, provided the motion was set for hearing and served the adverse party at least three (3) days before the date of hearing *(Rule 15, Section 4)*.

Omnibus Motion Rule

(1) The rule is a procedural principle which requires that every motion that attacks a pleading, judgment, order or proceeding shall include all grounds then available, and all objections not so included shall be deemed waived *(Sec. 8)*. Since the rule is subject to the provisions of Sec. 1, Rule 9, the objections mentioned therein are not deemed waived even if not included in the motion. These objections are: (a) that the court has no jurisdiction over the subject matter, (b) that there is another action pending between the same parties for the same cause *(litis pendencia)*, (c) that the action is barred by a prior judgment *(res judicata)*, and (d) that the action is barred by the statute of limitations *(prescription)* *(Sec. 1, par. 2, Rule 9)*.

(2) A motion to dismiss is a typical example of a motion subject to omnibus motion rule, since a motion to dismiss attacks a complaint which is a pleading. Following the omnibus motion rule, if a motion to dismiss is filed, then the motion must invoke all objections which are available at the time of the filing of said motion. If the objection which is available at the time is not included in the motion, that ground is deemed waived. It can no longer be invoked as affirmative defense in the answer which the movant may file following the denial of his motion to dismiss.

(3) The motion to quash the search warrant which the accused may file shall be governed by the omnibus motion rule, provided, however, that objections not available, existent or known during the proceedings for the quashal of the warrant may be raised in the hearing of the motion to suppress. Obviously, the issue of the defect in the application was available and existent at the time of filing of the motion to quash *(Pilipinas Shell Petroleum Corporation vs. Romars International Gases Corporation, GR No. 189669, 02/16/2015)*.

Litigated and *ex parte* motions

(1) A **litigated motion** is one which requires the parties to be heard before a ruling on the motion is made by the court. Sec. 4 establishes the general rule that every written motion is deemed a litigated motion. A motion to dismiss *(Rule 16)*, a motion for judgment for the pleadings *(Rule 34)*, and a summary judgment *(Rule 35)*, are litigated motions.

(2) An ***ex parte* motion** is one which does not require that the parties be heard, and which the court may act upon without prejudicing the rights of the other party. This kind of motion is not covered by the hearing requirement of the Rules *(Sec. 2)*. An example of an *ex parte* motion is that one filed by the plaintiff pursuant to Sec. 1, Rule 18, in which he moves

promptly that the case be set for pre-trial. A motion for extension of time is an *ex parte* motion made to the court in behalf of one or the other of the parties to the action, in the absence and usually without the knowledge of the other party or parties. Ex parte motions are frequently permissible in procedural matters, and also in situations and under circumstances of emergency; and an exception to the rule requiring notice is sometimes made where notice or the resulting delay might tend to defeat the objective of the motion *(Sarmiento vs. Zaratain, GR 167471, 02/05/2007)*.

Pro-forma motions

(1) The Court has consistently held that a motion which does not meet the requirements of Sections 4 and 5 of Rule 15 on hearing and notice of the hearing is a mere scrap of paper, which the clerk of court has no right to receive and the trial court has no authority to act upon. Service of a copy of a motion containing a notice of the time and the place of hearing of that motion is a mandatory requirement, and the failure of movants to comply with these requirements renders their motions fatally defective *(Vette Industrial Sales vs. Cheng, GR 170232-170301, 12/05/2006)*.

(2) A pro forma motion is one which does not satisfy the requirements of the rules and one which will be treated as a motion intended to delay the proceedings *(Marikina Development Corporatoin vs. Flojo, 251 SCRA 87)*. It is a mere scrap of paper.

Motions for Bill of Particulars *(Rule 12)*

Purpose and when applied for

(1) A party's right to move for a bill of particulars in accordance with Sec. 1, Rule 12 (doesn't include matters evidentiary in nature, which are covered by Modes of Discovery) when the allegations of the complaint are vague and uncertain is intended to afford a party not only a chance to properly prepare a responsive pleading but also an opportunity to prepare an intelligent answer. This is to avert the danger where the opposing party will find difficulty in squarely meeting the issues raised against him and plead the corresponding defenses which if not timely raised in the answer will be deemed waived. The proper preparation of an intelligent answer requires information as to the precise nature, character, scope and extent of the cause of action in order that the pleader may be able to squarely meet the issues raised, thereby circumscribing them within determined confines and preventing surprises during the trial, and in order that he may set forth his defenses which may not be so readily availed of if the allegations controverted are vague, indefinite, uncertain or are mere general conclusions. The latter task assumes significance because defenses not pleaded (save those excepted in Sec. 1, Rule 9, and whenever appropriate, the defenses of prescription) in a motion to dismiss or in the answer are deemed waived *(Republic vs. Sandiganbayan, GR No. 115748, 08/07/1996)*.

(2) The purpose of the motion is to seek an order from the court directing the pleader to submit a bill of particulars which avers matters with 'sufficient definitiveness or particularity' to enable the movant to prepare his responsive pleading (Sec. 1, Rule 12), not to enable the movant to prepare for trial. The latter purpose is the ultimate objective of the discovery procedures from Rules 23 to 29 and ever of a pre-trial under Rule 18. In other words, the function of a bill of particulars is to clarify the allegations in the pleading so an adverse party may be informed with certainty of the exact character of a cause of

action or a defense. Without the clarifications sought by the motion, the movant may be deprived of the opportunity to submit an intelligent responsive pleading.

(3) A motion for a bill of particulars is to be filed before, not after responding to a pleading *(Sec. 1, Rule 12)*. The period to file a motion refers to the period for filing the responsive pleading in Rule 11. Thus, where the motion for bill of particulars is directed to a complaint, the motion should be filed within fifteen (15) days after service of summons. If the motion is directed to a counterclaim, then the same must be filed within ten (10) days from service of the counterclaim which is the period provided for by Sec. 4, Rule 11 to answer a counterclaim.

(4) In case of a reply to which no responsive pleading is provided for by the Rules, the motion for bill of particulars must be filed within ten (10) days of the service of said reply *(Sec. 1, Rule 12)*.

Actions of the court

(1) Upon receipt of the motion which the clerk of court must immediately bring to the attention of the court, the latter has three possible options, namely: (a) to deny the motion outright, (b) to grant the motion outright or (c) to hold a hearing on the motion.

Compliance with the order and effect of non-compliance

(1) If a motion for bill of particulars is granted, the court shall order the pleader to submit a bill of particulars to the pleading to which the motion is directed. The compliance shall be effected within ten (10) days from notice of the order, or within the period fixed by the court *(Sec. 3, Rule 12)*. If denied, the pleader only has the balance of the period within which to file an answer *(see Rule 22)*.

(2) In complying with the order, the pleader may file the bill of particulars either in a separate pleading or in the form of an amended pleading *(Sec. 3, Rule 12)*. The bill of particulars submitted becomes part of the pleading for which it is intended *(Sec. 6, Rule 12)*.

(3) If the order to file a bill of particulars is not obeyed, or in case of insufficient compliance therewith, the court may order (a) the striking out of the pleading (b) or the portions thereof to which the order was directed or (c) make such other order as it deems just *(Sec. 4)*.

(4) **2003 Bar**: What is the effect of non-compliance with the order of a bill of particulars? (4%)

Answer: If the order is not complied with, the court may order the striking out of the pleading or the portions thereof to which the order was directed or make such other order as it deems just *(Sec. 4, Rule 12)*.

(5) **2008 Bar:** Within the period for filing a responsive pleading, the defendant filed a motion for bill of particulars that he set for hearing on a certain date. However, the defendant was surprised to find on the date set for hearing that the trial court had already denied the motion on the day of the filing, stating that the allegations of the complaint were sufficiently made.

(a) Did the judge gravely abuse his discretion in acting on the motion without waiting for the hearing set for the motion? (3%)

(b) If the judge grants the motion and orders the plaintiff to file and serve the bill of particulars, can the trial judge dismiss the case if the plaintiff does not comply with the order? (3%)

Answers:

(a) There is no need to set the motion for hearing. The duty of clerk of court is to bring the motion immediately to the attention of the judge, who may act on it at once *(Sec. 2, Rule 12)*.

(b) Yes, the judge may dismiss the case for failure of the plaintiff to comply with its order *(Sec. 3, Rule 17)* or order the striking out of the pleading and may issue any other order at its discretion *(Sec. 4, Rule 12)*.

Effect on the period to file a responsive pleading

(1) A motion for bill of particulars is not a pleading; hence, not a responsive pleading. Whether or not his motion is granted, the movant may file his responsive pleading. When he files a motion for BOP, the period to file the responsive pleading is stayed or interrupted. After service of the bill of particulars upon him or after notice of the denial of his motion, he may file his responsive pleading within the period to which he is entitled to at the time the motion for bill of particulars is filed. If he has still eleven (11) days to file his pleading at the time the motion for BOP is filed, then he has the same number of days to file his responsive pleading from the service upon him of the BOP. If the motion is denied, then he has the same number of days within which to file his pleading counted from his receipt of the notice of the order denying his motion. If the movant has less than five (5) days to file his responsive pleading after service of the bill of particulars or after notice of the denial of his motion, he nevertheless has five (5) days within which to file his responsive pleading *(Sec.5, Rule 12)*.

(2) A seasonable motion for a bill of particulars interrupts the period within which to answer. After service of the bill of particulars or of a more definite pleading, of after notice of denial of his motion, the moving party shall have the same time to serve his responsive pleading, if any is permitted by the rules, as that to which he was entitled at the time of serving his motion, but no less than five (5) days in any event *(Tan vs. Sandigabayan, GR 84195, 12/11/1989; Sec. 5)*.

(3) **2002 Bar Question**: The plaintiff sued the defendant in the RTC for damages allegedly caused by the latter's encroachment on the plaintiff's lot. In his answer, the defendant denied the plaintiff's claim and alleged that it was the plaintiff who in fact had encroached on his (defendant's) land. Accordingly, the defendant counterclaimed against the plaintiff for damages resulting from the alleged encroachment on his lot. The plaintiff filed an *ex parte* motion for extension of time to answer the defendant's counterclaim, but the court denied the motion on the ground that it should have been set for hearing. On the defendant's motion, therefore, the court declared the plaintiff in default on the counterclaim. Was the plaintiff validly declared in default? Why? (5%)

Answer: No, the plaintiff was not validly declared in default. A motion for extension of time to file an answer may be filed ex parte and need not be set for hearing *(Amante vs. Suñga, 64 SCRA 192 [1975])*.

(1) A motion to dismiss is not a pleading. It is merely a motion. It is an application for relief other than by a pleading *(Sec. 1, Rule 15)*. The pleadings allowed under the Rules are: (a) complaint, (b) answer, (c) counterclaim, (d) cross-claim, (e) third (fourth, etc.) -party complaint, (f) complaint in intervention *(Sec. 2, Rule 6)*, and reply *(Sec. 10, Rule 6)*. A motion is not one of those specifically designated as a pleading.

(2) An order denying a motion to dismiss is an interlocutory order which neither terminates nor finally disposes of a case as it leaves something to be done by the court before the case is finally decided on the merits. Thus, as a general rule, the denial of a motion to dismiss cannot be questioned in a special civil action for *certiorari* which is a remedy designed to correct errors of jurisdiction and not errors of judgment. As exceptions, however, the defendant may avail of a petition for *certiorari* if the ground raised in the motion to dismiss is lack of jurisdiction over the person of the defendant or over the subject matter, or when the denial of the motion to dismiss is tainted with grave abuse of discretion.

The reason why lack of jurisdiction as a ground for dismissal is treated differently from others is because of the basic principle that jurisdiction is conferred by law, and lack of it affects the very authority of the court to take cognizance of and to render judgment on the action - to the extent that all proceedings before a court without jurisdiction are void. We grant *certiorari* on this basis. As will be shown below, the Shari'a District Court's lack of jurisdiction over the subject matter is patent on the face of the complaint, and therefore, should have been dismissed outright *(Municipality of Tangkal, Province of Lanao Del Norte vs. Judge Balindong, GR No. 193340, 01/11/2017)*.

(3) In determining the sufficiency of a cause of action for resolving a motion to dismiss, a court must determine, hypothetically admitting the factual allegations in a complaint, whether it can grant the prayer in the complaint *(Guillermo vs. Philippine Information Agency, GR No. 223751, 03/15/2017)*.

Grounds

(1) Under Sec. 1, Rule 16, a motion to dismiss may be filed on any of the following grounds:

(a) The court has no jurisdiction over the person of the defending party;
(b) The court has no jurisdiction over the subject matter of the claim;
(c) The venue is improperly laid;
(d) The plaintiff has no legal capacity to sue;
(e) There is another action pending between the same parties and for the same cause (*litis pendentia*);
(f) The cause of action is barred by a prior judgment (*res judicata*) or by the statute of limitations (prescription);
(g) The pleading asserting the claim states no cause of action;
(h) The claim or demand set forth in the plaintiff's pleading has been paid, waived, abandoned, or otherwise extinguished;
(i) The claim on which the action is founded is unenforceable under the provisions of the statute of frauds; and
(j) A condition precedent for filing the action has not been complied with.

1. Exhaustion of administrative remedies
2. Compliance with earnest efforts between or among members of the family
3. Barangay conciliation

(2) The language of the rule, particularly on the relation of the words "abandoned" and "otherwise extinguished" to the phrase "claim or demand deemed set forth in the plaintiff's pleading" is broad enough to include within its ambit the defense of bar by laches. However, when a party moves for the dismissal of the complaint based on laches, the trial court must set a hearing on the motion where the parties shall submit not only their arguments on the questions of law but also their evidence on the questions of fact involved. Thus, being factual in nature, the elements of laches must be proved or disproved through the presentation of evidence by the parties *(Pineda vs. Heirs of Eliseo Guevara, GR No. 143188, 02/14/2007).*

(3) The issue of lack of jurisdiction was raised by respondents in their Appellant's Brief. And the fact that it was raised for the first time on appeal is of no moment. Under Sec. 1, Rule 9 of the Revised Rules of Court, defenses not pleaded either in a motion to dismiss or in the answer are deemed waived, except for lack of jurisdiction, litis pendentia, res judicata, and prescription, which must be apparent from the pleadings or the evidence on record. In other words, the defense of lack of jurisdiction over the subject matter may be raised at any stage of the proceedings, even for the first time on appeal. In fact, the court may *motu proprio* dismiss a complaint at any time when it appears from the pleadings or the evidence on record that lack of jurisdiction exists *(Heirs of Julao v. Sps. De Jesus, GR No. 176020, 09/29/2014).*

(4) **2008 Bar**: Within the period for filing a responsive pleading, the defendant field a motion for bill of particulars that he set for hearing on a certain date. However, the defendant was surprised to find on the date set for hearing that the trial court had already denied the motion on the day of its filing, stating that the allegations of the complaint were sufficiently made.

If the judge grants the motion and orders the plaintiff to file and serve the bill of particulars, can the trial judge dismiss the case if the plaintiff does not comply with the order? (3%)

Answer: Yes, the judge may dismiss the case for failure of the plaintiff to comply with its order *(Rule 17, Section 3)* or order the striking out of the pleading and may issue any other order at its discretion *(Rule 12, Section 4).*

Resolution of motion

(1) After the hearing, the court may
(a) dismiss the action or claim,
(b) deny the motion, or
(c) order the amendment of the pleading.

The court shall not defer the resolution of the motion for the reason that the ground relied upon is not indubitable. In every case, the resolution shall state clearly and distinctly the reasons therefor *(Sec. 3).*

(2) Options of the court after hearing – but not to defer the resolution of the motion for the reason that the ground relied upon is not indubitable:
(a) dismiss the action or claim;
(b) deny the motion to dismiss; or
(c) order amendment of the pleading.

Remedies of plaintiff when the complaint is dismissed

(1) If the motion is granted, the complaint is dismissed. Since the dismissal is final and not interlocutory in character, the plaintiff has several options:

(a) Refile the complaint, depending upon the ground for the dismissal of the action. For instance, if the ground for dismissal was anchored on improper venue, the defendant may file the action in the proper venue.

(b) Appeal from the order of dismissal where the ground relied upon is one which bars the refiling of the complaint like *res judicata*, prescription, extinguishment of the obligation or violation of the statute of frauds *(Sec. 5, Rule 16).* Since the complaint cannot be refiled, the dismissal is with prejudice. Under Sec. 1[h], Rule 41, it is an order dismissing an action without prejudice which cannot be appealed from. Conversely, where the dismissal is with prejudice, an appeal from the order of dismissal is not precluded. However, where the ground for dismissal for instance, is the failure of the complaint to state cause of action, the plaintiff may simply file the complaint anew; but since the dismissal is without prejudice to its refiling, the order of dismissal cannot be appealed from under the terms of Sec. 1[h], Rule 41.

(c) Petition for certiorari is availed of if the court gravely abuses its discretion in a manner amounting to lack of jurisdiction and is the appropriate remedy in those instances when the dismissal is without prejudice *(Sec. 1, Rule 41).*

Remedies of the defendant when the motion is denied

(1) File answer within the balance of the period prescribed by Rule 11 to which he was entitled at the time of serving his motion, but not less than five (5) days in any event *(Sec. 4, Rule 16).* As a rule, the filing of an answer, going through the usual trial process, and the filing of a timely appeal from an adverse judgment are the proper remedies against a denial of a motion to dismiss. The filing of an appeal from an order denying a motion to dismiss is not the remedy prescribed by existing rules. The order of denial, being interlocutory is not appealable by express provision of Sec 1[c], Rule 41.

(2) Special civil action under Rule 65. This remedy however is predicated upon an allegation and a showing that the denial of the motion was tainted with grave abuse of discretion amounting to lack of jurisdiction. Without such showing, Rule 65 cannot be availed of as a remedy.

(3) The general rule is that the denial of a motion to dismiss cannot be questioned in a special civil action for certiorari which is a remedy designed to correct errors of jurisdiction and not errors of judgment. Neither can a denial of a motion to dismiss be the subject of an appeal unless and until a final judgment or order is rendered. In order to justify the grant of the extraordinary remedy of certiorari, the denial of the motion to dismiss must have been tainted with grave abuse of discretion amounting to lack or excess of jurisdiction *(Douglas Lu Ym vs. Gertrudes Nabua, GR No. 161309, 02/23/2005).*

(4) File an appeal, because by the clear language of Sec. 5, the dismissal is subject to the right of appeal. This remedy is appropriate in the instances where the defendant is barred from refiling the same action of claim if the dismissal is based on the following grounds:
   (a) The cause of action is barred by a prior judgment
   (b) The cause of action is barred by the statute of limitations
   (c) The claim or demand has been paid, waived, abandoned or otherwise extinguished
   (d) The claim on which the action is founded is unenforceable under the provisions of the statute of frauds.

(5) The denial of a motion to dismiss is interlocutory, hence, the remedy is to file an answer, proceed to trial, and await judgment before interposing an appeal. The denial should be raised as an error of the trial court on appeal. *Certiorari* is not the proper remedy. A writ of *certiorari* is not intended to correct every controversial interlocutory ruling: It is resorted to only to correct a grave abuse of discretion or a whimsical exercise of judgment equivalent to lack of jurisdiction. Its function is limited to keeping an inferior court within

its jurisdiction and to relieve persons from arbitrary acts, acts which courts or judges have no power or authority in law to perform. It is not designed to correct erroneous findings and conclusions made by the courts *(Bonifacio Construction Management Corp. vs. Hon. Estela Bernabe, GR No. 148174, 06/30/2005).*

Effect of dismissal of complaint on certain grounds

(1) Failure to state cause of action – defendant hypothetically admits all the averments thereof. The test of sufficiency of the facts found in a complaint as constituting a cause of action is whether or not admitting the facts alleged, the court can render a valid judgment upon the same in accordance with the prayer thereof. The hypothetical admission extends to the relevant and material facts well pleaded in the complaint and inferences fairly deducible therefrom. Hence, if the allegations in the complaint can be maintained, the same should not be dismissed regardless of the defense that may be assessed by the defendant *(Davao Light and Power Co. vs.Hon. Judge, Davao City RTC, GR 147058, March 10, 2005).*

(2) When the complaint is dismissed on the grounds of (a) prior judgment or by (b) the statute of limitations, or (c) payment, waiver, abandonment or extinguishment of the claim or (d) unenforceability of the cause of action under the statute of frauds, the dismissal shall bar the refiling of the same action or claim, but this is without prejudice to the right of the other party to appeal from the order of dismissal because such dismissal is a final order, not merely interlocutory *(Sec. 5).*

When grounds pleaded as affirmative defenses

(1) If no motion to dismiss has been filed, any of the grounds provided for dismissal may be pleaded as an affirmative defense in the answer and, in the discretion of the court, a preliminary hearing may be had thereon as if a motion to dismiss has been filed *(Sec. 6, Rule 16).*

(2) Implied under Sec. 6, Rule 16 is that the grounds for a motion to dismiss are not waived even if the defendant fails to file a motion to dismiss because he may still avail of the defenses under Rule 16 as affirmative defenses in his answer.

(3) The preliminary hearing authorized on the affirmative defenses raised in the answer, applies only if no motion to dismiss has been filed. As a rule, a preliminary hearing is not authorized when a motion to dismiss has been filed. An exception previously carved out is if the trial court had not categorically resolved the motion to dismiss. Another exception would be justified under the liberal construction rule as when it is evident that the action is barred by *res judicata*. A strict application of Sec. 6 would accordingly lead to absurdity when an obviously barred complaint continues to be litigated. The denial of a motion to dismiss does not preclude any future reliance on the grounds relied thereupon *(Sps. Rasdas vs. Sps. Villa, GR 157605, 12/13/2005).*

Bar by dismissal

(1) ***Res judicata*** as a ground for dismissal is based on two grounds, namely: (a) public policy and necessity, which makes it to the interest of the State that there should be an end to litigation *(republicae ut sit litium)*; and (b) the hardship on the individual of being vexed twice for the same cause *(nemo debet bis vexari et eadem causa)*. Accordingly, courts will simply refuse to reopen what has been decided. They will not allow the same parties or their privies to litigate anew a question once it has been considered and decided with

finality. Litigations must end and terminate sometime and somewhere. The effective and efficient administration of justice requires that once a judgment has become final, the prevailing party should not be deprived of the fruits of the verdict by subsequent suits on the same issues filed by the same parties *(Fells, Inc. vs. Prov. of Batangas, GR No. 168557, 02/19/2007).*

(2) *Res judicata* comprehends two distinct concepts: (a) bar by a prior judgment, and (b) conclusiveness of judgment *(Heirs of Wenceslao Tabia vs.CA, GR 129377 & 129399, 02/22/2007).* The first concept bars the prosecution of a second action upon the same claim, demand or cause of action. The second concept states that a fact or question which was in issue in a former suit and was there judicially passed upon and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein as far as the parties to that action and persons in privity with them are concerned and cannot be again litigated in any future action between such parties or their privies, in the same court or any other court of concurrent jurisdiction on either the same or different cause of action, while the judgment remains unreversed by proper authority *(Moraga vs. Spouses Somo, GR 166781, 09/05/2006).*

(3) The doctrine of *res judicata* in the form of bar by prior judgment provides that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on all points and in the form or matters determined in the former suit. To apply this doctrine, there must be identity of parties, subject matter, and causes of action as between the first case where the first judgment was rendered and the second case that is sought to be barred *(Serrano v. Ambassador Hotel, Inc., GR No. 197003, 02/11/2013).*

(4) Grounds for dismissal that bar refiling

- (a) cause of action is barred by a prior judgment;
- (b) cause of action is barred by the statute of limitations;
- (c) claim or demand set forth in the plaintiff's pleading has been paid, waived, abandoned, or otherwise extinguished;
- (d) claim is unenforceable under the statute of frauds.

(5) **2007 Bar:** Husband H files a petition for declaration of nullity of marriage before the RTC of Pasig City. Wife W files a petition for habeas corpus before the RTC of Pasay City, praying for custody over their minor child. H files a motion to dismiss the wife's petition on the ground of the pendency of the other case. Rule. (10%)

Answer: The husband's motion to dismiss his wife's petition for habeas corpus should be granted because the case for nullity of marriage constitutes litis pendencia. The custody over the minor child and the action for nullity of the marriage are not separate causes of action. Judgment on the issue of custody in the nullity of marriage case before the RTC of Pasig City, regardless of which party would prevail, would constitute res judicata on the habeas corpus case before the RTC of Pasay City since the former has jurisdiction over the parties and the subject matter. The evidence to support the petition for nullity necessarily involves evidence of fitness to take custody of the child, as the court in the nullity of proceedings has a duty under the Family Code to protect the best interest of the child *(Yu vs. Yu, GR No. 164915, 03/102006; Sec. 1[e], Rule 16) and Sec. 2, Rule 102).*

(6) Res judicata has two concepts. The first is bar by prior judgment under Rule 39, Section 47(b), and the second is conclusiveness of judgment under Rule 39, Section 47(c). Jurisprudence taught us well that res judicata under the first concept or as a bar against the prosecution of a second action exists when there is identity of parties, subject matter and cause of action in the first and second actions. The judgment in the first action is final as to the claim or demand in controversy, including the parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose and of all matters that could have been adjudged in that case. The case

at hand satisfies the essential requisites of res judicata under the first concept. The RTC is therefore correct in dismissing the case on the ground of *res judicata* *(Samson v. Sps. Gabor, GR No. 182970, 07/23/2014)*.

(7) The principle of *res judicata* is applicable either by way of "bar by prior judgment" or by "conclusiveness of judgment." Here, Salvador's defense was res judicata by conclusiveness of judgment. Contrary to Salvador's contention, however, there appears to be no identity of issues and facts in the two administrative cases. The first case involved facts necessary to resolve the issue of whether or not Salvador falsified her PDS. The second one involved facts necessary to resolve the issue of whether or not Salvador was convicted of a crime involving moral turpitude. Falsification was the main issue in the first case, while it was no longer an issue in the second case. The only fact to consider in the second administrative complaint is the fact of conviction of a crime involving moral turpitude. It must be borne in mind that both administrative complaints were based on different grounds. The grounds were separate and distinct from each other and entailed different sets of facts *(Pagaduan vs. Civil Service Commission, GR No. 206379, 11/19/2014)*.

(8) A compromise agreement is a contract whereby the paiiies, make reciprocal concessions to avoid a litigation or put an end to one already commenced. In a compromise, the parties adjust their difficulties in the manner they have agreed upon, disregarding the possible gain in litigation and keeping in mind that such gain is balanced by the danger of losing. 80 It encompasses the objects stated, although it may include other objects by necessary implication. It is binding on the contractual parties, being expressly acknowledged as a juridical agreement between them, and has the effect and authority of *res judicata* *(Chu vs. Cunanan, GR No. 156185, 09/12/2011; Spouses Ibañez v. Harper, GR No. 194272, 02/15/2017)*.

(9) Section 5 of the same Rule [16], recites the effect of a dismissal under Sections 1(f), (h), and (i), thereof, thus:

> SEC. 5. *Effect of dismissal.* Subject to the right of appeal, an order granting a motion to dismiss based on paragraphs (t), (h), and (i) of section 1 hereof shall bar the refiling of the same action or claim.

Briefly stated, dismissals that are based on the following grounds, to wit: (1) that the cause of action is barred by a prior judgment or by the statute of limitations; (2) that the claim or demand set forth in the plaintiffs pleading has been paid, waived, abandoned or otherwise extinguished; and (3) that the claim on which the action is founded is unenforceable under the provisions of the statute of frauds, bar the refiling of the same action or claim. Logically, the nature of the dismissal founded on any of the preceding grounds is with prejudice because the dismissal prevents the refiling of the same action or claim. Ergo, dismissals based on the rest of the grounds enumerated are without prejudice because they do not preclude the refiling of the same action *(Development Bank of the Philippines vs. Judge Carpio, GR No. 195450, 02/01/2017)*.

(10) While the subject of civil Case No. Av-929 is the declaration of nullity of certain documents, the ruling on Magdalena's filiation cannot be conisdere *obiter dictum* since the RTC determinedly discussed and settled theat issue as a means to decide the main issue brought for its disposition. Being a final judgment, the Decision in Civil Case No. AV-929 constitutes *res judicata*.

Res judicata literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." It also refers to the rule that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on points and matters determined in the former suit. It rests on the principle that parties should not to be permitted to litigate the same issue more than once. When a right or fact has been judicially tried and determined by a court of competent jurisdiction, or an opportunity for such trial has been given, the judgment of the court, so long as it remains unreversed, should be conclusive upon the parties and those in privity with them in law or estate.

This judicially-created doctrine exists as an obvious rule of reason, justice, fairness, expediency, practical necessity, and public tranquillity. Moreover, public policy, judicial orderliness, economy of judicial time, and the interest of litigants, as well as the peace and order of society, all require that stability should be accorded judgments, that controversies once decided on their merits shall remain in repose, that inconsistent judicial decision shall not be made on the same set of facts, and that there be an end to litigation which, without the doctrine of *res judicata,* would be endless *(Hilario vs. Miranda, GR No. 196499, 11/28/2018)*.

(11) **2002 Bar:** Rolando filed a petition for declaration of the nullity of his marriage to Carmela because of the alleged psychological incapacity of the latter. After trial, the court rendered judgment dismissing the petition on the ground that Rolando failed to prove the psychological incapacity of his wife. The judgment having become final, Rolando filed another petition, this time on the ground that his marriage to Carmela had been celebrated without a license. Is the second action barred by the judgment in the first? Why? (2%)

Answer: No, the second action is not barred by the judgment in the first because they are different causes of action. The first is for annulment of marriage on the ground of psychological incapacity under Article 36 of the Family Code, while the second is for declaration of nullity of marriage in view of the absence of a basic requirement, which is a marriage license. They are different causes of action because the evidence required to prove them are not the same *(Pagsisihan vs. Court of Appeals, 95 SCRA 540 [1980])*.

(12) **2003 Bar:** A filed with the Metropolitan Trial Court (MTC) of Manila an action for specific performance against B, a resident of Quezon City, to compel the latter to execute a deed of conveyance covering a parcel of land situated in Quezon City having an assessed value of P19,000.00. B received the summons and a copy of the Complaint on 02 January 2003. On 10 January 2003, B filed a Motion to Dismiss the Complaint on the ground of lack of jurisdiction contending that the subject matter of the suit was incapable of pecuniary estimation. The court denied the motion. In due time, B filed with the Regional Trial Court (RTC) a Petition for Certiorari praying that the said Order be set aside because the MTC had no jurisdiction over the case.

On 13 February 2003, A filed with the MTC a motion to declare B in default. The motion was opposed by B on the ground that his Petition for Certiorari was still pending.

Was the denial of the Motion to Dismiss the Complaint correct? (6%)

Answer: The denial of the Motion to Dismiss the Complaint was not correct. Although the assessed value of the parcel of land involved was P19,000, within the jurisdiction of the MTC of Manila, the action filed by A for specific performance against B to compel the latter to execute a Deed of Conveyance of said parcel of land was not capable of pecuniary estimation and, therefore, the action was within the jurisdiction of the RTC *(Copioso vs. Copioso, GR No. 149243, 10/282002; Cabutihan vs. Landcenter Construction, 383 SCRA [2002])*.

(13) **2008 Bar:** Fe filed a suit for collection of P387,000 against Ramon in the RTC of Davao City. Aside from alleging payment as a defense, Ramon in his answer set up counterclaims for P100,000 as damages and P30,000 as attorney's fees as a result of the baseless filing of the complaint, as well as for P250,000 as the balance of the purchase price of the 30 units of air conditioners he sold to Fe.

b) Suppose Ramon's counterclaim for the unpaid balance is P310,000, what will happen to his counterclaims if the court dismisses the complaint after holding a preliminary hearing on Ramon's affirmative defenses? (3%)

Answer: The dismissal of the complaint shall be without prejudice to the prosecution in the same or separate action of a counterclaim pleaded in the answer *(Pinga vs. Heirs of Herman Santiago, GR No. 170354, 06302006)*.

c) Under the same premise as paragraph (b) above, suppose that instead of alleging payment as a defense in his answer, Ramon filed a motion to dismiss on that ground, at the same time setting up his counterclaim, and the court grants his motion. What will happen to his counterclaim. (3%)

Answer: His counterclaims can continue to be prosecuted or may be pursued separately at his option *(Pinga vs. Heirs of Herman Santiago, supra).*

Motion to Dismiss Distinguished from Demurrer to Evidence *(Rule 33)*

(1) Demurrer to evidence is a motion to dismiss filed by the defendant after the plaintiff had rested his case on the ground of insufficiency of evidence. It may be filed after the plaintiff has completed the presentation of his evidence. It is an aid or instrument for the expeditious termination of an action similar to a motion to dismiss, which the court or tribunal may either grant or deny.

(2) Distinctions:

(a) A motion to dismiss is usually filed before the service and filing of the answer; a demurrer to evidence is made after the plaintiff rests his case;

(b) A motion to dismiss is anchored on many grounds; a demurrer is anchored on one ground–plaintiff has no right to relief; and

(c) If a motion to dismiss is denied, the defendant may file his responsive pleading; in a demurrer, the defendant may present his evidence.

Motion to Dismiss	Demurrer to Evidence
Rule 16, Rules of Civil Procedure	Rule 33, Rules of Civil Procedure
Filed before the service and filing of answer	Filed after plaintiff rests his case
Anchored on several grounds	Anchored on the ground that plaintiff has no right to relief
If the motion is denied, defendant may file responsive pleading	When denied, defendant may present evidence

Dismissal of Actions *(Rule 17)*

(1) The Court previously ruled that an issue becomes moot and academic when it ceases to present a justiciable controversy so that a declaration on the issue would be of no practical use or value. In such cases, there is no actual substantial relief to which the plaintiff would be entitled to and which would be negated by the dismissal of the complaint. However, a case should not be dismissed simply because one of the issues raised therein had become moot and academic by the onset of a supervening event, whether intended or incidental, if there are other causes which need to be resolved after trial. When a case is dismissed without the other substantive issues in the case having been resolved would be tantamount to a denial of the right of the plaintiff to due process.

In this case, it reveals that Erlinda did not only pray that BCCC be enjoined from denying her access to the cottage and be directed to provide water and electricity thereon, but she also sought to be indemnified in actual, moral and exemplary damages because her proprietary right was violated by the respondents when they denied her of beneficial use of the property. In such a case, the Court should not have dismissed the complaint and

should have proceeded to trial in order to determine the propriety of the remaining claims *(Ilusorio vs. Baguio Country Club Corporation, GR No. 179571, 07/02/2014).*

(2) The Court of Appeals reversed and set aside the decision of the RTC dismissing the complaint filed by the respondents due to failure to prosecute. The petitioner contends that the Court of Appeals erred in reversing the said decision. The Supreme Court ruled that relief is accorded to the client who suffered by reason of the lawyer's palpable mistake or negligence and where the interest of justice so requires. The Court finds that respondents would be deprived of the opportunity to prove the legitimacy of their claims if the RTC's dismissal of the case – on a procedural technicality at that, which was clearly caused by the palpable negligence of their counsel – is sustained *(Yap-Co vs. Sps. Yu, GR No. 209295, 02/11/2015).*

Dismissal upon notice by plaintiff

(1) *Before* the service of an answer or the service of a motion for summary judgment, a complaint may be dismissed by the plaintiff by filing a *notice of dismissal*. Upon the filing of the notice of dismissal, the court shall issue an order confirming the dismissal *(Sec. 1, Rule 17).*

(2) It is not the order confirming the dismissal which operates to dismiss the complaint. As the name of the order implies, said order merely confirms a dismissal already effected by the filing of the notice of dismissal. The court does not have to approve the dismissal because it has no discretion on the matter. Before an answer or a motion for summary judgment has been served upon the plaintiff, the dismissal by the plaintiff by the filing of the notice is a matter of right. The dismissal occurs as of the date of the notice is filed by the plaintiff and not the date the court issues the order confirming the dismissal.

(3) Under the clear terms of Sec. 1, Rule 17, the dismissal as a matter of right ceases when an answer or a motion for summary judgment is served on the plaintiff and not when the answer or the motion is filed with the court. Thus, if a notice of dismissal is filed by the plaintiff even after an answer has been filed in court but before the responsive pleading has been served on the plaintiff, the notice of dismissal is still a matter of right.

Two-dismissal rule

(1) The two-dismissal rule applies when the plaintiff has (a) twice dismissed actions, (b) based on or including the same claim, (c) in a court of competent jurisdiction. The second notice of dismissal will bar the refiling of the action because it will operate as an adjudication of the claim upon the merits. In other words, the claim may only be filed twice, the first being the claim embodied in the original complaint. Since as a rule, the dismissal is without prejudice, the same claim may be filed. If the refiled claim or complaint is dismissed again through a second notice of dismissal, that second notice triggers the application of the two-dismissal rule and the dismissal is to be deemed one with prejudice because it is considered as an adjudication upon the merits.

Dismissal upon motion by plaintiff

(1) Once either an answer or motion for summary judgment has been served on the plaintiff, the dismissal is no longer a matter of right and will require the filing of a motion to dismiss, not a mere notice of dismissal. The motion to dismiss will now be subject to the approval of the court which will decide on the motion upon such terms and conditions as are just

(Sec. 2, Rule 17). The dismissal under Sec. 2 is no longer a matter of right on the part of the plaintiff but a matter of discretion upon the court.

Effect of dismissal upon existing counterclaim

(1) If a counterclaim has already been pleaded by the defendant prior to the service upon him of the plaintiff's motion to dismiss, and the court grants said motion to dismiss, the dismissal "*shall be limited to the complaint*" *(Sec. 2, Rule 17)*. The phraseology of the provision is clear: the counterclaim is not dismissed, whether it is a compulsory or a permissive counterclaim because the rule makes no distinction. The defendant if he so desires may prosecute his counterclaim either in a separate action or in the same action. Should he choose to have his counterclaim resolved in the same action, he must notify the court of his preference within fifteen (15) days from the notice of the plaintiff's motion to dismiss. Should he opt to prosecute his counterclaim in a separate action, the court should render the corresponding order granting and reserving his right to prosecute his claim in a separate complaint.

(2) A similar rule is adopted in Sec. 6, Rule 16 and Sec. 3, Rule 17, wherein the dismissal of the complaint does not carry with it the dismissal of the counterclaim. The same provision also grants the defendant a choice in the prosecution of his counterclaim.

(3) Dismissal with prejudice under Rule 17, Section 3 cannot defeat the right of a co-owner to ask for partition of the property at any time, as provided by Article 494 of the Civil Code, given that there is no actual adjudication of ownership of shares yet. Between dismissal with prejudice under Rule 17, Section 3, and the right granted to co-owners under Article 494 of the Civil Code, the latter must prevail. To construe otherwise would diminish the substantive right of a co-owner through the promulgation of procedural rules. In other words, Article 494 is an exception to Rule 17, Section 3.

However, there can still be res judicata in partition cases concerning the same parties and the same subject matter once the respective shares of the co-owners have been determined with finality by a competent court with jurisdiction or if the court determines that partition is improper for co-ownership does not or no longer exists. Here, the RTC has not made any such determination *(Quintos, et al. vs. Nicolas, et al, GR No. 210252, 06/16/2014)*.

(4) A dismissal based on any of the grounds in Section 3, Rule 17 of the Rules of Court has the effect of an adjudication on the merits. Unless otherwise qualified by the court, a dismissal under said rule is considered with prejudice, which bars the refiling of the case. 47 When an order completely disposes of the case and leaves nothing to be done by the court, it is a final order properly subject of an appeal.

The May 5, 2006 Order of the MeTC is an order of dismissal pursuant to Section 3, Rule 17. Since it was silent as to whether the dismissal of the case was with prejudice, the general rule would apply, that is, the same would be considered to be one with prejudice. Under the circumstances, Buen' s remedy would have been to file an ordinary appeal in the RTC pursuant to Rule 40 of the Rules of Court *(Martinez vs. Buen, GR No. 187342, 04/05/2017)*.

Dismissal due to the fault of plaintiff

(1) A complaint may be dismissed even if the plaintiff has no desire to have the same dismissed. The dismissal in this case will be through reasons attributed to his fault. Section 3 of Rule 17 provides the following grounds for dismissal:
   (a) Failure of the plaintiff, without justifiable reasons, to appear on the date of the presentation of his evidence in chief;

(b) Failure of the plaintiff to prosecute his action for an unreasonable length of time;
(c) Failure of the plaintiff to comply with the Rules of Court; or
(d) Failure of the plaintiff to obey any order of the court.

(2) The dismissal due to the fault of the plaintiff may be done by the court *motu propio* or upon a motion filed by the defendant *(Sec. 3, Rule 17).* The court may dismiss an action *motu propio, for*:

(a) Failure to prosecute for unreasonable length of time;
(b) Failure to appear at the trial;
(c) Failure to comply with the rules;
(d) Failure to comply with the order of the court; and
(e) Lack of jurisdiction.

Dismissal of counterclaim, cross-claim or third-party complaint

(1) The rule on the dismissal of a complaint applies to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone by notice pursuant to Sec. 1, Rule 17 shall be made before a responsive pleading or a motion for summary judgment is served or, if there is none, before the introduction of evidence at the trial or hearing *(Sec. 4).*

H. PRE-TRIAL *(Rule 18)*

Concept of pre-trial

(1) Pre-trial is a procedural device intended to clarify and limit the basic issues between the parties. It thus paves the way for a less cluttered trial and resolution of the case. Its main objective is to simplify, abbreviate and expedite trial, or totally dispense with it *(Abubakar vs. Abubakar, 317 SCRA 264).* It is a basic precept that the parties are bound to honor the stipulations made during the pre-trial *(Interlining Corp. vs. Phil. Trust Co., GR 144190, 03/06/2002).*

Nature and purpose

(1) After the last pleading has been served and filed, it shall be the duty of the plaintiff to promptly move *ex parte* that the case be set for pre-trial.

(2) The conduct of a pre-trial is mandatory.

(3) Pre-trial is a procedural device held prior to the trial for the court to consider the following purposes:

(a) The possibility of an amicable settlement or a submission to alternative modes of dispute resolution;
(b) Simplification of issues;
(c) Necessity or desirability of amendments to the pleadings;
(d) Possibility of obtaining stipulations or admissions of facts and of documents to avoid unnecessary proof;

(e) Limitation of the number of witnesses;
(f) Advisability of a preliminary reference of issues to a commissioner;
(g) Propriety of rendering judgment on the pleadings, or summary judgment, or of dismissing the action should a valid ground therefor be found to exist;
(h) Advisability or necessity of suspending the proceedings; and
(i) Other matters as may aid in the prompt disposition of the action *(Sec. 2, Rule 18).*

(4) Pre-trial is a procedural device intended to clarify and limit the basic issues raised by the parties and to take the trial of cases out of the realm of surprise and maneuvering. It is an answer to the clarion call for the speedy disposition of cases. The non-appearance by the plaintiff in the pre-trial shall be cause for dismissal of the action. However, the non-appearance of a party may be excused if a valid cause is shown therefor *(Sec. 4; Anson Trade Ctr. vs. Pacific Banking Corp., GR No. 179999, 03/17/2009).*

(5) Contending that the RTC was correct in dismissing the case for failure of respondent to prosecute his case, petitioner filed the instant petition praying that the decision of the CA be set aside. The SC however ruled that respondent had the option to move for pre-trial and if he fails to do so as he did, the branch clerk of court had the duty to have the case set for pre-trial. The Court emphasizes that in the absence of a pattern or scheme to delay the disposition of the case or a wanton failure to observe the mandatory requirement of the rules on the part of the plaintiff, as in the case at bar, courts should decide to dispense with rather than wield their authority to dismiss *(Soliman v. Fernandez, GR No. 176652, 06/04/2014).*

(6) Parañaque Kings clearly trifled with the mandatory character of a pre-trial, which is a procedural device intended to clarify and limit the basic issues raised by the parties and to take the trial of cases out of the realm of surprise and maneuvering. More significantly, a pre-trial has been institutionalized as the answer to the clarion call for the speedy disposition of cases. Hailed as the most important procedural innovation in Anglo-Saxon justice in the nineteenth century, it paves the way for a less cluttered trial and resolution of the case. It is, thus, mandatory for the trial court to conduct pre-trial in civil cases in order to realize the paramount objective of simplifying, abbreviating, and expediting trial *(Parañaque Kings Enterprises, Inc. vs. Santos, GR No. 194638, 07/02/2014).*

(7) **2001 Bar**: Lilio filed a complaint in the Municipal Trial Court of Lanuza for the recovery of a sum of money against Juan. The latter filed his answer to the complaint serving a copy thereof on Lilio. After the filing of the answer of Juan, whose duty is it to have the case set for pre-trial? Why? (5%)

Answer: After the filing of the answer of Juan, the plaintiff has the duty to promptly move ex parte that the case be set for pre-trial. The reason is that it is the plaintiff who knows when the last pleading has been filed and it is the plaintiff who has the duty to prosecute *(Rule 18, Section 1).*

Notice of pre-trial

(1) The notice of pre-trial shall be served on the counsel of the party if the latter is represented by counsel. Otherwise, the notice shall be served on the party himself. The counsel is charged with the duty of notifying his client of the date, time and place of the pre-trial *(Sec. 3, Rule 18).*

(2) Notice of pre-trial is so important that it would be grave abuse of discretion for the court for example, to allow the plaintiff to present his evidence *ex parte* for failure of the defendant to appear before the pre-trial who did not receive through his counsel a notice of pre-trial. Accordingly, there is no legal basis for a court to consider a party notified of the pre-trial and to consider that there is no longer a need to send notice of pre-trial merely because it was his counsel who suggested the date of pre-trail *(Agulto vs. Tucson, 476 SCRA 395).*

(3) Lack of notice of pre-trial voids a subsequently issued decision. Under Section 3, Rule 18, it is unequivocally required that the notice of pre-trial shall be served on counsel, or on the party who has no counsel. The notice of pre-trial seeks to notify the parties of the date, time and place of the pre-trial and to require them to file their respective pre-trial briefs within the time prescribed by the rules. Its absence therefore, renders the pre-trial and all subsequent proceedings null and void *(Philippine National Bank v. Sps. Perez, GR No. 187640, 06/15/2011).*

Appearance of parties; effect of failure to appear

(1) It shall be the duty of both the parties and their counsels to appear at the pre-trial *(Sec. 4, Rule 18).*

(2) The failure of the plaintiff to appear shall be cause for the dismissal of the action. This dismissal shall be with prejudice except when the court orders otherwise *(Sec. 5, Rule 18).* Since the dismissal of the action shall be with prejudice, unless otherwise provided, the same shall have the effect of an adjudication on the merits thus, final. The remedy of the plaintiff is to appeal from the order of dismissal. An order dismissing an action with prejudice is appealable. Under the Rules, it is only when the order of dismissal is without prejudice, that appeal cannot be availed of *(Sec. 1[h], Rule 41).* Since appeal is available, *certiorari* is not the remedy because the application of a petition for *certiorari* under Rule 65 is conditioned upon the absence of appeal or any plain, speedy and adequate remedy *(Sec. 1, Rule 65).*

(3) The failure of the defendant to appear shall be cause to allow the plaintiff to present his evidence *ex parte* and for the court to render judgment on the basis of the evidence presented by the plaintiff *(Sec. 5, Rule 18).* The order of the court allowing the plaintiff to present his evidence *ex parte* does not dispose of the case with finality. The order is therefore, merely interlocutory; hence, not appealable. Under Sec. 1(c) of Rule 41, no appeal may be taken from an interlocutory order. The defendant who feels aggrieved by the order may move for the reconsideration of the order and if the denial is tainted with grave abuse of discretion, he may file a petition for *certiorari*.

(4) During pre-trial, 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. In the case at bench, the petitioners failed to attend the pre-trial conference. They did not even give any excuse for their non-appearance. Thus, the MCTC properly allowed respondent to present evidence ex parte. Thus, the Court can only consider the evidence on record offered by respondent. The petitioners lost their right to present their evidence during the trial and, a fortiori, on appeal due to their disregard of the mandatory attendance in the pre-trial conference. *(Aguilar vs. Lightbringers Credit Cooperative, GR No. 209605, 01/12/2015).*

(5) On the procedural aspect, the Court reiterates the rule that the failure to attend the pre-trial conference does not result in the default of an absent party. Under the 1997 Rules of Civil Procedure, a defendant is only declared in default if he fails to file his Answer within the reglementary period. On the other hand, if a defendant fails to attend the pre-trial conference, the plaintiff can present his evidence ex parte. There is no dispute that Spouses Salvador and their counsel failed to attend the pre-trial conference set on February 4, 2005 despite proper notice. Spouses Salvador aver that their non-attendance was due to the fault of their counsel as he forgot to update his calendar. This excuse smacks of carelessness, and indifference to the pre-trial stage. It simply cannot be considered as a justifiable excuse by the Court. As a result of their inattentiveness, Spouses Salvador could no longer present any evidence in their favor *(Sps. Salvador vs. Sps. Rabaja, GR No. 199990, 02/04/2015).*

Pre-trial brief; effect of failure to file

(1) The parties shall file with the court their respective pre-trial briefs which shall be received at least three (3) days before the date of the pre-trial. This pre-trial brief shall be served on the adverse party *(Sec. 6, Rule 18).*

(2) The pre-trial brief shall contain the following matters:

(a) A statement of their willingness to enter into an amicable settlement or alternative modes of dispute resolution, indicating the desired terms thereof;
(b) A summary of admitted facts and proposed stipulation of facts;
(c) The issues to be tried or resolved;
(d) The documents or exhibits to be presented, stating the purposes thereof;
(e) A manifestation of their having availed of or their intention to avail of discovery procedures or referral to commissioners; and
(f) The number and names of the witnesses, and the substance of their respective testimonies *(Sec.6, Rule 18).*

(3) Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial *(Sec. 6, Rule 18).* Hence, if it is the plaintiff who fails to file a pre-trial brief, such failure shall be cause for dismissal of the action. If it is the defendant who fails to do so, such failure shall be cause to allow the plaintiff to present his evidence *ex parte*. A pre-trial brief is not required in a criminal case.

Distinction between pre-trial in civil case and pre-trial in criminal case

Civil Pre-trial *(Rule 18)*	Criminal Pre-trial *(Rule 118)*
Mandatory	Mandatory
Presence of defendant and counsel mandatory (failure to appear is a ground for dismissal)	Accused need not be present, but his counsel must be present; otherwise, he may be sanctioned
Amicable settlement is discussed	Amicable settlement is not discussed, unless the criminal case is covered by summary procedure
Agreement included in pre-trial order need not be in writing	Agreements or admissions must be written and signed by the accused and counsel to be admissible against him.
Can have proffer of evidence	Proffer of evidence only during trial
Requires motion *ex parte*	Does not require a motion; the court shall order *motu proprio*
Held after the last pleading has been served	Held after arraignment
Pre-trial brief is required	No pre-trial brief is required

(1) The pre-trial in a civil case is set when the plaintiff moves *ex parte* to set the case for pre-trial *(Sec.1, Rule 18)*. The pre-trial in criminal case is ordered by the court and no motion to set the case for pre-trial is required from either the prosecution or the defense *(Sec. 1, Rule 118).*

(2) The motion to set the case for pre-trial in a civil case is made after the last pleading has been served and filed *(Sec. 1, Rule 18).* In a criminal case, the pre-trial is ordered by the

court after arraignment and within thirty (30) days from the date the court acquires jurisdiction over the person of the accused *(Sec. 1, Rule 118)*.

(3) The pre-trial in a civil case considers the possibility of an amicable settlement as an important objective *(Sec. 2[a], Rule 18)*. The pre-trial in a criminal case does not include the considering of the possibility of amicable settlement of criminal liability as one of its purposes *(Sec.1, Rule 118)*.

(4) In a civil case, the agreements and admissions made in the pre-trial are not required to be signed by the parties and their counsels. They are to be contained in the record of pre-trial and the pre-trial order *(Sec. 7, Rule 18)*. In a criminal case, all agreements or admissions made or entered during the pre-trial conference shall be reduced in writing and signed by the accused and counsel; otherwise, they cannot be used against the accused *(Sec. 2, Rule 118)*.

(5) The sanctions for non-appearance in a pre-trial are imposed upon the plaintiff or the defendant in a civil case *(Sec. 4, Rule 18)*. The sanctions in a criminal case are imposed upon the counsel for the accused or the prosecutor *(Sec. 3, Rule 118)*.

2004 Guidelines of Pre-trial and Use of Deposition-Discovery Measures *(AM No. 03-1-09-SC)*

(1) **2016 Bar**: What is the "most important witness" rule pursuant to the 2004 Guidelines of Pre-trial and Use of Deposition-Discovery Measures? Explain. (2.5%)

What is the "one day examination of witness" rule pursuant to the said 2004 Guidelines? Explain. (2.5%)

Answers:

Under *AM No. 03-01-09-SC* or the *2004 Guidelines of Pre-trial and Use of Deposition-Discovery Measures (July 13, 2004)*, in civil cases where no amicable settlement was reached by the parties, the trial judge is directed to determine the most important witnesses and limit the number of such witnesses to be heard. The court shall also require the parties and/or counsels to submit the names, addresses, and contact numbers of the witnesses to be summoned by subpoena. The facts to be proven by each witness and the approximate number of hours per witness shall also be fixed by the trial judge *(Section [1] [A] [S] [j]*.

The "one day examination of witness" rule requires that a witness has to be fully examined in one (1) day only. This rule shall be strictly adhered to subject to the courts' discretion during trial on whether or not to extend the direct and/or cross-examination for justifiable reasons. On the last hearing day allotted for each paty, he is required to make his formal offer of evidence after the presentation of his last witness and the opposing party is required to immediately interpose his objection thereto. Thereafter, the judge shall make the ruling on the offer of evidence in open court, but the judge has the discretion to allow the offer of evidence in writing in conformity with Section 35, Rule 132 of AM No. 03-01-09-SC.

Alternative Dispute Resolution (ADR)

(1) Voluntary arbitration involves the reference of a dispute to an impartial body, the members of which are chosen by the parties themselves, which parties freely consent in advance to abide by the arbitral award issued after proceedings where both parties had the oppostunity to be heard. The basic objective is to provide a speedy and inexpensive method of settling disputes by allowing the parties to avoid the formalities, delay, expense and aggravataion which commonly accompany ordinary litigation, especially litigation

which goes through the entire hierarchy of courts *(Hi-Precision Steel Center, Inc. vs. Lim Kim Steel Builders, Inc., 228 SCRA 397).*

(2) Arbitration is proper only when there is disagreement between the parties as to some provisions of the contract between them. However, validity of the contract cannot be the subject of arbitration proceedings. Allegation of fraud and duress in the execution of contract are matters within the jurisdiction of the ordinary courts of law. These questions are legal in nature and require the application and interpretation of laws and jurisprudence which is necessarily a judicial function.

Under the doctrine of separability, an arbitration agreement is considered as independent of the main contract. Being a separate contract in itself, the arbitration agreement may be invoked regardless of the possible nullity or invalidity of the main contract.

The fact that the parties already underwent through Judicial Dispute Resolution (JDR) preoceedings before the RTC, will bot make the subsequent conduct of arbitration between the parties unnecessary or circuitous. The JDR system is substantially different from arbitration proceedings *(Koppel, Inc. vs. Makati Rotary Club Foundation, Inc., 705 SCRA 142).*

(3) The Construction Industry Arbitration Commission under Executive Order No. 1008 has original and exclusive jurisdiction over disputes arising from, or connected with construction contracts *(J Plus Asia Development Corp. vs. Utility Assurance Corp., 700 SCRA 134).*

(4) Voluntary arbitrators, by the nature of their function, act in a quasi-judicial capacity *(Chung Fu Industries (Phils.), Inc. vs. CA, 206 SCRA 545).*

(5) Arbitration clauses are binding upon the parties, assigns, and heirs *(California and Hawaiian Sugar, Co. vs. Pioneer Insurance and Surety Corp., 346 SCRA 214; Heirs of A. Salas, jr. vs. Laperal Realty Corp., 320 SCRA 610; Del Monte Corp-USA vs. CA, 351 SCRA 373).*

(6) The parties to a submission agreement are bound by the arbitrator's award only to the extent and in the manner prescribed by the contract and only if the award is rendered in conformity thereto. A party aggrieved by the arbitral award may avail of petition for certiorari under Rule 65 *(Asset Privatization Trust vs. CA, 300 SCRA 579).*

(7) The subject of arbitration is precisely to allow an expeditious determination of a dispute. Xxx

Persons who are not parties to a contract with an arbitration clause cannot be compelled to submit to arbitration *(Agan, Jr. vs. PIATCO, 402 SCRA 612).*

(8) The provision of a contract should not be read in isolation from the rest of the instrument, but, on the contrary, interpreted in the light of the other related provisions *(Oil and Natural Gas Commission vs. CA, 293 SCRA 26).*

(9) Under Section 24 of RA 9285, the RTC has no jurisdiction disputes that are properly the subject of arbitration pursuant to an arbitration clause, and mandates the referral to arbitration in such cases.

However, foreign arbitral awards are only enforceable when confirmed by the Regional Trial Courts. Foreign arbitral award confirmed by the RTC is deemed not as judgment of a foreign court, but as a foreign arbitral award.

Whatever infractions or breaches by a party or differences arising from the contract with arbitration clause must be brought first and resolved by arbitration, and not through extrajudicial rescission or judicial action.

The pendency of arbitral proceeding does not foreclose resort to the courts for provisional relief. The RTC has authority and jurisdiction to grant interim measures aof protection *(Korea Technologies Co. Ltd. vs. Lerma, 542 SCRA 1, 01/07/2008).*

(10) Under RA 876, it is the RTC which exercises jursidiciton over disputes relating to the validity of arbitration agreement.

Employment agreements are usually contracts of adhesion. Any ambiguity in its provisions is generally resolved against the party who drafted the document *(Magellan Capital Mgt. Corp. vs. Zosa, 355 SCRA 157).*

(11) A decision or award of a voluntary arbitrator is appealable to the CA via petition for review under Rule 43 *(Royal Plant Workers Union vs. Coca-Cola Bottlers Phils., Inc., 696 SCRA 357)*.

(12) If the case has already filed a complaint with the trial court without prior recourse to arbitration, the proper procedure to enable an arbitration panel to resolve the parties' dispute pursuant to the contract is for the trial court to stay the proceedings. After the arbitration proceeding has already been pursued and completed, then the trial court may confirm the award made by the arbitration panel *(Fiesta World Mall Corp. vs. Linberg Phils. Inc., GR 152471, 08/18/ 2006)*.

(13) A party has several judicial remedies available at its disposal after the Arbitration Committee denied its Motion for Reconsideration:

(a) It may petition the proper RTC to issue an order vacating the award on the grounds provided for under Sec. 24 of the Arbitration Law;

(b) File a petition for review under Rule 43 with the Court of Appeals on questions of fact, of law, or mixed *questions* of fact and law *(Sec. 41, ADR)*;

(c) File a petition for *certiorari* under Rule 65 on the ground that the Arbitration Committee acted without or in excess of its jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction *(Insular Savings Bank vs. Far East Bank and Trust Co., GR 141818, 06/22/2006)*.

(14) Disputes do not go to arbitration unless and until the parties have agreed to abide by the arbitrator's decision. Necessarily, a contract is required for arbitration to take place and to be binding. The provision to submit to arbitration any dispute arising therefrom and the relationship of the parties is part of that contract. As a rule, contracts are respected as the law between the contracting parties and produce effect as between them, their assigns and heirs. Only those parties who have agreed to submit a controversy to arbitration who, as against each other, may be compelled to submit to arbitration *(Aboitiz Transport System Corp. vs. Gothong Lines, Inc. GR No. 198226, 07/18/2014)*.

(15) While there is jurisprudential authority stating that "a clerical error in the judgment appealed from may be corrected by the appellate court," the application of that rule cannot be made in this case considering that the CIAC Rules provides for a specific procedure to deal with particular errors involving "an evident miscalculation of figures, a typographical or arithmetical error. While the CA correctly affirmed in full the CIAC Arbitral Tribunal's factual determinations, it improperly modified the amount of the award in favor of AIC, which modification did not observe the proper procedure for the correction of an evident miscalculation of figures in the arbitral award. Section 17.1 of the CIAC Rules mandates the filing of a motion for the foregoing purpose within fifteen (15) days from receipt thereof. Failure to file said motion would consequently render the award final and executory under Section 18. 1 of the same rules *(National Transmission Corporation vs. Alphaomega Integrated Corp., GR No. 184295, 07/30/2014)*.

(16) While it appears that the Special ADR Rules remain silent on the procedure for the execution of a confirmed arbitral award, it is the Court's considered view that the Rules' procedural mechanisms cover not only aspects of confirmation but necessarily extend to a confirmed award's execution in light of the doctrine of necessary implication which states that every statutory grant of power, right or privilege is deemed to include all incidental power, right or privilege.

As the Court sees it, execution is but a necessary incident to the Court's confirmation of an arbitral award. To construe it otherwise would result in an absurd situation whereby the confirming court previously applying the Special ADR Rules in its confirmation of the arbitral award would later shift to the regular Rules of Procedure come execution. Irrefragably, a court's power to confirm a judgment award under the Special ADR Rules should be deemed to include the power to order its execution for such is but a collateral and subsidiary consequence that may be fairly and logically inferred from the statutory grant to regional trial courts of the power to confirm domestic arbitral awards *(Department of Environment and Natural Resources vs. United Planners Consultants, Inc., GR No. 212081, 02/23/2015)*.

(17) Section 3(h) of Republic Act *(R.A.)* No. 9285 or the Alternative Dispute Resolution of 2004 *(ADR Act)* defines confidential idformation as follows:

> "Confidential information" means any information, **relative to the subject of mediation or arbitration**, expressly intended by the source not to be disclosed, or obtained under circumstances that would create a reasonable expectation on behalf of the source that the information shall not be disclosed**. It shall include (1) communication, oral or written, made in a dispute resolution proceedings**, including any memoranda, notes or work product of the neutral party or non-party participant, as defined in this Act; (2) an oral or written statement made or which occurs during mediation or for purposes of considering, conducting, participating, initiating, continuing of reconvening mediation or retaining a mediator; and (3) pleadings, motions manifestations, **witness statements, reports filed or submitted in an arbitration** or for expert evaluation. [Emphases Supplied]

The said list is not exclusive and may include other information as long as they satisfy the requirements of express confidentiality or implied confidentiality.

Plainly, Rule 10.1 of A.M. No. 07-11-08-SC or the Special Rules of Court on Alternative Dispute Resolution *(Special ADR Rules)* allows "[a] party, counsel or witness who disclosed or who was compelled to disclose information relative to the subject of ADR under circumstances that would create a reasonable expectation, on behalf of the source, that the information shall be kept confidential xxx the right to prevent such information from being further disclosed without the express written consent of the source or the party who made the disclosure." Thus, the rules on confidentiality and protective orders apply when:

1. An ADR proceeding is pending;
2. A party, counsel or witness disclosed information or was otherwise compelled to disclose information;
3. The disclosure was made under circumstances that would create a reasonable expectation, on behalf of the source, that the information shall be kept confidential;
4. The source of the information or the party who made the disclosure has the right to prevent such information from being disclosed;
5. The source of the information or the party who made the disclosure has not given his express consent to any disclosure; and
6. The applicant would be materially prejudiced by an unauthorized disclosure of the information obtained, or to be obtained, during the ADR proceeding.

Gauged by the said parameters, the written statements of witnesses Ross, Holmes and Jennings, as well as the latter's oral testimony in the April 25, 2013 arbitration hearing, both fall under Section 3 (h) [1] and [3] of the ADR Act which states that *"communication, oral or written, made in a dispute resolution proceedings,* including any memoranda, notes or work product of the neutral party or non-party participant, as defined in this Act; and (3) pleadings, motions, manifestations, *witness statements,* reports filed or submitted in an arbitration or for expert valuation," constitutes confidential information *(Federal Express vs. Airfreight 2100, Inc., GR No. 216600, 11/21/2016).*

(18) **2015 Bar:** Water Builders, a construction company based in Makati City, entered into a construction agreemenbt with Super Powers, Inc., an energy company based in Manila, for the construction of a mini hydro electric plant. Water Builders failed to complete the project within the stipulated duration. Super Powers cancelled the contract. Water Builders filed a request for arbitration with the Construction Industry Arbitration Commission (CIAC). After due proceedings, CIAC rendered judgment in favor of Super Powers, Inc. ordering Water Builders to pay the former liquidated damages. Dissatisfied with the CIAC's judgment, Water Builders, pursuant to the Special Rules of Court on Alternative Dispute Resolution (ADR Rules) filed with the RTC of Pasay City a petition to vacate the arbitral award. Super Powers, Inc., in its opposition, moved to dismiss the

petition, invoking the ADR Rules, on the ground of improper venue as neither of the parties were doing business in Pasay City.

Should Water Builder's petition be dismissed? (3%)

Answer:

Yes, the petition should be dismissed on the ground of improper venue. Under the Special Rules of Court on Alternative Dispute Resolution (ADR), the petition shall be filed with the Regional Trial Court having the jurisdiction over the place where one of the parties is doing business, where any of the parties reside, or where the arbitration proceedgins were conducted *(Rule 11.3, AM No. 07-11-08-SC)*; hence, the venue of the petition to vacate the arbitral award of Water Builders is improperly laid.

H. INTERVENTION *(Rule 19)*

(1) Intervention is a legal proceeding by which a person who is not a party to the action is permitted by the court to become a party by intervening in a pending action after meeting the conditions and requirements set by the Rules. This third person who intervenes is one who is not originally impleaded in the action *(First Philippine Holdings Corp. vs. Sandiganbayan, 253 SCRA 30; Rule 19)*.

(2) Intervention is merely collateral or accessory or ancillary to the principal action and not an independent proceeding. With the final dismissal of the original action, the complaint in intervention can no longer be acted upon.

(3) The Ombudsman may not be allowed to intervene and seek reconsideration of the adverse decision rendered by CA in absolving Sison from the liability. In order to file an intervention, two requisites must concur: (1) movant has legal interest in the matter in litigation; and (2) intervention must not unduly delay or prejudice the adjudication of the rights of the parties, nor should the claim of the intervenor be capable of being properly decided in a separate proceeding. The interest referred to must be direct and immediate in character that the intervenor will be affected by the decision or judgment to be rendered. Moreover, when judges actively participate in the appeal of the decision which they have rendered, they become adversarial and cease to be judicial which supposed to be principal function. The Court ruled that the Ombudsman must be mindful of its role as an adjudicator which must remain partial and detached from the cases it ruled upon *(Office of the Ombudsman vs. Sison, GR No. 185954, 02/16/2010)*.

(4) Intervention is never an independent action, but is ancillary and supplemental to the existing litigation. Its purpose is not to obstruct nor unnecessarily delay the placid operation of the machinery of trial, but merely to afford one not an original party, yet having a certain right or interest in the pending case, the opportunity to appear and be joined so he could assert or protect such right or interests. In this case, Pulgar does not contest the RTC's dismissal of Civil Case No. 0587-M for lack of jurisdiction, but oddly maintains his intervention by asking in this appeal a review of the correctness of the subject realty tax assessment. This recourse, the Court, however, finds to be improper since the RTC's lack of jurisdiction over the main case necessarily resulted in the dismissal of his intervention *(Pulgar vs. RTC of Mauban, Quezon, GR No. 157583, 09/10/2014)*.

(5) In *Republic vs. Sereno, GR No. 237428, 05/11/2018,* the Supreme Court *En Banc* ruled that Intervention is a remedy by which a third party, not originally impleaded in the proceedings, becomes a litigant therein for a certain purpose: to enable the third party to protect or preserve a right or interest that may be affected by those proceedings.

Nevertheless, the remedy of intervention is not a matter of right but rests on the sound discretion of the court upon compliance with the first requirement on legal interest and the second requirement that no delay and prejudice should result as spelled out under Section 1, Rule 19 of the Rules of Court. x x x

Apart from such naked allegations, movant-intervenors failed to establish to the Court's satisfaction the required legal interest. Our jurisprudence *(Ongco vs. Dalisay, 691 Phil. 462, 469-4 70 [2012]* citing *Hon. Executive Secretary, et al. v. Northeast Freight Forwarders, Inc.,* 600 Phil. 789, 799 [2009]) is well-settled on the matter:

> Intervention is not a matter of absolute right but may be permitted by the court when the applicant shows facts which satisfy the requirements of the statute authorizing intervention. Under our Rules of Court, what qualifies a person to intervene is his possession of a legal interest in the matter in litigation or in the success of either of the parties, or an interest against both; or when he is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or an officer thereof. As regards the legal interest as qualifying factor, this Court has ruled that such interest must be of a direct and immediate character so that the intervenor will either gain or lose by the direct legal operation of the judgment. The interest must be actual and material, a concern which is more than mere curiosity, or academic or sentimental desire; it must not be indirect and contingent, indirect and remote, conjectural, consequential or collateral.

The Court denied the movant-intervenors to intervene, ruling that the movant-intervenors' sentiments, no matter how noble, do not in any way come within the purview of the concept of "legal interest" contemplated under the Rules to justify the allowance of intervention, for failing to show any legal interest of such nature that they will either gain or lose by the direct legal operation of the judgmene. The Court stressed that, if every person, not parties to the action but assert their desire to uphold the rule of law and the Constitution, were allowed to intervene, proceedings would become unnecessarily complicated, expensive, and interminable.

Requisites for intervention

(1) The following requisites must be complied with before a non-party may intervene in a pending action:
   (a) There must be a motion for intervention filed *before* rendition of judgment by the trial court *(Sec. 1, Rule 19).* A motion is necessary because leave of court is required before a person may be allowed to intervene.
   (b) The movant must show in his motion that he has:
      i. A legal interest in the matter in litigation, the success of either of the parties in the action, or against both parties;
      ii. That the movant is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof; and
      iii. That the intervention must not only unduly delay or prejudice the adjudication of the rights of the original parties and that the intervenor's rights may not be fully protected in a separate proceeding *(Mabayo Farms, Inc. vs. CA, GR No. 140058, 08/01/2002).*

(2) **2000 Bar**: What are the requisites for an intervention by a non-party in an action pending in court? (5%)

Answer: The requisites for intervention are:

(a) Legal interest in the matter in controversy; or
(b) Legal Interest in the success of either of the parties; or
(c) Legal interest against both; or
(d) So situated as to be adversely affected by the distribution or other disposition of property in the custody of the court or of an officer thereof; or
(e) Intervention will not unduly delay or prejudice the adjudication of the rights of original parties; or
(f) Intervenor's rights may not be fully protected in a separate proceeding *(Acenas v. Court of Appeals, 247 SCRA 773 [1995]).*

Time to intervene

(1) The motion to intervene may be filed at any time before the rendition of judgment by the trial court *(Sec. 2, Rule 18).* Intervention after trial and decision can no longer be permitted *(Yau vs. Manila Banking Corp., GR 126731, 07/11/2002).*

(2) The RTC of Manila denied the respondents' motion for intervention on the ground of the finality of the order of the RTC of Catbalogan, there being no appeal or any other legal remedy perfected in due time by either the petitioners or the respondents. Since the dismissal of the complaint was already final and executory, the RTC of Manila can no longer entertain a similar action from the same parties. The bone of contention is not regarding the petitioners' execution of waivers of the defense of prescription, but the effect of *finality of an order or judgment* on both parties.

The petitioners attempted to justify their failure to file an action to have the orders of the RTC of Catbalogan annulled by ratiocinating that the respondents precluded them from doing so when the latter filed their complaint anew with the RTC of Manila. This is untenable, as it is clear that the respondents filed the said complaint-in-intervention with the RTC of Manila more than a year after the case was ordered dismissed by the RTC of Catbalogan.56 Aside from this, the petitioners offered no other acceptable excuse on why they did not raise their oppositions against the orders of the RTC of Catbalogan when they had the opportunity to do so. Thus, the only logical conclusion is that the petitioners abandoned their right to waive the defense of prescription *(Caltex [Philippines], Inc. vs. Aguirre, GR No. 170746-47, 03/09/2016).*

Remedy for the denial of motion for intervention

(1) The remedy of the aggrieved party is a motion for reconsideration. Intervention is an interlocutory action or judgment; hence, unappleable. *Mandamus* will not lie except in case of grave abuse of discretion.

J. SUBPOENA *(Rule 21)*

(1) **Subpoena** is a process directed to a person requiring him to attend and to testify at the hearing or the trial of an action, or at any investigation conducted under the laws of the Philippines, or for taking of his deposition *(Sec. 1, Rule 21)*.

(2) **Subpoena *duces tecum*** is a process directed to a person requiring him to bring with him at the hearing or trial of an action any books, documents, or other things under his control.

(3) **Subpoena *ad testificandum*** is a process by which the court, at the instance of a party, commands a witness who has in his possession or control some document or paper that is pertinent to the issues of a pending controversy to produce it at the trial *(Black's Law Disctionary, 5th Ed.)*.

Service of subpoena

(1) It shall be made in the same manner as personal or substituted service of summons. The original shall be exhibited and a copy thereof delivered to the person on whom it is served, tendering to him the fees for one day's attendance and the kilometrage allowed by the Rules, except that when a subpoena is issued by or on behalf of the Republic, or an officer or agency thereof, the tender need not be made. The service must be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance. If the subpoena is *duces tecum*, the reasonable cost of producing the books, documents or things demanded shall also be tendered.

(2) Service of a subpoena shall be made by the sheriff, by his deputy, or by any other person specially authorized, who is not a party and is not less than eighteen (18) years of age *(Sec. 6, Rule 21)*.

Compelling attendance of witnesses; Contempt

(1) In case of failure of a witness to attend, the court or judge issuing the subpoena, upon proof of the service thereof and of the failure of the witness, may issue a warrant to the sheriff of the province, or his deputy, to arrest the witness and bring him before the court or officer where his attendance is required, and the cost of such warrant and seizure of such witness shall be paid by the witness if the court issuing it shall determine that his failure to answer the subpoena was willful and without just cause *(Sec. 8)*.

(2) Failure by any person without adequate cause to obey a subpoena served upon him shall be deemed a contempt of the court from which the subpoena is issued. If the subpoena was not issued by a court, the disobedience thereto shall be punished in accordance with the applicable law or Rule *(Sec. 9)*.

Quashing of subpoena

(1) The court may quash a subpoena *duces tecum* upon motion promptly made and, in any event, at or before the time specified therein: (a) if it is unreasonable and oppressive, or (b) the relevancy of the books, documents or things does not appear, or (c) if the person on whose behalf the subpoena is issued fails to advance the reasonable cost of the

production thereof, or (d) the witness fees and the kilometrage allowed by the Rules were not tendered when the subpoena was served *(Sec. 4)*.

(2) Subpoena *ad testificandum* may be quashed on the ground that: (a) the witness is not bound thereby, where the residence is more than 100 kilometers from the lace of trial, and (b) the witness fees and the kilometrage allowed by the Rules were not tendered when the subpoena was served *(Sec. 4)*.

(3) Viatory Right of a Witness. This is a right availed of only in civil cases where a witness resides more than 100 kilometers from the place of trial where he has to travel by ordinary course or travel, or where a detention prisoner with no permission obtained from the court where his case is pending, then he cannot be compelled to attend the trial *(People vs. Montejo, GR No. L-24154, 10/31/1967)*.

K. MODES OF DISCOVERY *(Rules 23-28)*

(1) Modes of discovery:
   (a) Depositions pending action *(Rule 23);*
   (b) Depositions before action or pending appeal *(Rule 24);*
   (c) Interrogatories to parties *(Rule 25)*
   (d) Admission by adverse party *(Rule 26);*
   (e) Production or inspection of documents and things *(Rule 27);* and
   (f) Physical and mental examination of persons *(Rule 28).*

(2) The importance of the rules of discovery is that they shorten the period of litigation and speed up adjudication. The evident purpose is to enable the parties, consistent with recognized principles, to obtain the fullest possible knowledge of the facts and issues before civil trials and thus prevent said trials from being carried on in the dark. The rules of discovery serve as (a) devices, along with the pre-trial hearing under Rule 18, to narrow and clarify the basic issues between the parties; and (b) devices for ascertaining the facts relative to those issues *(Republic vs. Sandiganbayan, 204 SCRA 212).*

(3) The basic purposes of the rules of discovery are:
   (a) To enable a party to obtain knowledge of material facts within the knowledge of the adverse party or of third parties through depositions;
   (b) To obtain knowledge of material facts or admissions from the adverse party through written interrogatories;
   (c) To obtain admissions from the adverse party regarding the genuineness of relevant documents or relevant matters of fact through requests for admissions;
   (d) To inspect relevant documents or objects, and lands or other property in the possession and control of the adverse party; and
   (e) To determine the physical or mental condition of a party when such is in controversy *(Koh vs. IAC, 144 SCRA 259).*

(4) Depositions must be competent, relevant, authentic, and offered.

(1) Rule 23 as a mode of discovery is not applicable in criminal cases. Its equivalent is found in Sections 12, 13, and 15 of Rule 119 *(advance examination of witness).*

Depositions pending action, before action or pending appeal

(1) As regards the taking of depositions, Rule 23, Section 1 is clear 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. Rojas (571 Phil. 51 [2008]) explained that this provision "does not make any distinction or restriction as to who can avail of deposition." Thus, this Court found it immaterial that the plaintiff was a non-resident foreign corporation and that all its witnesses were Americans residing in the United States.

On the use of depositions taken, we refer to Rule 23, Section 4 of the Rules of Court. This Court has held that "depositions may be used without the deponent being actually called to the witness stand by the proponent, under certain conditions and for certain limited purposes."

Xxx

In *Republic vs. Sandiganbayn (678 Phil. 358 [2011]),* the Rules of Court in relation to Rule 130, Section 47 on testimonies and depositions at a former proceeding. The deposition of Maurice Bane was taken in London for one case, and what the court disallowed was its *use* in another case.

In sum, Rule 23, Section 1 of the Rules of Court gives utmost freedom in the taking of depositions. Section 16 on protection orders, which include an order that deposition not be taken, may only be issued after notice and for good cause shown. However, petitioners' arguments in support of the trial court's Order denying the taking of deposition fails to convince as good cause shown.

The civil suit was filed pursuant to an agreement that gave respondent the option of filing the case before our courts or the courts of California. It would have been even more costly, time-consuming, and disadvantageous to petitioners had respondent filed the case in the United States.

Further, it is of no moment that respondent was not suffering from any impairment. Rule 23, Section 4(c)(2) of the Rules of Court, which was invoked by respondent, governs the use of depositions taken. This allows the use of a deposition taken when a witness is "out of the Philippines."

In any case, Rule 23 of the Rules of Court still allows for objections to admissibility during trial. The difference between admissibility of evidence and weight of evidence has long been laid down in jurisprudence. These two are not to be equated. Admissibility considers factors such as competence and relevance of submitted evidence. On the other hand, weight is concerned with the persuasive tendency of admitted evidence *(Santamaria vs. Cleary, GR No. 197122, 06/15/2016).*

(2) Section 1, Rule 23 of the Rules of Court provides that the testimony of any person may be taken by deposition upon oral examination or written interrogatories at the instance of any party. Depositions serve as a device for narrowing and clarifying the basic issues between the parties, as well as for ascertaining the facts relative to those issues. The purpose is to enable the parties, consistent with recognized privileges, to obtain the fullest possible knowledge of the issues and facts before trial. Thus, in *Dasmarinas Garments, Inc. v. Judge Reyes,* the Court ruled:

Depositions are chiefly a mode of discovery. They are intended as a means to compel disclosure of facts resting in the knowledge of a party or other person which are relevant in some suit or proceeding in court. Depositions, and the other modes of discovery (interrogatories to parties; requests for admission by adverse party; production or inspection of documents or things; physical and mental examination of persons) are meant to enable a party to learn all the material and relevant facts, not only known to him and his witnesses but also those known to the adverse party and the latter's own witnesses. In fine, the object of discovery is to make it possible for all the parties to a case to learn all the material and relevant facts, from whoever may have knowledge thereof, to the end that their pleadings or motions may not suffer from inadequacy of factual foundation, and all the relevant facts may be clearly and completely laid before the Court, without omission or suppression.

Depositions are principally made available by law to the parties as a means of informing themselves of all the relevant facts; they are not therefore generally meant to be a substitute for the actual testimony in open court of a party or witness. The deponent must as a rule be presented for oral examination in open court at the trial or hearing. This is a requirement of the rules of evidence. Section 1, Rule 132 of the Rules of Court provides:

> SECTION 1. *Examination to be done in open court.* -- The examination of witnesses presented in a trial or hearing shall be done in open court, and under oath or affirmation. Unless the witness is incapacitated to speak, or the question calls for a different mode of answer, the answers of the witness shall be given orally.

Indeed, any deposition offered to prove the facts therein set out during a trial or hearing, in lieu of the actual oral testimony of the deponent in open court, may be opposed and excluded on the ground that it is hearsay: the party against whom it is offered has no opportunity to cross-examine the deponent at the time that his testimony is offered. It matters not that opportunity for cross-examination was afforded during the taking of the deposition; for normally, the opportunity for crossexamination must be accorded a party at the time that the testimonial evidence is actually presented against him during the trial or hearing.

However, depositions may be used without the deponent being actually called to the witness stand by the proponent, under certain conditions and for certain limited purposes. These exceptional situations are governed by Section 4, Rule 24 [now Rule 23] of the Rules of Court.

Although petitioner questions the taking of depositions on the ground of lack of reasonable notice in writing, the Court, in order to put to rest any other issue arising from the depositions in this case, deems it proper to rule that the trial court did not commit any error in allowing Avelina to take her deposition and those of her witnesses and in subsequently admitting the same in evidence considering the allegations in the Motion that she and her witnesses were residing in the United States. This situation is one of the exceptions for its admissibility under Section 4(c)(2), Rule 23 of the Rules of Court, *i.e.,* that the witness resides at a distance of more than 100 kilometers from the place of trial or hearing, or is out of the Philippines, unless it appears that his absence was procured by the party offering the deposition *(Martires v. Heirs of Avelina Somera, GR No. 210789, 12/03/2018)*.

(3) The Court also finds no merit in petitioner's contention that the depositon-taking is invalid on account of a defective notice.

Notice has been defined as "information or announcement." The word was derived from the Latin words, *notitia* or "knowledge," *notus* meaning "known" and *noscere* which means "to know." Hence, it is unequivocal that the purpose of a notice is merely to inform the other party about the intended proceedings.

First, petitioner admits that in an Order dated July 5, 2007, the RTC granted the motion to conduct deposition. The requirement of giving notice intends to avoid situations wherein the adverse party is kept in the dark as regards the deposition-taking. Here, while it is true that Avelina's Motion indicated that the deposition-taking would be initially scheduled in July 2007, and the proceeding was actually conducted on September 27, 2007, it could not be said that petitioner was caught off guard by the belated conduct of the deposition. On September 24, 2007, Avelina's counsel manifested that the deposition would be held on September 27 to 28, 2007.23 Further, it was shown that on September 3, 2007, during the hearing of petitioner's motion with regard to the taking of deposition, petitioner, through counsel, was sufficiently informed that the deposition would be taken on September 27, 2007. Also, it is worthy to note that petitioner's counsel even declared before the court that petitioner was in the United States at that time and he intended to attend the deposition.

Second, Section 29(a), Rule 23 of the Rules of Court states that "all errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice." Contrary to petitioner's contention that the right to object came into being only when respondents sought to introduce the transcripts in evidence, petitioner should have objected to the perceived irregularity of the notice immediately upon receipt thereof. To be sure, there is no impediment to petitioner raising the issue of belated receipt of notice when he received the same after the depositions were already taken. It must be emphasized that Section 29(a) refers to errors and irregularities in the notice without any reference to the depositions taken by virtue of such notice. Hence, possession of the transcripts of the depositions is not a condition precedent for challenging the validity of the notice for taking a deposition. Consequently, petitioner's objections to the notice are already deemed waived considering that more than three years have already elapsed from petitioner's receipt thereof.

In any case, petitioner is not without remedy. Section 9, Rule 23 of the Rules of Court provides that "at the trial or hearing, any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party." Further, the admissibility of the deposition does not preclude the determination of its probative value at the appropriate time. The admissibility of evidence should not be equated with weight of evidence. Relevance and competence determine the admissibility of evidence, while weight of evidence presupposes that the evidence is already admitted and pertains to its tendency to convince and persuade *(Martires v. Heirs of Avelina Somera, GR No. 210789, 12/03/2018)*.

Meaning of Deposition

(1) A deposition is the taking of the testimony of any person, whether he be a party or not, but at the instance of a party to the action. This testimony is taken out of court. It may be either by oral examination, or by a written interrogatory *(Sec. 1, Rule 23)*.

(2) Kinds of depositions:

(a) Deposition *de bene esse* - one taken pending action *(Sec. 1, Rule 23)*; and
(b) Deposition *in perpetua rei memoriam* - one taken prior to the institution of an apprehended or intended action *(Rule 134)*.

Uses of Deposition

(1) A deposition may be sought for use in a future action *(Rule 24)*, during a pending action *(Rule 23)*, or for use in a pending appeal *(Rule 24)*. If the deposition is for use during a

pending action, it is commonly called a *deposition **benne esse*** and is governed by Rule 23. If it is to perpetuate a testimony for use in future proceedings as when it is sought before the existence of an action, or for cases on appeal, it is called a deposition *in **perpetuam rei memoriam***. Any or all of the deposition, so far as admissible under the rules of evidence, may be used (a) against any party who was present or represented at the taking of the deposition, or (b) against one who had due notice of the deposition *(Sec. 4, Rule 23)*.

(2) The deposition may be used for the following purposes:

(a) For contradicting or impeaching the testimony of the deponent as a witness;
(b) For any purpose by the adverse party where the deponent is a party;
(c) For any purpose by any party, where the deponent is a witness if the court finds that:
1. The witness is dead;
2. The witness resides more than 100 kilometers from the place of trial or hearing, or is out of the Philippines, unless it appears that his absence was procured by the party offering the deposition;
3. That the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or
4. That the party offering the deposition has been unable to procure the attendance of witnesses by subpoena; or
5. When exceptional circumstances exist *(Sec. 4, Rule 23)*.

Scope of examination

(1) Unless otherwise ordered by the court as provided by Sec. 16 or 18, the deponent may be examined regarding any matter not privileged, which is relevant to the pending action, whether relating to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts *(Sec. 2)*.

When may Objections to Admissibility be Made

(1) Subject to the provisions of Sec. 29, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying *(Sec. 6)*.

When may taking of deposition be terminated or its scope limited

(1) At any time during the taking of the deposition, on motion or petition of any party or of the deponent and upon showing that the examination is being conducted in bad faith or in such manner as reasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the RTC of the place where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition, as provided in Sec. 16, Rule 23. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a notice for an order. In granting or refusing such order, the court

may impose upon either party or upon the witness the requirement to pay such costs or expenses as the court may deem reasonable *(Sec. 18)*.

Written interrogatories to adverse parties

(1) Rule 25 lays down the procedure for conducting interrogatories to parties:
   (a) By leave of court after jurisdiction has been obtained over any defendant or over property which is the subject of the action, or
   (b) Without leave after an answer has been served, any party desiring to elicit material and relevant facts from any adverse parties shall file and serve upon the latter written interrogatories to be answered by the party served. If a party served is a public or private corporation or a partnership or association, by any officer thereof competent to testify in its behalf *(Sec. 1)*.

(2) The interrogatories shall be answered fully in writing, signed and sworn to by the person making them. The party whom the interrogatories have been served shall file and serve a copy of the answers on the party submitting the interrogatories within fifteen (15) days after service thereof unless the court on motion and for good cause shown, extends or shortens the time *(Sec. 2)*.

(3) When objections to any interrogatories is presented to the court within ten (10) days after service thereof, with notice as in a case of a motion; and answers shall be deferred until the objections are resolved, which shall be at as early as time as is practicable *(Sec. 3)*.

Consequences of refusal to answer

(1) If a party or other deponent refuses to answer any question upon oral examination, the examination may be completed on other matters or adjourned as the proponent of the question may prefer. The proponent may thereafter apply to the proper court of the place where the deposition is being taken, for an order to compel an answer. The same procedure may be availed of when a party or a witness refuses to answer any interrogatory submitted under Rules 23 or 25.

   If the application is granted, the court shall require the refusing party or deponent to answer the question or interrogatory and if it also finds that the refusal to answer was without substantial justification, it may require the refusing party or deponent or the counsel advising the refusal, or both of them, to pay the proponent the amount of the reasonable expenses incurred in obtaining the order, including attorney's fees.

   If the application is denied and the court finds that it was filed without substantial justification, the court may require the proponent or the counsel advising the filing of the application, or both of them, to pay to the refusing party or deponent the amount of the reasonable expenses incurred in opposing the application, including attorney's fees *(Sec. 1, Rule 29)*.

(2) If a party or other witness refuses to be sworn or refuses to answer any question after being directed to do so by the court of the place in which the deposition is being taken, the refusal may be considered a contempt of that court *(Sec. 2, Rule 29)*.

(3) If any party or an officer or managing agent of a party refuses to obey an order made under section 1 of this Rule requiring him to answer designated questions, or an order under Rule 27 to produce any document or other thing for inspection, copying, or photographing or to permit it to be done, or to permit entry upon land or other property, or an order made under Rule 28 requiring him to submit to a physical or mental examination, the court may make such orders in regard to the refusal as are just, and among others the following:

(a) An order that the matters regarding which the questions were asked, or the character or description of the thing or land, or the contents of the paper, or the physical or mental condition of the party, or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(b) An order refusing to allow the disobedient party to support or oppose designated claims or defenses or prohibiting him from introducing in evidence designated documents or things or items of testimony, or from introducing evidence of physical or mental condition;

(c) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party; and)

(d) In lieu of any of the foregoing orders or in addition thereto, an order directing the arrest of any party or agent of a party for disobeying any of such orders except an order to submit to a physical or mental examination *(Sec. 3, Rule 29)*.

Effect of failure to serve written interrogatories

(1) A party not served with written interrogatories may not be compelled by the adverse party to give testimony in open court, or to give deposition pending appeal, unless allowed by the court or to prevent a failure of justice *(Sec. 6, Rule 25)*. This provision encourages the use of written interrogatories although a party is not compelled to use this discovery procedure, the rule imposes sanctions for his failure to serve written interrogatories by depriving him of the privilege to call the adverse party as a witness or to give a deposition pending appeal.

Request for Admission *(Rule 26)*

(1) A party, although not compelled by the Rules, is advised to file and serve a written request for admission on the adverse party of those material and relevant facts at issue which are, or ought to be, within the personal knowledge of said adverse party. The party who fails to file and serve the request shall not be permitted to present evidence on such facts *(Sec. 5, Rule 26)*.

Implied admission by adverse party

(1) 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 *(Sec. 2, par. 2)*.

(2) Documents under Section 1 of Rule 26 are non-actionable documents.

Consequences of failure to answer request for admission

(1) The facts or documents are deemed admitted. Under the Rules, 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 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 matter of which an admission is requested or setting forth in detail the reason why he cannot truthfully either admit or deny those matters.

Effect of admission

(1) Any admission made by a party pursuant to such request is for the purpose of the pending action only and shall not constitute an admission by him for any other purpose nor may the same be used against him in any other proceeding *(Sec. 3)*.

Effect of failure to file and serve request for admission

(1) A party who fails to file and serve a request for admission on the adverse party of material and relevant facts at issue which are, or ought to be, within the personal knowledge of the latter, shall not be permitted to present evidence on such facts *(Sec. 5)*.

Production or inspection of documents or things *(Rule 27)*

(1) Upon motion of any party showing good cause therefor, the court in which an action is pending may:
   (a) Order any party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things, not privileged, which constitute or contain evidence material to any matter involved in the action and which are in his possession, custody or control; or
   (b) Order any party to permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any designated relevant object or operation thereon. The order shall specify the time, place and manner of making the inspection and taking copies and photographs, and may prescribe such terms and conditions as are just.

(2) Requirements for the production or inspection of documents or things:
   (a) A motion must be filed by a party showing good cause therefor;
   (b) The motion must sufficiently describe the document or thing sought to be produced or inspected;
   (c) The motion must be given to all the other parties;
   (d) The document or thing sought to be produced or inspected must constitute or contain evidence material to the pending action;
   (e) The document or thing sought to be produced or inspected must not be privileged; and

(f) The document or thing sought to be produced or inspected must be in the possession of the adverse party or, at least under his control *(Sec. 1, Rule 27; Lime Corp. vs. Moran, 59 Phil. 175)*.

(3) The Court ruled that the availment of a motion for production, as one of the modes of discovery, is not limited to the pre-trial stage. Rule 27 does not provide for any time frame within which the discovery mode of production or inspection of documents can be utilized. The rule only requires leave of court "upon due application and a showing of due cause" *(Eagle Ridge Development Corporation vs. Cameron Granville 3 Asset Management, Inc., GR No. 204700, 11/24/2014)*.

(4) **2002 Bar:** The plaintiff sued the defendant in the RTC to collect on a promissory note, the terms of which were stated in the complaint and a photocopy attached to the complaint and as an annex. Before answering, the defendant filed a motion for an order directing the plaintiff to produce the original of the note so that the defendant could inspect it and verify his signature and the handwritten entries of the dates and amounts.

a. Should the judge grant the defendant's motion for production and inspection of the original of the promissory note? (2%)

Answer: Yes, because upon motion of any party showing good cause, the court in which the action is pending may order any party to produce and permit the inspection of designated documents *(Rule 27)*. The defendant has the right to inspect and verify the original of the promissory note so that he could intelligently prepare his answer.

b. Assuming that an order for production and inspection was issued but the plaintiff failed to comply with it, how should the defendant plead to the alleged execution of the note? (3%)

Answer: The defendant is not required to deny under oath the genuineness and due execution of the promissory note, because of the non-compliance by the plaintiff with the order for production and inspection of the original thereof *(Rule 8, Section 8)*.

Physical and Mental Examination of Persons *(Rule 28)*

(1) Requirements of physical and mental examination of persons:
   (a) The physical or mental condition of a party must be in controversy in the action;
   (b) A motion showing good cause must be filed; and
   (c) Notice of the motion must be given to the party to be examined and to all the other parties *(Secs. 1 and 2)*.

(2) Rules governing the rights of parties on the report of the examining physician regarding the physical or mental condition of party examined:
   (a) The person examined shall, upon request, be entitled to a copy of the detailed written report of the examining physician setting out his findings and conclusions;
   (b) The party causing the examination to be made shall be entitled upon request to receive from the party examined, a like report of any examination previously or thereafter made, of the same physical or mental condition;
   (c) If the party examined refuses to deliver such report, the court on motion and notice may make an order requiring delivery;
      a. If a physician fails or refuses to make such report, the court may exclude his testimony if offered at the trial;
   (d) The party examined who obtains a reports of the examination or takes the deposition of the examiner waives any privilege he may have in that action or any other action involving the same controversy, regarding the testimony of every other person who

has examined or may thereafter examine him in respect of the same mental or physical examination *(Sec. 4)*.

Consequences of refusal to comply with modes of discovery *(Rule 29)*

(1) The following are the consequences of a plaintiff's refusal to make discovery:
   (a) The examining party may complete the examination on the other matters or adjourn to the same *(Sec. 1)*;
   (b) Thereafter, on reasonable notice to all persons affected thereby, he may apply to the court of the province where the deposition is being taken for an order compelling answer;
   (c) If the court finds that the refusal was without substantial justification, it may order the refusing party or the attorney advising him or both of them to pay the examining party the amount of reasonable attorney's fees;
   (d) The refusal to answer may be considered as contempt of court *(Sec. 2)*;
   (e) The court may order that the facts sought to be established by the examining party shall be taken to be established for the purpose of the action in accordance with the claim of the party obtaining the order *(Sec. 3[a])*;
   (f) The court may issue an order refusing to allow the disobedient party to support or oppose designated claims or defenses or prohibiting him from introducing in evidence designated documents or things or items of testimony *(Sec. 3[b])*;
   (g) The court may order the striking out of pleadings or party thereof *(Sec. 3[c]);*
   (h) The court may stay further proceedings until the order is obeyed;
   (i) The court may dismiss the action or proceeding or any party thereof, or render judgment by default against the disobedient party *(Sec. 5)*;
   (j) The court may order the arrest of any party who refuses to admit the truth of any matter of fact or the genuineness of any document to pay the party who made the request and who proves the truth of any such matters or the genuineness of such document, reasonable expenses incurred in making such proof, including reasonable attorney's fees *(Sec. 4)*.

L. TRIAL *(Rule 30)*

(1) A trial is the judicial process of investigating and determining the legal controversies, starting with the production of evidence by the plaintiff and ending with his closing arguments *(Acosta vs. People, 5 SCRA 774).*

Adjournments and postponements

(1) The general rule is that a court may adjourn a trial from day to day, and to any stated time, as the expeditious and convenient transaction of business may require *(Sec. 2).*

(2) The court has no power to adjourn a trial for a period longer than one month from each adjournment, nor more than three (3) months in all, except when authorized in writing by the Court Administrator. A motion for postponement should not be filed on the last hour especially when there is no reason why it could not have been presented earlier *(Republic vs. Sandiganbayan, 301 SCRA 237).*

(3) Postponement is not a matter of right. It is addressed to the sound discretion of the court *(Garces vs. Valenzuela, 170 SCRA 745).*

(4) The Constitution guarantees the right of persons against unreasonable delay in the disposition of cases before all judicial, quasi-judicial or administrative bodies. Judges play an active role in ensuring that cases are resolved with speed and dispatch so as not to defeat the cause of the litigants. The mandatory continuous trial system was adopted precisely to minimize delay in the process and expedite the resolution of cases in the trial courts by holding trials on scheduled dates without needless postponements and terminating the entire proceedings within ninety days from the initial hearing. The need for speedy administration of justice cannot be ignored. Excessive delay in the disposition of cases renders the rights of people guaranteed by various legislations inutile *(Matias vs. Plan, AM No. MTJ-98-1159, 08/03/1998).*

Requisites of motion to postpone trial for absence of evidence

(1) Trial may be postponed on the ground of absence of evidence upon compliance with the following:
   (a) A motion for postponement must be filed;
   (b) The motion must be supported by an affidavit or sworn certification showing (1) the materiality or relevancy of the evidence, and (2) that due diligence has been used to procure it *(Sec. 3).*

(2) If the adverse party admits the facts given in evidence, the trial shall not be postponed even if he reserves the right to object to the admissibility of the evidence *(Sec. 3).*

Requisites of motion to postpone trial due to illness of party or counsel

(1) A motion for postponement must be filed;

(2) The motion must be supported by an affidavit or sworn certification showing that (a) the presence of the party or counsel at the trial is indispensable, and (b) that the character of his illness is such as to render his non-attendance excusable *(Sec. 4).*

Agreed statements of facts

(1) If the parties agree, in writing, on the facts involved in the action, they may then ask the court to render judgment thereon without the introduction of evidence. If the agreement of facts is partial, trial shall be held as to others *(Sec. 6)*. The agreed statement of facts is conclusive on the parties, as well as on the court. Neither of the parties may withdraw from the agreement, nor may the court ignore the same *(McGuire vs. Manufacturers Life Ins., 87 Phil. 370)*.

Order of trial

(1) Subject to the provisions of Sec. 2, Rule 31, and unless the court for special reasons otherwise directs, the trial shall be limited to the issues stated in the pre-trial order and shall proceed as follows:
   (a) The plaintiff shall adduce evidence in support of his complaint;
   (b) The defendant shall then adduce evidence in support of his defense, counterclaim, cross-claim and third party complaint;
   (c) The third party defendant, if any, shall adduce evidence of his defense, counterclaim, cross-claim and fourth-party complaint;
   (d) The fourth party, and so forth, if any, shall adduce evidence of the material facts pleaded by them;
   (e) The parties against whom any counterclaim or cross-claim has been pleaded, shall adduce evidence in support of their defense, in the order to be prescribed by the court;
   (f) The parties may then respectively adduce rebutting evidence only, unless the court, for good reasons and in the furtherance of justice, permits them to adduce evidence upon their original case; and
   (g) Upon admission of the evidence, the case shall be deemed submitted for decision, unless the court directs the parties to argue or to submit their respective memoranda or any further pleadings.

   If several defendants or third party defendants and so forth having separate defenses appear by different counsel, the court shall determine the relative order of presentation of their evidence *(Sec. 5)*.

(2) *Republic vs. Sandiganbayan (678 Phil. 358 [2011])* explained Rule 39, Section 5 in this wise:

   Under this rule, a party who has the burden of proof must introduce, at the first instance, all the evidence he relies upon and such evidence cannot be given piecemeal. The obvious rationale of the requirement is to avoid injurious surprises to the other party and theconsequent delay in the administration of justice.

   A party's declaration of the completion of the presentation of his evidence prevents him from introducing further evidence; but where the evidence is *rebuttal* in character, whose necessity, for instance, arose from the shifting of the burden of evidence from one party to the other; or where the evidence sought to be presented is in the nature of *newly discovered* evidence, the party's right to introduce further evidence must be recognized. Otherwise, the aggrieved party *may* avail of the remedy of *certiorari.*

   Largely, the exercise of the court's discretion under the exception of Section 5 (f), Rule 30 of the Rules of Court depends on the attendant facts - i.e., on whether the evidence would qualify as a "good reason" and be in furtherance of "the interest of justice." For a reviewing court to properly interfere with the lower court's exercise of discretion, the

petitioner must show that the lower court's action was attended by grave abuse of discretion. Settled jurisprudence has defined this term as the capricious and whimsical exercise of judgment, equivalent to lack of jurisdiction; or, the exercise of power in an arbitrary manner by reason of passion, prejudice, or personal hostility, so patent or so gross as to amount to an evasion of a positive duty, to a virtual refusal to perform the mandated duty, or to act at all in contemplation of the law. Grave abuse of discretion goes beyond the bare and unsupported imputation of caprice, whimsicality or arbitrariness, and beyond allegations that merely constitute errors of judgment or mere abuse of discretion.

Xxx

The introduction of new evidence even after a party has rested its case may, therefore, be done but only if the court finds that it is for good reasons and in the furtherance of justice. The admission is discretionary on the part of the court and, as explained in *Republic,* may only be set aside if the admission was done with grave abuse of discretion or:

> [T]he capricious and whimsical exercise of judgment, equivalent to lack of jurisdiction; or, the exercise of power in an arbitrary manner by reason of passion, prejudice, or personal hostility, so patent or so gross as to amount to an evasion of a positive duty, to a virtual refusal to perform the mandated duty, or to act at all in contemplation of the law. (citation omitted)

To recall, Sindophil filed an Urgent Motion to Reset Hearing with Notice of Change of Address one (1) day before its scheduled initial presentation of evidence. On motion by the Solicitor General, representing the Republic, the Regional Trial Court denied the Motion to Reset Hearing for having been filed on short notice and deemed as waived Sindophil's right to present evidence. The parties were then ordered to file their respective memoranda thirty (30) days from notice, after which the case would be deemed submitted for decision.

Thereafter, Sindophil filed a motion for extension, praying for an additional fifteen (15) days or until February 26, 2009, to file its memorandum. The Regional Trial Court granted the motion in its February 24, 2009 Order. However, despite the grant of extension,

Sindophil did not file the required memorandum. Instead, it filed the Motion to Re-Open Case more than a month later or on March 31, 2009. In its Motion to Re-Open Case, Sindophil alleged that its witness, Sindophil President Chalid, had previously suffered a stroke that rendered her indisposed to take the stand.

The stroke suffered by Sindophil' s President was not a good reason to reopen the case. In its Pre-Trial Brief, Sindophil indicated the Register of Deeds of Pasay City as its other witness. It could have very well presented the Register of Deeds first while Chalid recovered from her stroke. Why it did not do so is only known to Sindophil.

Furthermore, while illness is a valid ground for postponing a hearing, it does not appear that Sindophil raised Chalid's stroke as a ground to postpone its initial presentation of defense evidence. The illness was only alleged in the Motion to Re-Open Case filed on March 31, 2009, more than three (3) months after the scheduled presentation of evidence on December 10, 2008. The excuse, therefore, appears to be an afterthought *(Sindophil, Inc. vs. Republic, GR No. 204594, 11/07/2018)*.

Reversal of order *(see Reverse Trial)*

(1) When the accused admits the act or omission charged in the complaint or information but interposes a lawful defense, the order of trial may be modified *(Sec. 11, Rule 119)*.

(2) This is availed of when defendant alleges or adduces affirmative defenses, the order shall start with the defendant.

Consolidation or Severance of Hearing or Trial *(Rule 31)*

(1) **Consolidation**. When actions involving a common question of law or facts are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay *(Sec. 1)*.

(2) **Severance (Separate) Trials**. The court, in furtherance of convenience or to avoid prejudice, may order a separate trial of any claim, cross-claim, counterclaim, or third party complaint, or of any separate issue or of any number of claims, cross-claims, counterclaim, third party complaints or issue *(Sec. 2)*.

(3) Consolidation is a procedural device to aid the court in deciding how cases in its docket are to be tried so that business of the court may be dispatched expeditiously and with economy while providing justice to the parties. To promote this end, the rule allows the consolidation and a single trial of several cases in the court's docket, or in the consolidation of issues within those cases *(Republic vs. Heirs of Oribello, GR No. 199501, 0306/2013)*.

(4) In the context of legal procedure, the term **consolidation** is used in three different senses:

(a) Where all except one of several actions are stayed until one is tried, in which case the judgment in the one trial is conclusive as to the others: **quasi-consolidation**;

(b) Where several actions are combined into one, lose their separate identity, and become a single action in which a single judgment is rendered. This is illustrated by a situation where several actions are pending between the same parties stating claims which might have been set out originally in one complaint: **actual consolidation**; and

(c) Where several actions are ordered to be tried together but each retains its separate character and requires the entry of a separate judgment. This type of consolidation does not merge the suits into single action, or cause the parties to one action to be parties to the other: **consolidation for trial** *(Republic vs. Heirs of Oribello, supra.)*.

Delegation of reception of evidence

(1) The judge of the court where the case is pending shall personally receive the evidence to be adduced by the parties. Reception of the evidence may nevertheless be delegated to the clerk of court who is a member of the bar, in any of the following cases:

(a) In default hearings;

(b) In *ex parte* hearings; or

(c) In any case by written agreement of the parties *(Sec. 9)*.

Trial by Commissioners *(Rule 32)*

(1) Commissioner includes a referee, an auditor and an examiner *(Sec. 1)*

Reference by consent

(1) By written consent of both parties, the court may order any or all of the issues in a case to be referred to a commissioner to be agreed upon by the parties or to be appointed by the court *(Sec. 1)*.

Reference ordered on motion

(1) When the parties do not consent, the court may, upon the application of either or on its own motion, direct a reference to a commissioner in the following cases:
   (a) When the trial of an issue of fact requires the examination of a long account on either side, in which case the commissioner may be directed to hear and report upon the whole issue or any specific question involved therein;
   (b) When the taking of an account is necessary for the information of the court before judgment, or for carrying a judgment or order into effect;
   (c) When a question of fact, other than upon the pleadings, arises upon motion or otherwise, in any stage of a case, or for carrying a judgment or order into effect *(Sec. 2)*.

Powers of Commissioner

(1) Under the Rules, the court's order may specify or limit the powers of the commissioner. Hence, the order may direct him to:
   (a) Report only upon particular issues;
   (b) Do or perform particular acts; or
   (c) Receive and report evidence only.

(2) The order may also fix the date for beginning and closing of the hearings and for the filing of his report.

(3) Subject to such limitations stated in the order, the commissioner:
   (a) Shall exercise the power to regulate the proceedings in every hearing before him;
   (b) Shall do all acts and take all measures necessary or proper for the efficient performance of his duties under the order;
   (c) May issue subpoenas and subpoenas *duces tecum*, and swear witnesses; and
   (d) Rule upon the admissibility of evidence, unless otherwise provided in the order of reference *(Sec. 3, Rule 32)*.

Commissioner's report; notice to parties and hearing on the report

(1) Upon completion of the trial or hearing or proceeding before the commissioner, he shall file with the court his report in writing upon the matters submitted to him by the order of reference. When his powers are not specified or limited, he shall set forth his findings of fact and conclusions of law in his report. He shall attach in his report all exhibits, affidavits, depositions, papers and the transcript, if any, of the evidence presented before him *(Sec. 9)*.

(2) The commissioner's report is not binding upon the court which is free to adopt, modify, or reject, in whole or in part, the report. The court may receive further evidence or recommit the report with instructions *(Sec. 11, Rule 32; Baltazar vs. Limpin, 49 Phil. 39)*.

(3) Notice of the filing of the report must be sent to the parties for the purpose of giving them an opportunity to present their objections *(Santos vs. Guzman, 45 Phil. 646)*. The failure to grant the parties, in due form, this opportunity to object may, in some instances, constitute a serious error in violation of their substantial rights *(Govt. vs. Osorio, 50 Phil. 864)*.

(4) In the hearing to be conducted on the commissioner's report, the court will review only so much as may be drawn in question by proper objections. It is not expected to rehear the case upon the entire record *(Kreidt vs. McCullough and Co., 37 Phi. 474)*.

(5) The rule, however, is not absolute. In *Manila Trading and Supply Co. vs. Phil. Labor Union, 71 Phil. 539*, it was ruled that although the parties were not notified of the filing of the commissioner's reports, and the court failed to set said report for hearing, if the parties who appeared before the commissioner were duly represented by counsel and given an opportunity to be heard, the requirement of due process has been satisfied, and a decision on the basis of such report, with the other evidence of the case is a decision which meets the requirements of fair and open hearing.

M. DEMURRER TO EVIDENCE *(Rule 33)*

(1) Demurrer to evidence is a motion to dismiss filed by the defendant after the plaintiff had rested his case on the ground of insufficiency of evidence *(Ballentine's Law Dictionary)*.

(2) The provision of the Rules governing demurrer to evidence does not apply to an election case *(Gementiza vs. COMELEC, 353 SCRA 724)*.

(3) Relate Rule 33 with Section 23, Rule 119.

(4) In a demurrer to evidence, however, it is premature to speak of "preponderance of evidence" because it is filed *prior* to the defendant's presentation of evidence; it is precisely the office of a demurrer to evidence to expeditiously terminate the case *without the need* of the defendant's evidence. Hence, what is crucial is the determination as to whether the plaintiffs evidence entitles it to the relief sought *(Republic v. De Borja, GR No. 187448, 01/09/2017)*.

Ground

(1) The only ground for demurrer to evidence is that the plaintiff has no right to relief.

Effect of denial; Effect of grant

(1) In the event his motion is denied, the defendant does not waive his right to offer evidence. An order denying a demurrer to evidence is interlocutory and is therefore, not appealable. It can however be the subject of a petition for *certiorari* in case of grave abuse of discretion or an oppressive exercise of judicial authority.

(2) If the motion is granted and the order of dismissal is reversed on appeal, the movant loses his right to present the evidence on his behalf. In the case of reversal, the appellate court shall render judgment for the plaintiff based on the evidence alone.

(3) It is not correct for the appellate court reversing the order granting the demurrer to remand the case to the trial court for further proceedings. The appellate court should, instead of remanding the case, render judgment on the basis of the evidence submitted by the

plaintiff *(Radiowealth Finance Corp. vs. Del Rosario, 335 SCRA 288)*. Remanding the case to the RTC avails the plaintiff the opportunity to adduce evidence, which is against the Rules.

(4) **2001 Bar:** Carlos filed a complaint against Pedro in the Regional Trial Court (RTC) of Ozamis City for the recovery of the ownership of a car. Pedro filed his answer within the reglementary period. After the pre-trial and actual trial, and after Carlos has completed with the presentation of his evidence, Pedro moved for the dismissal of the complaint on the ground that under the facts proven and the law applicable to the case, Carlos is not entitled to the ownership of the car. The RTC granted the motion for dismissal. Carlos appealed the order of dismissal and the appellate court reversed the order of the trial court. Thereafter, Pedro filed a motion with the RTC asking the latter to allow him to present his evidence. Carlos objected to the presentation of evidence by Pedro.

Should the RTC grant Pedro's motion to present his evidence? Why? (5%)

Answer: No, Pedro's motion should be denied. He can no longer present evidence. The Rules provide that the motion for dismissal is granted by the trial court but on appeal the order of dismissal is reversed, he shall be deemed to have waived the right to present evidence.

Waiver of right to present evidence

(1) If the demurrer is granted but on appeal the order of dismissal is reversed, the defendant is deemed to have waived his right to present evidence.

Demurrer to evidence in a civil case versus demurrer to evidence in a criminal case

Demurrer to Evidence *(Rule 33)*	Demurrer to Evidence *(Sec. 23, Rule 119)*
Litigated motion	Litigated motion
Founded on the ground that the plaintiff has shown no right to relief	Founded on the ground of insufficiency of evidence
Filed after the plaintiff has completed the presentation of evidence	Filed after the prosecution rests its case
Quantum of evidence is preponderance of evidence	Quantum of evidence is proof beyond reasonable doubt
Once granted, the final order is appealable	Once granted, the accused is acquitted; demurrer is not appealable
If denied, the defendant may present evidence	If denied: with leave of court, accused is allowed to present evidence; without leave of court, accused loses the right to present evidence
If reversed on appeal, defendant loses the right to present evidence	(no appeal since appeal would violate the accused's right againt double jeopardy)
No period requirement	Non-extendible periods of 5 days (motion for leave to file, and opposition) and 10 days (filing, and opposition)

(1) In a civil case, leave of court is not required before filing a demurrer. In a criminal case, demurrer to evidence is filed with or without leave of court *(Sec. 23, Rule 119).*

(2) In a civil case, if the demurrer is granted, the order of dismissal is appealable. In a criminal case, the order of dismissal is not appealable because of the constitutional policy against double jeopardy – denial is tantamount to acquittal, final and executory.

(3) In civil case, if the demurrer is denied, the defendant may proceed to present his evidence. In a criminal case, the accused may adduce his evidence only if the demurrer is filed with leave of court. He cannot present his evidence if he filed the demurrer without leave of court *(Sec. 23, Rule 119).*

(4) Both are in the nature of motion to dismiss, with the same ground, available after plaintiff or prosecutor has rested his case.

N. JUDGMENTS AND FINAL ORDERS *(Rules 34 – 36, 51)*

Doctrine of Immutability and Unalterability of Final Judgments

(1) Under the doctrine of finality 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. Any act which violates this principle must immediately be struck down *(FGU Insurance Corp. vs. RTC of Makati City Br. 66, 659 Phil. 117 [2011]).*

(2) The attitude of judicial reluctance towards the annulment of a judgment, final order or final resolution is understandable, for the remedy disregards the time-honored doctrine of immutability and unalterability of final judgments, a solid corner stone in the dispensation of justice by the courts. The doctrine of immutability and unalterability serves a two-fold purpose, namely: *(a)* to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business; and *(b)* to put an end to judicial controversies, at the risk of occasional errors, which is precisely why the courts exist. As to the first, a judgment that has acquired finality becomes immutable and unalterable and is no longer to be modified in any respect even if the modification is meant to correct an erroneous conclusion of fact or of law, and whether the modification is made by the court that rendered the decision or by the highest court of the land. As to the latter, controversies cannot drag on indefinitely because fundamental considerations of public policy and sound practice demand that the rights and obligations of every litigant must not hang in suspense for an indefinite period of time *(Dare Adventure Farm Corporation vs. Court of Appeals, GR No.161122, 09/24/2012).*

(3) It is well-settled that 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. In this case, the Court concurs with the CA's view that the Assailed Order had already become final and executory at the time when the NHA sought to have it reconsidered before the court *a quo*. As evidenced by the registry return receipt on record, the NHA, however, moved for reconsideration therefrom only more than four (4) months from notice. As the motion was filed way beyond

the 15-day reglementary period prescribed therefor, the court *a quo*'s judgment had already lapsed into finality *(National Housing Authority vs. Court of Appeals, GR No. 173802, 04/07/2014).*

(4) Well-entrenched in jurisprudence is the rule that factual findings of the trial court, especially when affirmed by the appellate court, are accorded the highest degree of respect and considered conclusive between the parties, save for the following exceptional and meritorious circumstances: (1) when the factual findings of the appellate court and the trial court are contradictory; (2) when the findings of the trial court are grounded entirely on speculation, surmises or conjectures; (3) when the lower court's inference from its factual findings is manifestly mistaken, absurd or impossible; (4) when there is grave abuse of discretion in the appreciation of facts; (5) when the findings of the appellate court go beyond the issues of the case, or fail to notice certain relevant facts which, if properly considered, will justify a different conclusion; (6) when there is a misappreciation of facts; (7) when the findings of fact are themselves conflicting; and (8) when the findings of fact are conclusions without mention of the specific evidence on which they are based, are premised on the absence of evidence, or are contradicted by evidence on record *(Federal Builders, Inc. vs. Foundation Specialists, Inc., GR No. 194507, 09/08/2014).*

(5) 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 or law, and whether it will be made by the court that rendered it or by the highest court of the land. There are, however, exceptions to the general rule, namely: (1) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable. In this case, the clarification made by Secretary Pangandaman in his February 2, 2006 Order falls under the fourth exception *(Delfino, Sr. vs. Anasiao, GR No. 197486, 09/10/2014).*

(6) The court ruled that a judgment on compromise agreement is a judgment on the merits. It has the effect of res judicata, and is immediately final and executory unless set aside because of falsity or vices of consent. The doctrine of immutability of judgments bars courts from modifying decisions that have already attained finality, even if the purpose of the modification is to correct errors of fact or law *(Gadrinan vs. Salamanca, GR No. 194560, 06/11/2014).*

(7) When given judicial approval, a compromise agreement becomes more than a contract binding upon the parties. Having been sanctioned by the court, it is entered as a determination of a controversy and has the force and effect of a judgment. It is immediately executory and not appealable, except for vices of consent or forgery. The nonfulfillment of its terms and conditions justifies the issuance of a writ of execution; in such an instance, execution becomes a ministerial duty of the court *(Metro Manila Shopping Mecca Corp. vs. Toledo, GR No. 190818, 11/10/2014).*

(8) The doctrine of immutability of judgments bars courts from modifying decisions that had already attained finality, even if the purpose of the modification is to correct errors of fact or of law *(Abadilla, Jr. vs. Obrero, GR No. 210855, 12/09/2015).*

(9) A final judgment may no longer be modified on any respect even if the modification is meant to correct what is perceived to be an erroneous conclusion of facts or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land *(De Ocampo vs. RPN/Radio Philippines Network, GR No. 192947, 12/09/2015).*

(10) The doctrine of immutability of judgments bars courts from modifying decisions that had already attained finality, even if the purpose of the modification is to correct errors of fact or law *(Abadilla, Jr. vs. Obrero, GR No. 210855, 12/09/2015).*

(11) Clearly, the RTC's issuances contravened a settled principle affecting execution of judgments. Time and again, courts have emphasized that a writ of execution must

conform substantially to every essential particular of the judgment promulgated. An execution that is not in harmony with the judgment is bereft of validity. This applies because "once a judgment becomes final and executory, all that remains is the execution of the decision which is a matter of right. The prevailing party is entitled to a writ of execution, the issuance of which is the trial court's ministerial duty."

While exceptions to the rule on immutability of final judgments are applied in some cases, these are limited to the following instances: (I) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party; and (3) void judgments. None of these exceptions attend Stronghold's case *(Stronghold Insurance Co., Inc. vs. Pamana Island Resort Hotel and Marina Club, Inc., GR No. 174838, 06/01/2016).*

(12) The doctrine admits of certain exceptions, which are usually applied to serve substantial justice, particularly in the following instances: (1) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision, rendering its execution unjust and inequitable. None of these circumstances attends the present case *(Sps. Balarao vs. MSC and Company, GR No. 185331, 06/08/2016).*

(13) Indeed, the well-settled principle of immutability of final judgments demands that once a judgment has become final, the winning party should not, through a mere subterfuge, be deprived of the fruits of the verdict. There are, however, recognized exceptions to the execution as a matter of right of a. final and immutable judgment, one of which is the existence of a supervenmg event.

In the present case, petitioners' basis of their claim over the subject property is the Deed of Sale of Unregistered Land that the late Zosimo Maravilla executed with the late Asiclo S. Tupas. This Deed of Sale has been acknowledged and adjudged by the RTC to be binding between the parties, and in fact, has attained finality. This Court, however, in the *Secretary of the Department of Environment and Natural Resources (DENR), et al. v. Yap, et al.* and *Sacay, et al. v. the Secretary of the DENR, et al.,* ruled that the entire island of Boracay as state-owned except for lands already covered by existing titles.

Xxx This Court's decision in *The Secretary DENR v. Yap* and *Sacay v. the Secretary of the DENR* is, therefore, considered as a supervening event that can stay the execution of a judgrnent that has already attained finality *(Heirs of Maravilla vs. Tupas, GR No. 192132, 09/14/2016).*

(14) The attitude of judicial reluctance towards the annulment of a judgment, final order or final resolution is understandable, for the remedy disregards the time-honored doctrine of immutability and unalterability of final judgments, a solid cornerstone in the dispensation of justice by the courts. The doctrine of immutability and unalterability serves a two-fold purpose, namely: (a) to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business; and (b) to put an end to judicial controversies, at the risk of occasional errors, which is precisely why the courts exist. As to the first, a judgment that has acquired finality becomes immutable and unalterable and is no longer to be modified in any respect even if the modification is meant to correct an erroneous conclusion of fact or of law, and whether the modification is made by the court that rendered the decision or by the highest court of the land. As to the latter, controversies cannot drag on indefinitely because fundamental considerations of public policy and sound practice demand that the rights and obligations of every litigant must not hang in suspense for an indefinite period of time *(Dare Adventure Farm Corporation vs. CA, 695 Phil. 681 [2012]* cited in *Heirs of Fermin Arania vs. Intestate Estate of Sangalang, GR No. 193208, 12/13/2017).*

(15) The doctrine of immutability of judgment provides that once a final judgment is executory, it becomes immutable and unalterable. It cannot be modified in any respect by any court. The purpose of the doctrine is *first,* to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business, and *second,* to put an end to judicial controversies, at the risk of occasional errors, which is precisely why courts exist.

Nonetheless, there are exceptions to the foregoing doctrine. These are: *first,* the correction of clerical errors; *second, nunc pro tunc* entries which cause no prejudice to any pmiy; *third,* void judgments; and *fourth,* whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.

None of the exceptions obtain in this case. *First*, if we uphold the Decision of the CA on the First petition, then it will effectively set aside the Decision of the CA on the Second Petition which has already been affirmed with finality by this Court in GR No. 201344. Clearly, that is not a mere correction of a clerical error. *Second*, the objective of *nunc pro tunc* entries is to place in proper form on the record the judgment that had been previously rendered to make it speak the truth, so as to make it show what the judicial action really was. Here, there is no ambiguity or confusion as to the ruling of the CA on the Second Petition. *Third*, the Decision of the CA regarding the Second Petition is not void as it was issued by a court having jurisdiction over the case. *Fourth,* no circumstance has transpired that would render the execution of the Decision of the CA concerning the Second Petition unjust and inequitable *(Citibank vs. Andres, GR No. 197074, 09/12/2018)*.

(16) As a general rule, the perfection of an appeal in the manner and within the period permitted by law is not only mandatory but also jurisdictional, and the failure to perfect the appeal renders the judgment of the court final and executory. As such, it has been held that the availability of an appeal is fatal to a special civil action for *certiorari* for the same is not a substitute for a lost appeal. This is in line with the doctrine of finality of judgment or immutability of judgment under which 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. Any act which violates this principle must immediately be struck down.

But like any other rule, the doctrine of immutability of judgment has exceptions, namely: (1) the correction of clerfoal errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (3) *void judgments;* and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable. Similarly, while it is doctrinally entrenched that *certiorari* is not a substitute for a lost appeal, the Court has allowed the resort to a petition for *certiorari* despite the existence of or prior availability of an appeal, such as: (1) where the appeal does not constitute a speedy and adequate remedy; (2) *where the orders were also issued either in excess of or without jurisdiction;* (3) for certain special considerations, as public welfare or public policy; (4) where in criminal actions, the court rejects rebuttal evidence for the prosecution as, in case of acquittal, there could be no remedy; (5) *where the order is a patent nullity;* and (6) where the decision in the *certiorari* case will avoid future litigations.

Similarly, in the instant case, the trial court failed to serve Ventura with a notice of hearing and a copy of the petition with its annexes. As aptly found by the CA, there was no proof that Ventura was personally served with said notice. Neither was there proof of substantial service or even service by publication in a newspaper of general circulation *(Orlina vs. Ventura, GR No. 227033, 12/03/2018)*.

Judgment without Trial

(1) The theory of summary judgment is that although an answer may on its face appear to tender issues–requiring trial–yet if it is demonstrated by affidavits, depositions, or admissions that those issues are not genuine, but sham or fictitious, the Court is justified in dispensing with the trial and rendering summary judgment for plaintiff. The court is expected to act chiefly on the basis of the affidavits, depositions, admissions submitted by the movants, and those of the other party in opposition thereto. The hearing

contemplated (with 10-day notice) is for the purpose of determining whether the issues are genuine or not, not to receive evidence on the issues set up in the pleadings. A hearing is not thus *de riguer*. The matter may be resolved, and usually is, on the basis of affidavits, depositions, admissions. Under the circumstances of the case, a hearing would serve no purpose, and clearly unnecessary. The summary judgment here was justified, considering the absence of opposing affidavits to contradict the affidavits *(Galicia vs. Polo, L-49668, 11/14/1989; Carcon Devt. Corp. vs. CA, GR 88218, 12/17/1989).*

(2) **2005 Bar**: In a complaint for recovery of real property, the plaintiff averred, among others, that he is the owner of the said property by virtue of a deed of sale executed by the defendant in his favor. Copy of the deed of sale was appended to the complaint as Annex "A" thereof. In his unverified answer, the defendant denied the allegation concerning the sale of the property in question, as well as the appended deed of sale, for lack of knowledge or information sufficient to form a belief as to the truth thereof. Is it proper for the court to render judgment without trial? Explain. (4%)

Answer: Defendant cannot deny the sale of the property for lack of knowledge or information sufficient to form a belief as to the truth thereof. The answer, being defective amounts to an admission *(Sec. 10, Rule 8)*. Moreover, the genuineness and due execution of the deed of sale can only be denied by the defendant under oath and failure to do so is also an admission of the deed. Hence, a judgment on the pleadings can be rendered by the court without need of a trial *(Phil. Advertising Counselors, Inc. vs. Revilla, 52 SCRA 246 [1973]; Gutierrez v. Court of Appeals, 74 SCRA 127 [1976]).*

Contents of a Judgment

(1) Judgment has two parts: (a) the body of the judgment or the *ratio decidendi*, and (b) the dispositive portion of the judgment or *fallo*. The body of the decision (ratio decidendi) is not the part of the judgment that is subject to execution but the fallo because it is the latter which is the latter which is the judgment of the court. The importance of *fallo* or dispositive portion of a decision should state whether the complaint or petition is granted or denied, the specific relief granted, and the costs *(Morales vs. CA, 461 SCRA 34).* It is the dispositive part of the judgment that actually settles and declares the rights and obligations of the parties, finally, definitively, and authoritatively *(Light Rail Transit Authority vs. CA, 444 SCRA 125).*

(2) The general rule is that where there is a conflict between the *fallo* and the *ratio decidendi*, the fallo controls. This rule rests on the theory that the *fallo* is the final order while the opinion in the body is merely a statement ordering nothing. Where the inevitable conclusion from the body of the decision is so clear that there was a mere mistake in the dispositive portion, the body of the decision prevails *(Poland Industrial Limited vs. National Development Company, 467 SCRA 500).*

(3) This constitutional mandate is reflected in Section 1, Rule 36 of the Rules of Court which states that:

Sec l. Rendition of judgments and final orders. -· A judgment or final order determining the merits of the case shall be in writing personally and directly prepared by the judge, stating dearly and distinctly the facts and the law on which it is based, signed by him, and filed with the clerk of court.

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In this case, a review of the records shows that the RTC had failed to *clearly and distinctly* state the facts and the law on which it based its ruling insofar as Go's civil liability to East Oceanic is concerned. There is absolutely no discussion at all in the assailed Decision as to the RTC's ruling in the collection case, particularly, cm how it arrived at its conclusion finding Go liable to pay East Oceanic "'the sum of P2,814,054.86 plus 6% interest to be computed from the time of the filing of the complaint."

Xxx

Given these circumstances, we find that **the assailed Decision is void insofar as the collection case is concerned**, as it contained neither an analysis of the evidence of East Oceanic and Go as regards the outstanding balance of the latter's loan obligation, nor a reference to any legal basis in reaching its conclusion as to Go's civil liability to East Oceanic. Clearly, the RTC failed to meet the standard set forth in Section 14, Article VIII of the Constitution, and in so doing, deprived Go of his right to due process "since he was not accorded a fair opportunity to be heard by a fair and responsible magistrate" *(Go vs. East Oceanic Leasing and Finance Corporation, GR No. 206841-42, 01/19/2018).*

(4) **Bar 2006**: What is the difference between a judgment and an opinion of the court? (2.5%)

The judgment or fallo is the final disposition of the Court which is reflected in the dispositive portion of the decision. A decision is directly prepared by the judge and signed by him, containing clearly and distinctly a statement of the facts proved and the law upon which the judgment is based. An opinion of the court is the informal expression of the views of the court and cannot prevail against its final order. The opinion of the court is contained in the body of the decision that serves as a guide or enlightenment to determine the ratio decidendi of the decision. The opinion forms no part of the judgment even if combined in one instrument, but may be referred to for the purpose of construing the judgment *(Etoya vs. Singson, AM No. RTJ-91-758, 09/26/1994; Contreras vs. Felix, GR No.L-477, 09/30/1947).*

(5) **2004 Bar**: Distinguish clearly but briefly: Legislative facts and adjudicative facts. (2.5%)

Legislative facts refer to facts mentioned in a statute or in an explanatory note, while adjudicative facts are facts found in a court decision.

(6) The rule is that in case of ambiguity or uncertainty in the dispositive portion of a decision, the body of the decision may be scanned for guidance in construing the judgment. The Court's silence as to the payment of the legal interests in the dispositive portion of the decision is not tantamount to its deletion or reversal. If such was the intention, it should have also expressly declared its deletion together with its express mandate to remove the award of liquidated damages to UPSI *(UPSI Property Holdings, Inc. vs. Diesel Construction Co., Inc., GR No. 200250, 08/06/2014).*

Judgment on the Pleadings *(Rule 34)*

(1) Where an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading, the court may, on motion of that party, direct judgment on such pleading. However, in actions for declaration of nullity or annulment of marriage or for legal separation (or for unliquidated damages, or admission of the truth of allegation of adverse party), the material facts alleged in the complaint shall always be proved *(Sec. 1).*

(2) An order that does not finally dispose of the case, and does not end the Court's task of adjudicating the parties' contentions and determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the Court, is "interlocutory," e.g., an order denying a motion to dismiss under Rule 16 of the Rules. x x x Unlike a "final" judgment or order, which is appealable, an "interlocutory" order may not be questioned on appeal except only as part of an appeal that may eventually be taken from the final judgment rendered in the case. The RTC Order denying respondents' special and affirmative defenses contained in their answer is no doubt interlocutory since it did not finally dispose of the case but will proceed for the reception of the parties' respective evidence to determine the rights and obligations of each other *(Heirs of Dimaampao vs. Atty. Alug, GR No. 198223, 02/18/2015).*

(3) The court ruled that judgment on the pleadings is proper when an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading. An answer fails to tender an issue if it does not comply with the requirements of a specific denial as set out in Sections 8 and 10, Rule 8 of the 1997 Rules of Civil Procedure, resulting in the admission of the material allegations of the adverse party's pleadings *(Asian Construction and Development Corporation vs. Sannedle Co., Ltd., GR No. 181676, 06/11/2014).*

(4) Judgment on the pleadings is proper where an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading. An answer would "fail to tender an issue" if it does not deny the material allegations in the complaint or admits said material allegations of the adverse party's pleadings by confessing the truthfulness thereof and/or omitting to deal with them at all. Now, if an answer does in fact specifically deny the material averments of the complaint and/or asserts affirmative defenses (allegations of new matter which, while admitting the material allegations of the complaint expressly or impliedly, would nevertheless prevent or bar recovery by the plaintiff), a judgment on the pleadings would naturally be improper *(Adolfo vs. Adolfo, GR No. 201427, 03/18/2015).*

(5) **2015 Bar:** Plaintiff sued defendant for collection of P1 million based on the latter's promissory note. The complaint alleges, among others:

1. Defendant borrowed P1 million formplaintiff as evidenced by a duly executed promissory note;

2. The promissory note reads:

"Makati, Philippines
Dec. 30, 2014

For value received from plaintiff, defendant promises to pay plaintiff P1 million, twelve (12) months from the above indicated date without necessity of demand.

Signed
Defendant"

A copy of the promissory note is attached as Annex "A".

Defendant, in his verified answer, alleged among others:

1) Defendant specifically denies the allegation in paragraphs 1 and 2 of the complaint, the truth being defendant did not execute any promissory note in favor of plaintiff, or

2) Defendant has paid the P1 million claimed in the promissory note (Annex "A" of the Complaint) as evidenced by an "Acknowledgment Receipt" duly executed by plaintiff on January 30, 2015 Manila with his spouse signing as witness.

A copy of the "Acknowledgment Receipt" is attached as annex "1" hereof.

Plaintiff filed a motion for judgment on the pleadings on the ground that defendant's answer failed to tender an issue as the allegations therein on his defense are sham for being inconsistent; hence, no defense at all. Defendant filed an opposition claiming his answer tendered an issue.

(A) Is judgment on the pleading proper? (3%)

Defendant filed a motion for summary judgment on the ground that there are no longer any triable genuine issues of facts.

(B) Should the court grant defendant's motion for summary judgment? (3%)

Answer:

(A) No. The judgment on the pleadings is not proper. Judgment on the pleadings is proper only when the answer fails to tender an issue, or otherwise admits the material allegation of the adverseparty's pleading *(Sec. 1, Rule 34)*.

When it appears, however, that not all the material allegatons of the complaint were admitted in the answer, because some of them were either denied or disputed, and the defendant has set up certatin special defenses which, if proven would have the effect of nullifying plaintiff's main cause of action, judgment on the pleadings cannot be rendered *(Philippine National Bank vs. Aznar, GR No. 171805, 05/30/2011)*.

Clearly, since the defendant's verified Answer specifically denied the execution of the promissory note, or raised the affirmative defense of payment, judgment on the pleadings is not proper.

(B) No. The court should not grant the motion for summary judgment because the defense of payment is a genuine issue as to a material fact that must be resolved by the court upon presentation of evidence.

For 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.

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.

Relative thereto, when 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 *(Smart Communications vs. Aldecoa, GR No. 166330, 09/11/2013)*.

Summary Judgments *(Rule 35)*

(1) A summary judgment or accelerated judgment is a procedural technique to promptly dispose of cases where the facts appear undisputed and certain from the pleadings, depositions, admissions and affidavits on record, or for weeding out sham claims or defenses at an early stage of the litigation to avoid the expense and loss of time involved in a trial. Its object is to separate what is formal or pretended denial or averment from what is genuine and substantial so that only the latter may subject a party-in-interest to the burden of trial. Moreover, said summary judgment must be premised on the absence of any other triable genuine issues of fact. Otherwise, the movants cannot be allowed to obtain immediate relief. A genuine issue is such issue of fact which requires presentation of evidence as distinguished from a sham, fictitious, contrived or false claim *(Monterey Foods Corp. vs. Eserjose, GR 153126, 09/11/2003)*.

(2) The requisites are: (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.

(3) Trial is the judicial examination and determination of the issues between the parties to the action. During trial, parties present their respective evidence of their claims and defenses. Parties to an action have the right "to a plenary trial of the case" to ensure that they were given a right to fully present evidence on their respective claims. However, there are instances when trial may be dispensed with. Under Rule 35 of the 1997 Rules of Civil Procedure, a trial court may dispense with trial and proceed to decide a case if from the pleadings, affidavits, depositions, and other papers on file, there is no genuine

issue as to any material fact. In such a case, the judgment issued is called a summary judgment *(Olivarez Realty Corporation vs. Castillo, GR No. 196251, 07/09/2014)*.

(4) Section 19, Rule 70 of the Rules of Court provides for the immediate execution of judgment in favor of the plaintiff in ejectment cases, which can only be stayed if the defendant perfects an appeal, files a supersedeas bond, and makes periodic deposit of rental or other reasonable compensation for the use and occupancy of the subject premises during the pendency of the appeal. These requirements are mandatory and concurrent, without which execution will issue as a matter of right *(Mauleon vs. Porter, GR No. 203288, 07/18/2014)*.

(5) When a party moves for summary judgment, this is premised on the assumption that a scrutiny of the facts will disclose that the issues presented need not be tried either because these are patently devoid of substance or that there is no genuine issue as to any pertinent fact. A judgment on the motion must be "rendered forthwith if the pleadings, supporting affidavits, depositions, and admissions on file show that, except as to the amount of damages, there is no genuine issue and that the moving party is entitled to a judgment as a matter of law. A prudent examination of the evidence on record yields to no other conclusion that there exists a genuine issue of fact as raised in both petitions *(YKR Corporation vs. Philippine Agri-Business Center Corporation, GR No. 191838, 10/20/2014)*.

(6) A judgment on the pleadings is a judgment on the facts as pleaded, and is based exclusively upon the allegations appearing in the pleadings of the parties and the accompanying annexes. It is settled that the trial court has the discretion to grant a motion for judgment on the pleadings filed by a party if there is no controverted matter in the case after the answer is filed. A genuine issue of fact is that which requires the presentation of evidence, as distinguished from a sham, fictitious, contrived or false issue. Under Rule 35, on Summary Judgments, the petitioner had recourse to move for summary judgment, wherein it could have adduced supporting evidence to justify its action on the parties' lease, but it did not do so *(Comglasco Corporation/Aguila Glass vs. Santos Car Check Center Corporation, GR No. 202989, 03/25/2015)*.

(7) When the pleadings on file show that there are no genuine issues of fact to be tried, the Rules allow a party to obtain immediate relief by way of summary judgment, that is, when the facts are not in dispute, the court is allowed to decide the case summarily by applying the law to the material facts.

For a full-blown trial to be disposed with, the party who moves for summary judgment has the burden of demonstrating clerly the absence of genuine issues of fact, or that the issue posed is patently insubstantial as to constitute a genuine issue *(Republic vs. Pilipinas Shell Petroleum Corp., GR No. 209324, 12/09/2015)*.

For the claimant

(1) A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory relief may, at any time after the pleading in answer thereto has been served, move with supporting affidavits, depositions or admissions for a summary judgment in his favor upon all or any part thereof *(Sec. 1)*.

For the defendant

(1) A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory relief is sought may, at any time, move with supporting affidavits, depositions or admissions for a summary judgment in his favor as to all or any part thereof *(Sec. 2)*.

When the case not fully adjudicated

(1) If on motion, judgment is not rendered upon the whole case or for all the reliefs sought and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel shall ascertain what material facts exist without substantial controversy and what are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. The facts so specified shall be deemed established, and the trial shall be conducted on the controverted facts accordingly *(Sec. 4, Rule 35).*

(2) **2004 Bar:** After defendant has served and filed his answer to plaintiff's complaint for damages before the proper Regional Trial Court, plaintiff served and filed a motion (with supporting affidavits) for a summary judgment in his opposition (with supporting affidavits) to the motion. After due hearing, the court issued an order (1) stating that the court has found no genuine issue as to many material fact and thus concluded that plaintiff is entitled to judgment in his favor as a matter of law except as to the amount of damages recoverable, and (2) accordingly ordering that the plaintiff shall have judgment summarily against defendant for such amount as may be found due plaintiff for damages to be ascertained by trial on October 7, 2004, at 8:30 o'clock in the morning.

May defendant properly take an appeal from said order? Or may defendant properly challenge said order thru a special civil action for certiorari? Reason. (5%)

Answer: No, plaintiff may not properly take an appeal from said order because it is an interlocutory order and not a final and appealable order *(Sec. 4, Rule 35)*. It does not dispose of the action or proceeding. Partial summary judgments are interlocutory. There is still something to be done, which is the trial for the adjudication of damages (but the defendant may properly challenge said order thru a special civil action for certiorari *(Sec. 1[c], Rule 41; Province of Pangasinan vs. CA, 220 SCRA 726 [1993])*.

Affidavits and attachments

(1) Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Certified true copies of all papers or parts thereof referred to in the affidavit shall be attached thereto or served therewith *(Sec. 5)*.

(2) Should it appear to its satisfaction at any time that any of the affidavits presented pursuant to the Rules are presented in bad faith, or solely for the purpose of delay, the court shall forthwith order the offending party or counsel to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including attorney's fees. It may, after hearing, further adjudge the offending party or counsel guilty of contempt *(Sec. 6)*.

Judgments on the pleadings versus summary judgments

(1) In the judgment on the pleadings, the answer does not tender an issue; in summary judgment, there is an issue tendered in the answer, but it is not genuine or real issue as may be shown by affidavits and depositions that there is no real issue and that the party is entitled to judgment as a matter of right;

(2) In judgment on the pleadings, the movants must give a 3-day notice of hearing; while in summary judgment, the opposing party is given 10-day notice;

(3) In judgment on the pleadings, the entire case may be terminated; while in summary judgment, it may only be partial;

(4) In judgment on the pleadings, only the plaintiff or the defendants as far as the counterclaim, cross-claim or third-party complaint is concerned can file the same; while in summary judgment, either the plaintiff or the defendant may file it.

Judgment on the Pleading	Summary Judgment
Answer does not tender an issue	There is an issue tendered in the answer, but not real and genuine issue
Three-day notice required	Ten-day notice required
Entire case may be terminated	Only partially terminated
Only plaintiff and defendant can file	Only plaintiff and defendant can file

(5) **2016 Bar**: Distinguish "Summary Judgment" and "Judgment on the Pleadings". (2.5%)

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, GR No. No. 172660, 08/24/2011).*

Rendition of Judgments and Final Orders *(Rule 36)*

(1) Rendition of judgment is the filing of the same with the clerk of court. It is not the pronouncement of the judgment in open court that constitutes the rendition. Even if the judgment has already been put in writing and signed, it is still subject to amendment if it has not yet been filed with the clerk of court and before its filing does not yet constitute the real judgment of the court *(Ago vs. CA, 6 SCRA 530).* It is not the writing of the judgment or its signing which constitutes rendition of the judgment *(Castro vs. Malazo, 99 SCRA 164).*

(2) A judgment or final order determining the merits of the case shall be in writing personally and directly prepared by the judge, stating clearly and distinctly the facts and the law on which it is based, signed by him, and filed with the clerk of the court *(Sec. 1, Rule 36).*

(3) An order or a judgment is deemed final when it finally disposes of a pending action, so that nothing more can be done with it in the trial court. In other words, the order or judgment ends the litigation in the lower court. A dismissal with prejudice is already deemed an adjudication of the case on the merits, and it disallows and bars the refiling of the complaint. It is a final judgment and the case becomes *res judicata* on the claims that were or could have been brought in it *(HGL Development Corporation vs. Judge Penuela, GR No. 181353, 06/06/2016).*

(4) It is just as basic that a judgment can no longer be disturbed, altered, or modified as soon as it becomes final and executory; "nothing is more settled in law." Once a case is decided

with finality, the controversy is settled and the matter is laid to rest. Accordingly, [a final judgment] may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land.

Once a judgment becomes final, the court or tribunal loses jurisdiction, and any modified judgment that it issues, as well as all proceedings taken for this purpose are null and void.

This elementary rule finds basis in "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." Basic rationality dictates that there must be an end to litigation. Any contrary posturing renders justice inutile, reducing to futility the winning party's capacity to benefit from the resolution of a case.

In accordance with Rule 36, Section 2 of the 1997 Rules of Civil Procedure, unless a Motion for Reconsideration is timely filed, the judgment or final order from which it arose shall become final *(Gatmaytan vs. Dolor, GR No. 198120, 02/20/2017)*.

(5) **2004 Bar:** After Plaintiff in an ordinary civil action before the ZZ Regional Trial Court has completed presentation on his evidence, defendant without prior leave of court moved for dismissal of plaintiff's complaint for insufficiency of plaintiff's evidence. After due hearing of the motion and the opposition thereto, the court issued an order, reading as follows: "The Court hereby grants defendant's motion to dismiss and accordingly orders the dismissal of plaintiff's complaint, with the cost taxed against him. It is so ordered." Is the order of dismissal valid? May plaintiff properly take an appeal? Reason. (5%)

Answer: The order or decisions is void because it does not state findings of fact and of law, as required by Sec. 14, Article VII of the Constitution and Section 1, Rule 36 of the Rules of Civil Procedure. Being void, appeal is not available. The proper remedy is certiorari under Rule 65.

Entry of judgment and final order *(Rule 36)*

(1) If no appeal or motion for new trial or reconsideration is filed within the time provided in the Rules, the judgment or final order shall forthwith be entered by the clerk in the book of entries of judgments. The date of finality of the judgment or final order shall be deemed the date of its entry. The record shall contain the dispositive part of the judgment or final order and shall be signed by the clerk, with a certificate that such judgment or final order has become final and executory *(Sec. 2)*.

(2) The entry of judgment refers to the physical act performed by the clerk of court in entering the dispositive portion of the judgment in the book of entries of judgment and after the same has become final and executory. The record shall contain the dispositive portion of the judgment or final order and shall be signed by the clerk of court, with a certificate by said clerk that the judgment has already become final and executory *(Sec. 2, Rule 36)*.

(3) There are some proceedings the filing of which is reckoned from the date of the entry of judgment: (a) the execution of a judgment by motion is within five (5) years from the entry of the judgment *(Sec. 6, Rule 39)*; (b) the filing of a petition for relief has, as one of its periods, not more than six (6) months from the entry of the judgment or final order *(Sec. 3, Rule 38)*.

Judgment *(Rule 51; relate with Rules 36 and 120)*

(1) The judgment shall be rendered by members of the court who participated in the deliberation on the merits of the case before its assignment to a member for the writing of the decision *(Sec. 2).*

(2) **Harmless Error.** No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the trial court or by any of the parties is ground for granting a new trial or for setting aside, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceedings must disregard any error or defect which does not affect the substantial rights of the parties *(Sec. 6).*

(3) **Kinds of Judgment**:

(a) ***Sin Perjuicio Judgment.*** It is a judgment that violates the the requirements in Section 15, Article VIII of the Constitution insofar as it is without statements of facts to support its conclusions.

(b) ***Nunc Pro Tunc Judgment or Order***. It is an order of the court requiring a retroactive re-dating of an order, judgment or document filing be entered or recorded in a judgment (2014 Bar). The object of a judgment *nunc pro tunc* is not the rendering of a new judgment and the ascertainment and determination of newe rights, but is one placing in proper form on the record, the judgment that had been previously rendered, to make it speak the truth, so as to make judicial errors, such as to render a judgment which the court ought to have rendered, in place of the one it did erroneously render, nor to supply non-action by the court, however erroneous the judgtment may have been *(Filipinas Faroil Processisng vs. Dejapa, GR No. 167332, 02/07/2011).*

(c) ***Several Judgment***. It is a judgment rendered by a court against one or more defendants, but not against all, leaving the action to proceed against the other *(Sec. 4, Rule 36).*

(4) No error which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceedings therein will be considered unless stated in the assignement of errors, or closely related to or dependent on an assigned error and properly argued in the brief, save the court may pass upon plain errors and clerical errors *(Sec. 8, Rule 58).*

(5) Sec. 8 of Rule 51 provides that "[n]o error which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceeding therein will be considered unless stated in the assignment of errors, or closely related to or dependent on an assigned error and properly argued in the brief, save as the court may pass upon plain errors and clerical errors." Furthermore, jurisprudence has laid down exceptions to the general rule limiting the scope of the appellate court's review to the errors assigned and properly argued in the appeal brief or memorandum and the errors necessarily related to such assigned errors. As held in *Catholic Bishop of Balanga* v. *CA:*

> True, the appealing party is legally required to indicate in his brief an assignment of errors, and only those assigned shall be considered by the appellate .court in deciding the case. However, equally settled in jurisprudence is the exception to this general rule.
>
> xx xx
>
> Guided by the foregoing precepts, we have ruled in a number of cases that the appellate court is accorded a broad discretionary power to waive the lack of proper assignment of errors and to consider errors not assigned. It is clothed with ample authority to review rulings even if they are not assigned as errors in the appeal.

Inasmuch as the Court of Appeals may consider grounds other than those touched upon in the decision of the trial court and uphold the same on the basis of such other grounds, the Court of Appeals may, with no less authority, reverse the decision of the trial court on the basis of grounds other than those raised as errors on appeal. We have applied this rule, as a matter of exception, in the following instances:

(1) Grounds not assigned as errors but affecting jurisdiction over the subject matter;

(2) Matters not assigned as errors on appeal but are evidently plain or clerical errors within contemplation of law;

(3)' Matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interest of justice or to avoid dispensing piecemeal justice;

(4) Matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored;

(5) Matters not assigned as errors on appeal but closely related to an error assigned; and

(6) Matters not assigned as errors on appeal but upon which the determination of a question properly assigned, is dependent. (Citations omitted)

We find that the CA could have properly discussed whether *res judicata* applies in the present case even though it was not explicitly raised in the respondents' assignment of errors. The same falls under the exception, as it is a matter not specifically assigned but raised in the trial court and is a matter of record, having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored. This is bolstered by the fact that the CA, in its recital of the factual antecedents of this case, took note of petitioner's contention that the decision in Civil Case No. 418 already put to rest the issue of ownership over the subject property. On the other hand, We also find that the issue of whether Civil Case No. 418 constitutes *res judicata* to the case at bar is a matter which is closely related to one of the assigned errors within the contemplation of Sec. 8, Rule 51 insofar as the present petition before this Court is concerned *(Igot vs. Valenzona, GR No. 230687, 12/05/2018)*.

O. POST-JUDGMENT REMEDIES *(Rules 37-38, 40-47, 52-53)*

(1) Remedies before a judgment becomes final and executory:
   (a) Motion for reconsideration (prohibited in a case that falls under summary procedure) *(Rules 37, 52)*;
   (b) Motion for new trial *(Rules 37, 53)*; and
   (c) Appeal *(Rules 40, 41, 42, 43, 45)*

(2) Remedies after judgment becomes final and executory:
   (a) Petition for relief from judgment *(Rule 38)*;
   (b) Action to annul a judgment *(Rule 47)*;
   (c) Certiorari *(Rule 65)*; and
   (d) Collateral attack of a judgment.

(3) **2002 Bar:** May an order denying the probate of a will still be overturned after the period to appeal therefrom has lapsed? Why? (3%)

Answer: Yes, an order denying the probate of a will may be overturned after the period to appeal therefrom has lapsed. A petition for relief may be filed on the grounds of fraud, accident, mistakes or excusable negligence within a period of sixty (60) days after the petitioner learns of the judgment or final order and not more than six (6) months after such judgment or final order was entered *(Rule 38, Sections 1 and 3)*. An action for annulment may also be filed on the ground of extrinsic fraud within four (4) years from its discovery, and if based on lack of jurisdiction, before it is barred by laches or estoppel *(Rule 47, Sections 2 and 3)*.

(4) **2006 Bar**: Jojie filed with the Regional Trial Court (RTC) of Laguna a complaint for damages against Joe. During the pre-trial, Jojie (sic) and her (sic) counsel failed to appear despite notice to both of them. Upon oral motion of Jojie, Joe was declared as in default and Jojie was allowed to present her evidence ex parte. Thereafter, the court rendered its Decision in favor of Jojie.

Joe hired Jose as his counsel. What are the remedies available to him? Explain. (5%)

Motion for New Trial *(Rule 37)*	**Petition for Relief from Judgment *(Rule 38)***	**Action to Annul Judgment *(Rule 47)***
Grounds: 1. Extrinsic fraud 2. Accident 3. Mistake of fact 4. Excusable negligence	Grounds: 1. Extrinsic fraud 2. Accident 3. Mistake of fact 4. Excusable negligence	Grounds: 1. Extrinsic fraud 2. Lack of jurisdiction over the subject matter
Period of filing: 1. Within fifteen (15) days from receipt of notice of judgment or final order (Notice of Appeal); or 2. Within thirty (30) days from receipt of notice of judgment or final order (Record on Appeal)	Period of filing: 1. Within sixty (60) after petitioner learns of the judgment or order, and not more than six (6) months after entry of judgment.	Period of filing: 1. Extrinsic fraud – within four (4) years from discovery 2. Lack of jurisdiction – before barred by laches or estoppel

Spectrum of Remedies

Plaintiff	Defendant
Rule 17: Dismissal of action	Rule 16: Motion to dismiss
Rule 34: Judgment on the pleading	Rule 33: Demurrer to evidence
Rule 35: Summary judgment	
Rule 37: Motion for new trial / reconsideration	Rule 37: Motion for new trial / reconsideration
Rules 40 – 45: Appeals	Rules 40 - 45: Appeals
Rule 38: Petition for relief	Rule 38: Petition for relief
Rule 47: Annulment of judgment	Rule 47: Annulment of judgment

Motion for New Trial or Reconsideration *(Rule 37)*

(1) While we have ruled in the past that the filing of a motion for reconsideration cures the defect in procedural due process because the process of reconsideration is itself an opportunity to be heard, this ruling does not embody an absolute rule that applies in all circumstances. *The mere filing of a motion for reconsideration cannot cure the due process defect, especially if the motion was filed precisely to raise the issue of violation of the right to due process and the lack of opportunity to be heard on the merits remained.*

In other words, if a person has not been given the opportunity to squarely and intelligently answer the accusations or rebut the evidence presented against him, or raise substantive defenses through the proper pleadings before a quasi-judicial body (like the COA) where he or she stands charged, then a due process problem exists. This problem worsens and the denial of his most basic right continues if, in the first place, he is found liable without having been charged and this finding is confirmed in the appeal or reconsideration process without allowing him to rebut or explain his side on the finding against him.

Time and again, we have ruled that the essence of due process is the *opportunity to be heard.* In administrative proceedings, one is heard when he is accorded a *fair and reasonable opportunity* to explain his case or is given the chance to have the ruling complained of reconsidered *(Fontanilla vs. Commissioner Proper of COA, GR No. 209714, 06/21/2016, En Banc).*

Grounds for a motion for new trial

(1) Fraud (extrinsic), accident, mistake (of fact and not of law) or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights;

(2) Newly discovered evidence (Berry Rule), which he could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result.

(3) For the grounds of fraud, accident, mistake, or excusable negligence, attachment of affidavit of merit is required; otherwise, it would be a pro forma motion.

Grounds for a motion for reconsideration

(1) The damages awarded are excessive;
(2) The evidence is insufficient to justify the decision or final order;
(3) The decision or final order is contrary to law *(Sec. 1)*.

When to file

(1) A motion for new trial should be filed within the period for taking an appeal. Hence, it must be filed before the finality of the judgment *(Sec. 1)*. No motion for extension of time to file a motion for reconsideration shall be allowed. In *Destilleria Limtuaco vs. CA, 143 SCRA 92*, it was said that the period for filing a motion for new trial is within the period for taking an appeal.
(2) The period for appeal is within 15 days after notice to the appellant of the judgment or final order appealed from. Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within 30 days from notice of the judgment or final order *(Sec. 3, Rule 41)*. A record on appeal shall be required only in special proceedings and other cases of multiple or separate appeals *(Sec. 3, Rule 40)*.

Denial of the motion; effect

(1) If the motion is denied, the movant has a "fresh period" of fifteen days from receipt of notice of the order denying or dismissing the motion for reconsideration within which to file a notice of appeal.
(2) When the motion for new trial is denied on the ground of fraud, accident, mistake of fact or law, or excusable negligence, the aggrieved party can no longer avail of the remedy of petition for relief from judgment *(Francisco vs. Puno, 108 SCRA 427)*.
(3) The denial of a motion for reconsideration signifies that the grounds relied upon have been found, upon due deliberation, to be without merit, as not being of sufficient weight to warrant a modification of the judgment or final order. It means not only that the grounds relied upon are lacking in merit but also that any other, not so raised, is deemed waived and may no longer be set up in a subsequent motion or application to overturn the judgment; and this is true, whatever may be the title given to such motion or application, whether it be "second motion for reconsideration" or "motion for clarification" or "plea for due process" or "prayer for a second look," or "motion to defer, or set aside, entry of judgment" *(Social Justice Society vs. Lim, GR No. 187836, 03/10/2015)*.

Grant of the motion; effect

(1) If a new trial be granted in accordance with the provisions of the rules, the original judgment shall be vacated or set aside, and the action shall stand for trial *de novo*; but the recorded evidence taken upon the former trial so far as the same is material and competent to establish the issues, shall be used at the new trial without retaking the same *(Sec. 6)*. The filing of the motion for new trial or reconsideration interrupts the period to appeal *(Sec. 2, Rule 40; Sec. 3, Rule 41)*.
(2) If the court grants the motion (e.g., it finds that excessive damages have been awarded or that the judgment or final order is contrary to the evidence or law), it may amend such

judgment or final order accordingly *(Sec. 3)*. The amended judgment is in the nature of a new judgment which supersedes the original judgment. It is not a mere supplemental decision which does not supplant the original but only serves to add something to it *(Esquivel vs. Alegre, 172 SCRA 315)*. If the court finds that a motion affects the issues of the case as to only a part, or less than all of the matters in controversy, or only one, or less than all of the parties to it, the order may grant a reconsideration as to such issues if severable without interfering with the judgment or final order upon the rest *(Sec. 7)*.

(3) As a general rule, new trial based on newly discovered evidence is not allowed on appeal. However, this rule admits of an exception, provided the following requirements are present:

(a) The new evidence must have been discovered after trial;
(b) Earnest efforts were done to look for newly discovered evidence but fruitless;
(c) If so allowed, it would probably alter the result; and
(d) It must be material and not just corroborative or cumulative *(Mendoza vs. Ozamis)*.

Remedy when motion is denied

(1) The party aggrieved should appeal the judgment. This is so because a second motion for reconsideration is expressly prohibited under the Interim Rules *(Sec. 5)*.

(2) An order denying a motion for reconsideration or new trial is not appealable, the remedy being an appeal from the judgment or final order under Rule 41. The remedy from an order denying a motion for new trial is not to appeal from the order of denial. Again, the order is not appealable. The remedy is to appeal from the judgment or final order itself subject of the motion for new trial *(Sec. 9, Rule 37)*.

Fresh Fifteen (15) -day Period Rule *(Neypes Doctrine)*

(1) If the motion is denied, the movant has a fresh period of 15 days from receipt of notice of the order denying or dismissing the motion for reconsideration within which to file a notice to appeal. This new period becomes significant if either a motion for reconsideration or a motion for new trial has been filed but was denied or dismissed. This fresh period rule applies not only to Rule 41 governing appeals from the RTC but also to Rule 40 governing appeals from MTC to RTC, Rule 42 on petitions for review from the RTC to the CA, Rule 43 on appeal from quasi-judicial agencies to the CA, and Rule 45 governing appeals by certiorari to the SC. Accordingly, this rule was adopted to standardize the appeal periods provided in the Rules to afford fair opportunity to review the case and, in the process, minimize errors of judgment. Obviously, the new 15 day period may be availed of only if either motion is filed; otherwise, the decision becomes final and executory after the lapse of the original appeal period provided in Rule 41 *(Neypes vs. CA, GR No. 141524, 09/14/2005)*.

(2) The *Neypes* ruling shall not be applied where no motion for new trial or motion for reconsideration has been filed in which case the 15-day period shall run from notice of the judgment. This shall not apply to Rules 12, 16, 62, and 64. The period for Rules 40 and 41 are extendible, while those of Rules 42, 43, and 45 are not extendible.

(3) The fresh period rule does not refer to the period within which to appeal from the order denying the motion for new trial because the order is not appealable under Sec. 9, Rule 37. The non-appealability of the order of denial is also confirmed by Sec. 1(a), Rule 41, which provides that no appeal may be taken from an order denying a motion for new trial or a motion for reconsideration.

(4) Appeal from the MTC to the RTC: the fifteen-day period is counted from the date of the receipt of the notice of denial of motion.

(5) The doctrine of finality of judgment dictates that, at the risk of occasional errors, judgments or orders must become final at some point in time. In Neypes, the Supreme Court, in order to standardize the appeal periods provided in the Rules and to afford litigants fair opportunity to appeal their cases, declared that an aggrieved party has a fresh period of 15 days counted from receipt of the order dismissing a motion for a new trial or motion for reconsideration, within which to file the notice of appeal in the RTC. *(Heirs of Bihag vs. Heirs of Bathan, GR No. 181949, 04/23/2014).*

(6) The same principle was applied in the case of *San Lorenzo Ruiz Builders and Developers Group, Inc. and Oscar Violago v. Ma. Cristina F. Bayang,* wherein this Court reiterated that the "fresh period rule" in *Neypes* applies only to judicial appeals and not to administrative appeals *(Jocson vs. San Miguel, GR No. 206941, 03/09/2016).*

P. APPEALS

(1) The right to appeal is not part of due process but a mere statutory privilege that has to be exercised only in the manner and in accordance with the provisions of law *(Stolt-Nielsen vs. NLRC, GR 147623, 12/13/2005)*.

(2) The general rule is that the remedy to obtain reversal or modification of judgment on the merits is appeal. This is true even if the error, or one of the errors, ascribed to the court rendering the judgment is its lack of jurisdiction over the subject matter, or the exercise of power in excess thereof, or grave abuse of discretion in the findings of facts or of law set out in the decision *(Association of Integrated Security Force of Bislig-ALU vs. CA, GR 140150, 08/22/2005)*.

(3) An appeal may be taken only from judgments or final orders that completely dispose of the case *(Sec. 1, Rule 41)*.

(4) An interlocutory order is not appealable until after the rendition of the judgment on the merits. Exception: Doctrine of Procedural Void.

(5) Certain rules on appeal:

(a) No trial *de novo* anymore. The appellate courts must decide the case on the basis of the record, except when the proceedings were not duly recorded as when there was absence of a qualified stenographer *(Sec. 22[d], BP 129; Rule 21[d], Interim RulesI)*;
(b) There can be no new parties;
(c) There can be no change of theory *(Naval vs. CA, 483 SCRA 102)*;
(d) There can be no new matters *(Ondap vs. Abuga, 88 SCRA 610)*;
(e) There can be amendments of pleadings to conform to the evidence submitted before the trial court *(Dayao vs. Shell, 97 SCRA 407)*;
(f) The liability of solidary defendant who did not appeal is not affected by appeal of solidary debtor *(Mun. of Orion vs. Concha, 50 Phil. 679)*;
(g) Appeal by guarantor does not inure to the principal *(Luzon Metal vs. Manila Underwriter, 29 SCRA 184)*;
(h) In ejectment cases, the RTC cannot award to the appellant on his counterclaim more than the amount of damages beyond the jurisdiction of the MTC *(Agustin vs. Bataclan, 135 SCRA 342)*;
(i) The appellate court cannot dismiss the appealed case for failure to prosecute because the case must be decided on the basis of the record *(Rule 21, Interim Rules)*.

(6) Doctrinally-entrenched is that the right to appeal is a statutory right and the one who seeks to avail that right must comply with the statute or rules. The perfection of appeal in the manner and within the period set by law is not only mandatory but jurisdictional as well; hence, failure to perfect the same renders the judgment final and executory *(De Leon vs. Hercules Agro Industrial Corporation, GR No. 183239, 06/02/2014)*.

(7) An appeal throws the entire case open for review. An appeal, once accepted by this Court, throws the entire case open to review, and that this Court has the authority to review matters not specifically raised or assigned as error by the parties, if their consideration is necessary in arriving at a just resolution of the case *(Barcelona vs. Lim, GR No. 189171, 06/03/2014)*.

(8) The Court did relax the rule respecting the bond requirement to perfect appeal in cases where: (1) there was substantial compliance with the Rules, (2) surrounding facts and circumstances constitute meritorious grounds to reduce the bond, (3) a liberal interpretation of the requirement of an appeal bond would serve the desired objective of resolving controversies on the merits, or (4) the appellants, at the very least, exhibited their willingness and/or good faith by posting a partial bond during the reglementary

period. Clearly therefore, the Rules only allow the filing of a motion to reduce bond on two (2) conditions: (1) that there is meritorious ground and (2) a bond in a reasonable amount is posted. Compliance with the two conditions stops the running of the period to perfect an appeal provided that they are complied with within the 10-day reglementary period. *(Sara Lee Philippines, Inc. vs. Macatlang, GR Nos. 180147, 180149-50, 180319, 180685, 06/04/2014).*

(9) It is axiomatic that a party who does not appeal or file a petition for certiorari is not entitled to any affirmative relief. An appellee who is not an appellant may assign errors in his brief where his purpose is to maintain the judgment but he cannot seek modification or reversal of the judgment or claim affirmative relief unless he has also appealed. Thus, for failure of respondent to assail the validity of her dismissal, such ruling is no longer in issue. *(Immaculate Concepcion Academy vs. Camilon, GR No. 188035, 07/02/2014).*

(10) When an accused appeals from the sentence of the trial court, he waives the constitutional safeguard against double jeopardy and throws the whole case open to the review of the appellate court, which is then called upon to render such judgment as law and justice dictate, whether favorable or unfavorable to the appellant *(People v. Torres, GR No. 189850, 09/22/2014).*

(11) Editha imputes grave abuse of discretion on the part of the CA and argues that it was too technical and constricted in applying the rules of procedure. She insists that Section 4, Rule 43 of the Rules of Court admits of an exception, as the said provision states that a second extension may be granted for compelling reason.

Editha posits that there is a compelling reason to grant a second extension of time because on 3 December 2008, Atty. Talabucon suddenly withdrew as her counsel. It was only on 9 December 2008 that she hired a new counsel, Atty. Samillano. Having just entered the picture, Atty. Samillano needed more time to study the case, and he could not be expected to finish drafting the petition for review in just one (1) day before the expiration of the 15-day extension granted by the CA. In this accord, Editha contends that the filing of the second motion for extension of time was justified; and that the CA's dismissal of her petition for review impinged on her substantive right to due process.

The arguments proffered are specious and deserve scant consideration.

It is doctrinally entrenched that the right to appeal is a statutory right and the one who seeks to avail of that right must comply with the statute or rules. The requirements for perfecting an appeal within the reglementary period specified in the law must be strictly followed as they are considered indispensable interdictions against needless delays. Moreover, the perfection of appeal in the manner and within the period set by law is not only mandatory but jurisdictional as well. The failure to perfect the appeal within the time prescribed by the Rules of Court unavoidably renders the judgment final as to preclude the appellate court from acquiring the jurisdiction to review the judgment.

It bears stressing that the statutory nature of the right to appeal requires the appealing party to strictly comply with the statutes or rules governing the perfection of an appeal, as such statutes or rules are instituted in order to promote an orderly discharge of judicial business. In the absence of highly exceptional circumstances warranting their relaxation, the statutes or rules should remain inviolable *(Albor vs. Court of Appeals, GR No. 196598, 01/17/2018).*

(12) **2003 Bar**: Defendant X received an adverse Decision of the Regional Trial Court in an ordinary civil case on 02 January 2003. He filed a Notice of Appeal on 10 January 2003. On the other hand, plaintiff A received the same decision on 06 January 2003, and on 19 January 2003, filed a Motion for Reconsideration of the Decision. On 13 January 2003, defendant X filed a Motion withdrawing his notice of appeal in order to file a Motion for New Trial which he attached. On 20 January 2003, the court denied A's Motion to Withdraw Notice of Appeal. Plaintiff A received the Order denying his Motion for Reconsideration on 03 February 2003 and filed his Notice f Appeal on 05 February 2003.

The court denied due course of A's Notice of Appeal on the ground that the period to appeal had already lapsed.

a. Is the court's denial of X's Motion to Withdraw Notice of Appeal proper?

b. Is the court's denial of due course to A's appeal correct?

Answer: No, the court's denial of X's Motion to Withdraw Notice of Appeal is not proper, because the period of appeal of X has not yet expired. From 02 January 2003 when X received a copy of the adverse decision up to 13 January 2003 when he filed his withdrawal of appeal and Motion for New Trial, only ten (10) days had elapsed and he had fifteen (15) days to do so.

b. No, the court's denial of due course to A's appeal is not correct because the appeal was take on time. From January 6, 2003 when A received a copy of the decision up to January 19, 2003 when he filed a Motion for Reconsideration, only twelve (12) days had elapsed. Consequently, he had three (3) days from receipt of February 3, 2003 Order denying his Motion for Reconsideration within which to appeal. He filed his notice of appeal on February 5, 2003, or only two (2) days later.

Doctrine of Law of the Case

(1) The term *law of the case* has been held to mean that "whatever is once irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case, *whether correct on general principles or not*, so long as the facts on which such decision was predicated continue to be the facts of the case before the court. As a general rule, a decision on a prior appeal of the same case is held to be the law of the *case whether that question is right or wrong,* the remedy of the party deeming himself aggrieved being to seek a rehearing."

The doctrine applies when "(1) a question is passed upon by an appellate court, and (2) the appellate court remands the case to the lower court for further proceedings; the lower court and even the appellate courts on subsequent appeal of the case are, thus, bound by how such question had been previously settled."

This must be so for reasons of practicality and the orderly adjudication of cases. The doctrine of the *law of the case* is "necessary to enable an appellate court to perform its duties satisfactorily and efficiently, which would be impossible if a question, once considered and decided by it, were to be litigated anew in the same case upon any and every subsequent appeal." It is "founded on the policy of ending litigation." The need for "judicial orderliness and economy require such stability in the final judgments of courts or tribunals of competent jurisdiction" *(Heirs of Timbol, Jr. vs. Philippine National Bank, GR No. 207408, 04/10/2016).*

(2) The doctrine of the law of the case applies when in a particular case, an appeal to a court of last resort has resulted in a determination of a question of law. The determined issue will be deemed to be the law of the case such that it will govern a case through all its subsequent stages. Thus, after ruling on the legal issue and remanding the case to a lower court for further proceedings, the determined legal issue can no longer be passed upon and determined differently in another appeal in the same case.

In *Presidential Decree No. 1271 Committee vs. De Guzman (GR Nos. 187291 & 187334, 12/05/2016):*

> The doctrine of the "law of the case" provides that questions of law previously determined by a court will generally govern a case through all its subsequent stages where "the determination has already been made on a prior appeal to a court of last resort." In *People v. Olarte:*

Suffice it to say that our ruling in Case L-13027, rendered on the first appeal, constitutes the *law of the case,* and, even if erroneous, it may no longer be disturbed or modified since it has become final long ago. A subsequent reinterpretation of the law may be applied to new cases but certainly not to an old one finally and conclusively determined.

> 'Law of the case' has been defined as the opinion delivered on a former appeal. More specifically, it means that whatever is once irrevocably established as the controlling legal rule of decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court.
>
> As a general rule a decision on a prior appeal of the same case is held to be the law of the case whether that decision is right or wrong, the remedy of the party being to seek a rehearing.

Xxx

The legal issue determined in *Gammon* is the jurisdiction of CIAC. However, this determination was arrived at after this Court found that *the parties entered into a construction contract with an agreement to arbitrate* *(Metro Rail Transit Development Corporation vs. Gammon Philippines, Inc., GR No. 200401, 01/17/2018).*

Judgments and final orders subject to appeal

(1) An appeal may be taken only from judgments or final orders that completely dispose of the case *(Sec. 1, Rule 41).* An interlocutory order is not appealable until after the rendition of the judgment on the merits.

(2) There is a question of law when the doubt or difference arises as to what the law is on certain state of facts and which does not call for an existence of the probative value of the evidence presented by the parties-litigants. In a case involving a question of law, the resolution of the issue rests solely on what the law provides on the given set of circumstances. In the instant case, petitioner appealed the Order of the trial court which dismissed his complaint for improper venue, lack of cause of action, and res judicata. Dismissals based on these grounds do not involve a review of the facts of the case but merely the application of the law, specifically in this case, Rule 16 of the Revised Rules of Civil Procedure. Considering, therefore, that the subject appeal raised only questions of law, the CA committed no error in dismissing the same *(Samson vs. Sps. Gabor, GR No. 182970, 07/23/2014).*

Matters not appealable

(1) No appeal may be taken from:

- (a) An order denying a petition for relief or any similar motion seeking relief from judgment;
- (b) An interlocutory order;
- (c) An order disallowing or dismissing an appeal;
- (d) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;
- (e) An order of execution;

(f) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims, and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and
(g) An order dismissing an action without prejudice *(Sec. 1, Rule 41).*

(2) A question that was never raised in the courts below cannot be allowed to be raised for the first time on appeal without offending basic rules of fair play, justice and due process *(Bank of Commerce vs. Serrano, 451 SCRA 484).* For an appellate court to consider a legal question, it should have been raised in the court below *(PNOC vs. CA, 457 SCRA 32).* It would be unfair to the adverse party who would have no opportunity to present evidence in contra to the new theory, which it could have done had it been aware of it at the time of the hearing before the trial court. it is true that this rule admits of exceptions as in cases of lack of jurisdiction, where the lower court committed plain error, where there are jurisprudential developments affecting the issues, or when the issues raised present a matter of public policy *(Baluyot vs. Poblete, GR 144435, 02/06/2007).*

(3) The rule under (2) however is only the general rule because Sec. 8, Rule 51 precludes its absolute application allowing as it does certain errors which even if not assigned may be ruled upon by the appellate court. Hence, the court may consider an error not raised on appeal provided the same falls within any of the following categories:
(a) It is an error that affects the jurisdiction over the subject matter;
(b) It is an error that affects the validity of the judgment appealed from;
(c) It is an error which affects the proceedings;
(d) It is an error closely related to or dependent on an assigned error and properly argued in the brief; or
(e) It is a plain and clerical error.

(4) The Supreme Court ruled that an appellate court has a broad discretionary power in waiving the lack of assignment of errors in the following instances:
(a) Grounds not assigned as errors but affecting the jurisdiction of the court over the subject matter:
(b) Matters not assigned as errors on appeal but are evidently plain or clerical errors within contemplation of law;
(c) Matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interests of a justice or to avoid dispensing piecemeal justice;
(d) Matters not specifically assigned as errors on appeal but raised in thr trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored;
(e) Matters not assigned as errors on appeal but closely related to an error assigned; and
(f) Matters not assigned as errors on appeal but upon which the determination of a question properly assigned, is dependent *(General Milling Corp. vs. Sps. Ramos, GR No. 193723, 07/20/2011).*

(5) As a general rule, only questions of law may be raised in petitions filed under Rule 45. However, there are recognized exceptions to this general rule, namely: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings 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 respondent; (10) when the findings of fact are

premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion *(Prudential Bank vs. Rapanot & HLURB, GR No.191636, 01/16/2017)*.

Remedy against judgments and orders which are not appealable

(1) In those instances where the judgment or final order is not appealable, the aggrieved party may file the appropriate special civil action under Rule 65. Rule 65 refers to the special civil actions of certiorari, prohibition and mandamus. Practically, it would be the special civil action of certiorari that would be availed of under most circumstances. The most potent remedy against those judgments and orders from which appeal cannot be taken is to allege and prove that the same were issued without jurisdiction, with grave abuse of discretion or in excess of jurisdiction, all amounting to lack of jurisdiction.

Modes of appeal *(Sec. 2, Rule 41)*

(a) **Ordinary appeal.** The appeal to the CA in cases decided by the RTC 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 the 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 CA in cases decided by the RTC in the exercise of its appellate jurisdiction shall be by petition for review in accordance with Rule 42.

(c) **Petition for review on certiorari**. In all cases where only questions of law are raised or involved, the appeal shall be to the SC by petition for review on certiorari in accordance with Rule 45.

Material Data Rule *(Sec. 1 [a], Rule 50)*

(1) The record on appeal must show the following material data:
   (a) Date of the receipt of the copy of final order or judgment;
   (b) Date of filing of the motion for reconsideration or new trial; and
   (c) Date of the receipt of the denial of the motion for reconsideration or new trail.

(2) An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:
   (a) Failure of the record on appeal to show on its face that the appeal was taken within the period fixed by the Rules;
   (b) Failure to file the notice of appeal or the record on appeal within the period prescribed by the Rules;
   (c) Failure of the appellant to pay the docket and other lawful fees as provided in Section 5 of Rule 40 and Section 4 of Rule 41;
   (d) Unauthorized alterations, omissions or additions in the approved record on appeal as provided in Section 4 of Rule 44;
   (e) Failure of the appellant to serve and file the required number of copies of his brief or memorandum within the time provided by the Rules;

(f) Absence of specific assignment of errors in the appellant's brief, or page references to the record as required in Section 13 [a], [c], [d], and [f] of Rule 44;
(g) Failure of the appellant to take the necessary steps for the correction or completion of the record within the time limited by the court in its order;
(h) Failure of the appellant to appear at the preliminary conference under Rule 48 or to comply with orders, circulars, or directives of the court without justifiable cause; and
(i) The fact that the order or judgment appealed from is not appealable.

Dismissal of improper appeal to the Court of Appeals *(Sec. 2, Rule 50)*

(1) Section 2, Rule 50 of the Rules of Court, clearly mandates the outright dismissal of appeals made under Rule 41 thereof, if they only raise pure questions of law. The pertinent provision of Rule 50 reads as follows:

> SECTION 2. *Dismissal of improper appeal to the Court of Appeals.* - An appeal under Rule 41 taken from the Regional Trial Court to the Court of Appeals raising only questions of law shall be dismissed, issues purely of law not being reviewable by said court. Similarly, an appeal by notice of appeal instead of by petition for review from the appellate judgment of a Regional Trial Court shall be dismissed.
>
> An appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright.

There is a question of law when the issue does not call for an examination of the probative value of the evidence presented or an evaluation of the truth or falsity of the facts admitted. Here, the doubt revolves around the correct application of law and jurisprudence on a certain set of facts or circumstances. The test for ascertaining whether a question is one of law is to determine if the appellate court can resolve the issues without reviewing or evaluating the evidence. Where there is no dispute as to the facts, the question of whether or not the conclusions drawn from these facts are correct is considered a question of law. Conversely, there is a question of fact when doubt or controversy arises as to the truth or falsity of the alleged information or facts; the credibility of the witnesses; or the relevance of surrounding circumstances and their relationship to each other *(Sps. Navarro vs. Rural Bank of Tarlac, Inc., GR No. 180060, 07/13/2016).*

Issues to be raised on appeal

(1) Whether or not the appellant has filed a motion for new trial in the court below, he may include in his assignment of errors any question of law or fact that has been raised in the court below and which is within the issues framed by the parties *(Sec. 15, Rule 44).*

(2) The core issue raised in the present petition is a question of fact. As a general rule, a petition for review under Rule 45 of the Rules of Court covers *only* questions of law. Questions of fact are not reviewable and cannot be passed upon by the Court in the exercise of its power to review under Rule 45.

There are, however, exceptions to the general rule. Questions of fact may be raised before this Court in any of these instances: (1) when the findings are grounded entirely on speculations, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is a grave abuse of discretion; (4) when the judgment is based on misappreciation of facts; (5) when the findings of fact are conflicting; (6) when in making its findings, the same are contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings 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 petitioners main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.

The present case falls under two of the exceptions, particularly that the CA's findings are contrary to the RTC's findings, and that the CA's findings of fact are premised on absent evidence and contradicted by the evidence on record *(Gumabon vs. Philippine National Bank, GR No. 202514, 07/25/2016).*

(3) Section 2, Rule 41 of the Rules of Court governs appeals from judgments and final orders of the RTC:

(a) If the issues raised involve questions of fact or mixed questions of fact and law, the proper recourse is an ordinary appeal to the CA in accordance with Rule 41 in relation to Rule 44 of the Rules of Court; and

(b) If the issues raised involve only questions of law, the appeal shall be to the Court by petition for review on *certiorari* in accordance with

In *Sevilleno v. Carilo (GR No. 146454, 09/14/2007),* citing *Macawiwili Gold Mining and Development Co., Inc. v. Court of Appeals (GR No. 115104, 10/12/1998),* We summarized:

(1) In all cases decided by the R TC in the exercise of its original jurisdiction, appeal may be made to the Court of Appeals by mere notice of appeal where the appellant raises questions of fact or mixed questions of fact and law;

(2) In all cases decided by the RTC in the exercise of its original jurisdiction where the appellant raises only questions of law, the appeal must be taken to the Supreme Court on a petition for review on *certiorari* under Rule 45;

(3) All appeals from judgments rendered by the RTC in the exercise of its appellate jurisdiction, regardless of whether the appellant raises questions of fact, questions of law, or mixed questions of fact and law, shall be brought to the Court of Appeals by filing a petition for review under Rule 42. (Emphasis supplied)

A question of law exists when there is doubt or controversy as to what the law is on a certain state of facts, and there is a question of fact when the doubt or difference arises as to the truth or falsehood of facts, or when the query necessarily invites calibration of the whole evidence considering mainly the credibility of witnesses, existence and relevancy of specific surrounding circumstances, their relation to each other and to the whole and probabilities of the situation. No examination of the probative value of the evidence would be necessary to resolve a question of law. The opposite is true with respect to questions of fact.

The test of whether a question is one of law or fact is not the appellation given to such question by the party raising the same. It is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence and would only limit itself to the inquiry of whether the law was properly applied given the facts and supporting evidence. Such is a question of law. Otherwise, it is a question of fact *(Mandaue Realty & Resources Corp. vs. Court of Appeals, GR No. 185082, 11/28/2016).*

(4) Rule 45, Section 1 of the Rules of Court is unequivocal in stating that an appeal *via* petition for review on *certiorari* under Rule 45 shall raise only questions of law which must be distinctly set forth. The Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial of the case considering that the findings of facts of the lower courts are conclusive and binding upon the Court.

However, the Court has ruled in a *catena* of cases that such rule is not inflexible. The Court has recognized several exceptions to the rule that only questions of law can be raised in a Rule 45 petition. Questions of fact may be revisited by the Court: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the

inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings 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 respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

Here, the Court exercises its discretion in delving into the questions of fact involved in the instant Petition. As will be discussed at length below, the findings of facts of the courts and various administrative bodies are in conflict with each other.

Further, the findings of fact made by the RTC in its Decision that are adverse to petitioners, as concurred in by the CA in its Assailed Decision and Resolution, are premised on the supposed absence of evidence presented by petitioners. However, a careful re-examination of the records sheds some light on the possibility that such conclusion made by the lower courts are contradicted by the available evidence on record.

Hence, for the foregoing reasons, the Court exercises its discretion in setting aside the general rule that only pure questions of law may be examined by the Court in assessing the instant Petition *(Melendres vs. Catambay, GR No. 198026, 11/28/2018)*.

Period of appeal

(1) In appeals cognized by the Office of the President, the time during which a motion for reconsideration has been pending with the Ministry/agency concerned shall be deducted from the period for appeal *(Sps. Rosete v. Briones, GR No. 176121, 09/22/2014).*

(2) A party litigant wishing to file a petition for review on certiorari must do so within 15 days from notice of the judgment, final order or resolution sought to be appealed. Here, petitioners received the Resolution of the CA denying their Motion for Reconsideration on March 17, 2011. Under the Rules, they have until April 1, 2011 to file the petition. However, they filed the same only on May 6, 2011. This was 50 days beyond the 15-day period provided under Section 2, Rule 45 and 30 days beyond the extension asked for. Even if petitioners were given the maximum period of extension of 30 days, their petition before us still cannot stand. The Rules allow only for a maximum period of 45 days within which an aggrieved party may file a petition for review on certiorari. By belatedly filing their petition with the CA, petitioners have clearly lost their right to appeal *(Nueva Ecija II Electric Cooperative, Inc. vs. Mapagu, GR 196084, 02/15/2017).*

(3) The provision is straightforward. While the CA enjoys a wide latitude of discretion in granting a first motion for extension of time, its authority to grant a further or second motion for extension of time is delimited by two conditions: *First,* there must exist a most compelling reason for the grant of a further extension; and *second,* in no case shall such extension exceed fifteen (15) days *(Albor vs. Court of Appeals, GR No. 196598, 01/17/2018).*

MODE OF APPEAL	PERIOD OF APPEAL	Period of appeal if party files MFR or New Trial (Neypes Rule)
Ordinary Appeal (Rules 40, 41)		
a) Notice of Appeal (Rule 40)	Within 15 days from receipt of judgment or final order, with no extension	Within 15 days from receipt of order denying motion for reconsideration or new trial
b) Record on Appeal (Rule 41)	Within 30 days from receipt of judgment or final order	The 30-day to file the notice of appeal and record on appeal should be reckoned from the receipt of the order denying the motion for new trial or motion for reconsideration *(Zayco vs. Himlo, GR 170243, April 16, 2008)*
Petition for Review (Rule 42)	Within 15 days from receipt of judgment	Within 15 days from receipt of the order denying motion for reconsideration or new trial
Petition for Review (Rule 43)	Within 15 days from receipt of judgment or final order or of last publication	Within 15 days from receipt of the order denying motion for reconsideration or new trial
Petition for Review on Certiorari (Rule 45)	Within 15 days from receipt of judgment or final order	Within 15 days from receipt of the order denying motion for reconsideration or new trial

(4) **Period of Ordinary Appeal under Rule 40.** An appeal may be taken (from MTC to RTC) within 15 days after notice to the appellant of the judgment or final order appealed from. Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within 30 days after notice of the judgment or final order. The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed *(Sec. 2)*.

(5) **Period of Ordinary Appeal under Rule 41**. The appeal shall be taken within 15 days from notice of the judgment or final order appealed from. Where a record on appeal is required, the appellants shall file a notice of appeal and a record on appeal within 30 days from notice of the judgment or final order. However, on appeal in *habeas corpus* cases shall be taken within 48 hours from notice of the judgment or final order appealed from *(AM No. 01-1-03-SC, June 19, 2001)*. The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed *(Sec. 3)*. If the record on appeal is not transmitted to the CA within 30 days after the perfection of appeal, either party may file a motion with the trial court, with notice to the other, for the transmittal of such record or record on appeal *(Sec. 3, Rule 44)*.

(6) **Period of Petition for Review under Rule 42.** The petition shall be filed and served within 15 days from notice of the decision sought to be reviewed or of the denial of petitioner's motion for new trial or reconsideration filed in due time after judgment. The court may grant an additional period of 15 days only, provided the extension is sought (a) upon proper motion, and (b) there is payment of the full amount of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period. No further extension shall be granted except for the most compelling reason and in no case to exceed 15 days *(Sec. 1).*

(7) **Period of Appeal by Petition for Review under Rule 43**. The appeal shall be taken within 15 days from notice of the award, judgment, final order or resolution, or from the date of its last publication, if publication is required by law for its effectivity, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency *a quo*. Only one (1) motion for reconsideration shall be allowed. Upon proper motion and the payment of the full amount of the docket fee before the expiration of the reglementary period, the CA may grant an additional period of 15 days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed 15 days *(Sec. 4).*

(8) **Period of Appeal by Petition for Review on Certiorari under Rule 45**. The appeal which shall be in the form of a verified petition shall be filed within 15 days from notice of the judgment, final order or resolution appealed from, or within 15 days from notice of the denial of the petitioner's motion for new trail or motion for reconsideration filed in due time. The Supreme Court may, for justifiable reasons, grant an extension of 30 days only within which to file the petition provided, (a) there is a motion for extension of time duly filed and served, (b) there is full payment of the docket and other lawful fees and the deposit for costs, and (c) the motion is filed and served and the payment is made before the expiration of the reglementary period *(Sec. 2).*

Perfection of appeals

(1) **For Ordinary Appeals from MTC to the RTC *(Rule 40)* and from the RTC to the CA *(Rule 41).***

(a) A party's appeal by notice of appeal is deemed perfected as to him upon the filing of the notice of appeal in due time;

(b) A party's appeal by record on appeal is deemed perfected as to him with respect to the subject matter thereof upon the approval of the record on appeal filed in due time;

(c) In appeals by notice of appeal, the court loses jurisdiction only over the subject matter thereof upon the approval of the records on appeal filed in due time and the expiration of the time to appeal of the other parties;

(d) In either case, prior to the transmittal of the original record or the record on appeal, the court may issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, approve compromises, permit appeals of indigent litigants, order execution pending appeal in accordance with Sec. 2, Rule 39, and allow withdrawal of the appeal *(Sec. 9, Rule 41).*

(2) **Perfection of Appeal by Petition for Review under *Rule 42*.** *(Sec. 8)*

(a) Upon the timely filing of a petition for review and the payment of the corresponding docket and other lawful fees, the appeal is deemed perfected as to the petitioner. The RTC loses jurisdiction over the case upon the perfection of the appeals filed in due time and the expiration of the time to appeal of the other parties.

However, before the CA give due course to the petition, the RTC may issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, approve compromises, permit appeals of indigent litigants, order execution pending appeal in accordance with Sec. 2, Rule 39, and allow withdrawal of the appeal.

(b) Except in civil cases decided under Rules on Summary Procedure, the appeal shall stay the judgment or final order unless the CA, the law, or the Rules provide otherwise.

(c) A party's appeal by notice of appeal is deemed perfected as to him upon the filing thereof in due time, and a party's appeal by record on appeal is deemed perfected as to him upon the approval thereof. In the first case, the court loses jurisdiction over the whole case upon the perfection of the appeals taken by the parties who have appealed and the expiration of the time to appeal of the other parties. In the second case, the court loses jurisdiction over the subject matter thereof upon the approval of all the records on appeal filed by the parties who have appealed and the expiration of the time to appeal of the other parties; and retains jurisdiction over the remaining subject matter not covered by the appeal.

(3) The rule is that failure to file or perfect an appeal within the reglementary period will make the judgment final and executory by operation of law. Filing of an appeal beyond the reglementary period may, under meritorious cases, be excused if the barring of the appeal would be inequitable and unjust in light of certain circumstances therei. *(Bañez v. Social Security System, GR No. 189574, 07/18/2014).*

(4) A counsel's failure to perfect an appeal within the reglementary period is simple negligence. It is not one as gross, palpable, and reckless as to deprive a party of its day in court. Hence, we will not override the finality and immutability of a judgment based only on the simple negligence of a party's counsel *(IK&G Mining Corporation vs. Acoje Mining Company, GR No. 188364, 02/11/2015).*

(5) With the foregoing provisions [4 and 13, Rule 41], "the Court has consistently upheld the dismissal of an appeal or notice of appeal for failure to pay the full docket fees within the period for taking the appeal. Time and again, this Court has consistently held that the payment of docket fees within the prescribed pedior is mandatory for the perfection of an appeal. Without such payment, the appellate court does not acquire jurisdiction over the subject matter of the action ad the decision sought to be appealed from becomes final and executory.

Admittedly, there are exceptions to the aforecited general rule on the timely payment of appellate docket fees, embodied aldo in jurisprudence as identified by the Court of Appeals and Consilium in its petition for *certiorari* with the appellate court. But reading them, including a catena of other cases, will show that they involve exceptionally meritorious reasons why the appellate docket fees were not timely paid - the substantive merits of the case, a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, the existence of a special or compelling circumstance, *etc.*

The Court of Appeals cites *Villena* v. *Rupisan* where the appellate docket fees were paid six days beyond the reglementary period to appeal. Therein, we upheld the Court of Appeals decision reversing the trial court's denial of the notice of appeal where the reason extended by the appellant for their failure to timely pay the docket fees was admitted poverty, which is a defense miles away from the proffered lapse in memory by Consilium. Such excuse does not even come close to the ample precedents allowing for liberal construction of the rules of procedure. In other words, in *Villena* and the other cited cases where we upheld the liberal application of the rules, the appellants therein hinged their arguments on exceptionally meritorious circumstances peculiar to their particular situations that convinced Us of their entitlement to a lax application of the Rules.

If the Court' were to admit the tendered excuse, *i.e.,* the negligence of the counsel's clerk as compelling or sufficient explanation for the belated payment of the appeal fee, we would be putting a premium on such lackadaisical attitude and negating a considerabl.e sum of our jurisprudence that affirmed dismissals of appeals or notices of appeal for nonpayment of the full appellate docket fees. We will not do that *(Zosa vs. zosa, GR No. 196765, 09/19/2018)*.

Participation of the Solicitator General During Appeal

(1) The authority to represent the State in appeals of criminal cases before the Court and the CA is vested solely in the OSG which is "the law office of the Government whose specific powers and functions include that of representing the Republic and/or the People [of the Philippines] before any court in any action which affects the welfare of the people as the ends of justice may require." Section 35 (1), Chapter 12, Title III, Book IV of the 1987 Administrative Code 47 provides that:

> Section 35. Powers and Functions. - The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. x x x. It shall have the following specific powers and functions:
>
> (1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court, and Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.

In *People v. Piccio (GR No. 193681, 0/06/2014),* which involved one of the thirteen criminal cases between the same parties, this Court held that "if there is a dismissal of a criminal case by the trial court or if there is an acquittal of the accused**, it is only the OSG that may bring an appeal on the criminal aspect representing the People**. The rationale therefor is rooted in the principle that the party affected by the dismissal of the criminal action is the People and not the petitioners who are mere complaining witnesses. For this reason, **the People are therefore deemed as the real parties in interest in the criminal case and, therefore, only the OSG can represent them in criminal proceedings pending in the CA or in this Court**. In view of the corollary principle that every action must be prosecuted or defended in the name of the real party in interest who stands to be benefited or injured by the judgment in the suit, or by the party entitled to the avails of the suit, an appeal of the criminal case not filed by the People as represented by the OSG is perforce dismissible. The private complainant or the offended party may, however, file an appeal without the intervention of the OSG but only insofar as the civil liability of the accused is concerned. He may also file a special civil action for *certiorari* even without the intervention of the OSG, but only to the end of preserving his interest in the civil aspect of the case" *(Malayan Insurance Company, Inc. vs. Piccio, GR No. 203370 and 215106, 04/11/2016)*.

(2) As such, even if the petitioner in this case, representing the People, is only the Assistant Provincial Prosecutor and not the Office of the Solicitor General, such technicality can be relaxed in the interest of justice. The Court has allowed some meritorious cases to proceed despite inherent procedural defects and lapses. This is in keeping with the principle that rules of procedure are mere tools designed to facilitate the attainment of justice and that strict and rigid application of rules which would result in technicalities that tend to frustrate rather than promote substantial justice must always be avoided. It is a far better and more prudent cause of action for the court to excuse a technical lapse and afford the parties a review of the case to attain the ends of justice, rather than dispose of

the case on technicality and cause grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice. In certain cases, this Court even allowed private complainants to file petitions for *certiorari* and considered the said petitions as if filed by the Office of the Solicitor General. In *United Laboratories, Inc. vs. Isip (500 Phil. 342 [2005]),* this Court ruled that an exception exists to the general rule that the proper party to file a petition in the CA or Supreme Court assailing any adverse order of the RTC in the search warrant proceedings is the People of the Philippines, through the OSG... *(People vs. Judge Castillo, Sr., GR No. 204419, 11/07/2016).*

Appeal from judgments or final orders of the MTC

(1) An appeal from a judgment or final order of an MTC may be taken to the RTC exercising jurisdiction over the area to which the former pertains. The title of the case shall remain as it was in the court of origin, but the party appealing the case shall be further referred to as the appellant and the adverse party as the appellee *(Sec. 1, Rule 40).*

(2) The appeal is taken by filing a notice of appeal with the court that rendered the judgment or final order appealed from. The notice of appeal shall indicate the parties to the appeal, the judgment or final order or part thereof appealed from, and state the material dates showing the timeliness of the appeal. A record on appeal shall be required only in special proceedings and in other cases of multiple or separate appeals *(Sec. 3).*

(3) Procedure *(Sec. 7)*:

(a) Upon receipt of the complete record or the record on appeal, the clerk of court of the RTC shall notify the parties of such fact.

(b) Within 15 days from such notice, the appellant shall submit a memorandum which shall briefly discuss the errors imputed to the lower court, a copy of which shall be furnished by him to the adverse party. Within 15 days from receipt of appellant's memorandum, the appellee may file his memorandum. Failure of appellant to file a memorandum shall be a ground for dismissal of the appeal.

(c) Once the filing of the memorandum of the appellee, or the expiration of the period to do so, the case shall be considered submitted for decision. The RTC shall decide the case on the basis of the record of the proceedings had in the court of origin and such memoranda as are filed.

Appeal from judgments or final orders of the RTC

(1) Judgment or orders of the RTC may be appealed to the Supreme Court through any of the following modes:

Rule 41 (Ordinary Appeal) applies to appeals from the judgment or final order of the RTC in the exercise of its original jurisdiction.

Rule 42 (Petition for Review) applies to an appeal from the judgment or final order of the RTC to the CA in cases decided by the RTC in the exercise of its appellate jurisdiction.

Rule 45, Petition for Review on Certiorari to the Supreme Court on purely questions of law.

(20) The core issue here is whether the CA erred in dismissing the appeal for petitioner's failure to file the appellant's brief seasonably.

In insisting that the dismissal of her appeal was erroneous, petitioner harps on the negligence of her counsel which is gross and therefore should not bind her. She argues that her right to exercise ownership over her property is at stake and the denial of the

appeal would be tantamount to deprivation of her right to property without due process of law. To not allow her to ventilate her position on appeal would bind her to the RTC Decision which is patently erroneous.

The Court resolves to deny the petition.

Section 3, Rule 41 of the 1997 Rules of Civil Procedure provides:

> Section 3. *Period of ordinary appeal.* - The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order.
>
> The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed.

The foregoing Rule should be read in consonance with Section 7, Rule 44, which states:

> Section 7. *Appellant's brief* - It shall be the duty of the appellant to file with the court, within fo1iy-five (45) days from receipt of the notice of the clerk that all the evidence, oral and documentary, are attached to the record, ·seven (7) copies of his legibly typewritten, mimeographed or printed brief, with proof of service of two (2) copies thereof upon the appellee.

Corollarily, the CA has, under the foregoing provision, discretion to dismiss or not to dismiss respondent's appeal.

> Section 1. *Grounds for dismissal of appeal.* - An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:
> xx xx
> (e) Failure of the appellant to serve and file the required number of copies of his brief or memorandum within the time provided by these Rules[.]

The CA in the case at b.ar opted to dismiss the appeal interposed by petitioner considering the negligence of the counsel as merely simple which binds petitioner from the adverse consequence thereof. Her invocation of outright deprivation of property did not carry her day before the appellate court as it was observed that she actively participated in the proceedings before the trial court and thus she was afforded therein the unfettered opportunity to ventilate her case.

The failure to file Appellant's Brief, though not jurisdictional, results in the abandonment of the appeal which may be the cause for its dismissal *(Sibayan vs. Costales, et al., GR No. 191492, 07/04/2016).*

(1) **2004 Bar:** Distinguish clearly but briefly: Questions of law and questions of fact. (5%)

A question of law is when the doubt of difference arises as to what the law is on a certain set of facts, while a question of fact is when the doubt or differences arise as to the truth or falsehood of alleged facts *(Ramos vs. Pepsi-Cola Bottling Co., 19 SCRA 289 [1967]).*

(2) Section 21, Rule 70 provides that the judgment of the RTC in ejectment cases appealed to it shall be immediately executory and can be enforced despite the perfection of an appeal to a higher court. To avoid such immediate execution, the defendant may appeal said judgment to the CA and therein apply for a writ of preliminary injunction. In this case, the decisions of the MTCC, of the RTC, and of the CA, unanimously recognized the right of the ATO to possession of the property and the corresponding obligation of Miaque to immediately vacate the subject premises. This means that the MTCC, the RTC, and the Court of Appeals all ruled that Miaque does not have any right to continue in possession of the said premises. It is therefore puzzling how the Court of Appeals justified its issuance of the writ of preliminary injunction with the sweeping statement that Miaque "appears to have a clear legal right to hold on to the premises leased by him from ATO at least until

such time when he shall have been duly ejected therefrom by a writ of execution of judgment caused to be issued by the MTCC *(Air Transportation Office vs. Court of Appeals, GR No. 173616, 06/25/2014).*

Appeal from judgments or final orders of the CA

(1) Appeal by *certiorari* under Rule 45 shall be taken to the SC where the petitions shall raise only questions of law distinctly set forth. The general rule is that the SC shall not entertain questions of fact, except in the following cases:
   (a) The conclusion of the CA is grounded entirely on speculations, surmises and conjectures;
   (b) The inference made is manifestly mistaken, absurd or impossible;
   (c) There is grave abuse of discretion;
   (d) The judgment is based on misapprehension of facts;
   (e) The findings of facts are conflicting;
   (f) 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;
   (g) The findings are contrary to those of the trial court;
   (h) The facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents;
   (i) The findings of fact of the CA are premised on the supposed absence of evidence and contradicted by the evidence on record; or
   (j) Those filed under Writs of amparo, *habeas data*, or kalikasan.

(2) **2005 Bar:** May the aggrieved party file a petition for certiorari to the Supreme Court under Rule 65 instead of filing petition for review on certiorari under Rule 45 for the nullification of a decision of the Court of Appeals in the exercise either of its original or appellate jurisdiction? Explain.

   Answer: The remedy to nullify a decision of the Court of Appeals is a petition for review on certiorari in the Supreme Court under Rule 45 instead of a petition for certiorari under Rule 65, except in certain exceptional circumstances such as where appeal is inadequate. By settled jurisprudence, certiorari is not a substitute for lost appeal.

(3) **2006 Bar**: Explain certiorari: As a mode of appeal from the Regional Trial Court or the Court of Appeals to the Supreme Court. (2.5%)

   Answer: Certiorari as a mode of appeal is governed by Rule 45 which allows appeal from judgment, final order of resolution of the Court of Appeals, Sandiganbayan, the RTC or other courts to the Supreme Court via verified petition for review whenever authorized by law raising only questions of law distinctly set forth.

Appeal from judgments or final orders of the Court of Tax Appeals

(1) Under Sec. 11 of RA 9282, no civil proceeding involving matters arising under the NIRC, the TCC or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA *en banc* and disposed of in accordance with the provisions of the Act. A party adversely affected by a resolution of a Division of CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA *en banc*.

(2) Sec. 11 of RA 9282 further provides that a party adversely affected by a decision or ruling of the CTA *en banc* may file with the SC a verified petition for review on *certiorari* pursuant to Rule 45.

(3) An appeal directly filed to the Supreme Court from the Court of Tax Appeals division must be dismissed for failure to comply with the procedure on appeal. It must be emphasized that an appeal is neither a natural nor a constitutional right, but is merely statutory. The implication of its statutory character is that the party who intends to appeal must always comply with the procedures and rules governing appeals; or else, the right of appeal may be lost or squandered. Neither is the right to appeal a component of due process. It is a mere statutory privilege and may be exercised only in the manner prescribed by, and in accordance with, the provisions of law *(Duty Free Philippines vs. Bureau of Internal Revenue, GR No. 197228, 10/08/2014)*.

Review of final judgments or final orders of the COMELEC

(1) A judgment, resolution or final order of the COMELEC may be brought by the aggrieved party to the SC on *Certiorari* under Rule 65 by filing the petition within 30 days from notice *(Sec. 2, Rule 64)*.

Review of final orders or final judgments from the . . .	**to the . . .**	**via**	**within**
Civil Service Commission	Court of Appeals	Rule 43	15 days
Commission on Audit	Supreme Court	Rule 65	30 days
Commission on Elections	Supreme Court	Rule 64 (Rule 65)	30 days

Review of final orders of the Civil Service Commission

(1) A judgment, final order or resolution of the Civil Service Commission may be taken to the CA under Rule 43. Note the difference between the mode of appeal from a judgment of the CSC and the mode of appeal from the judgments of other constitutional commissions.

Review of final orders of the Commission on Audit

(1) A judgment, resolution or final order of the Commission on Audit may be brought by the aggrieved party to the SC on *certiorari* under Rule 65 by filing the petition within 30 days from notice *(Sec. 3, Rule 64)*.

(2) In **administrative disciplinary** cases decided by the COA, the proper remedy in case of an adverse decision is an appeal to the Civil Service Commission and not a petition for *certiorari* before this Court under Rule 64.

Rule 64 governs the review of judgments and final orders or resolutions of the Commission on Audit and the Commission on Elections. It refers to Rule 65 for the mode of review of the judgment or final order or resolution of the Commission on Audit and the Commission on Elections. A petition filed under Rule 65 requires that the "tribunal, board, or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his 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 in the ordinary course oflaw xx x."

Our power to review COA decisions refers to money matters and **not to administrative** cases **involving the discipline of its personnel** *(Galindo vs. Commission on Audit, EB, GR No. 210788, 1/10/2017)*.

Section 7, Article IX-A of the Constitution provides that "[u]nless otherwise provided by this Constitution, **or by law,** any decision, order, or ruling of each Commission may be brought to the Supreme Court on *certiorari* by the aggrieved paiiy within thirty days from receipt of a copy thereof." The Administrative Code of 1987 is the law that provided for the Civil Service Commission's appellate jurisdiction in **administrative disciplinary** cases:

> Section 47. *Disciplinary Jurisdiction.* - (1) The Commission shall decide upon appeal all administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty days, or fine in an amount exceeding thirty days' salary, demotion in rank or salary or transfer, removal or dismissal from office. A complaint may be filed directly with the Commission by a private citizen against a government official or employee in which case it may hear and decide the case or it may deputize any department or agency or official or group of officials to conduct the investigation. The results of the investigation shall be submitted to the Commission with recommendation as to the penalty to be imposed or other action to be taken.
>
> (2) The Secretaries and heads of agencies and instrumentalities, provinces, cities and municipalities shall have jurisdiction to investigate and decide matters involving disciplinary action against officers and employees under their jurisdiction. Their decisions shall be final in case the penalty imposed is suspension for not more than thirty days or fine in an amount not exceeding thirty days' salary. In case the decision rendered by a bureau or office head is appealable to the Commission, the same may be initially appealed to the department and finally to the Commission and pending appeal, the same shall be executory except when the penalty is removal, in which case the same shall be executory only after confirmation by the Secretary concerned.
>
> (3) An investigation may be entrusted to regional director or similar officials who shall make the necessary report and recommendation to the chief of bureau or office or department within the period specified in Paragraph (4) of the following Section.
>
> (4) An appeal shall not stop the decision from being executory, and in case the penalty is suspension or removal, the respondent shall be considered as having been under preventive suspension during the pendency of the appeal in the event he wins an appeal.
>
> Section 49. *Appeals.* - (1) Appeals, where allowable, shall be made by the party adversely affected by the decision within fifteen days from receipt of the decision unless a petition for reconsideration is seasonably filed, which petition shall be decided within fifteen days. Notice of the appeal shall be filed with the disciplining office, which shall forward the records of the case, together with the notice of appeal, to the appellate authority within fifteen days from filing of the notice of appeal, with its comment, if any. The notice of appeal shall specifically state the date of the decision appealed from and the date of receipt thereof. It shall also specifically set forth clearly the grounds relied upon for excepting from the decision.
>
> (2) A petition for reconsideration shall be based only on any of the following grounds: (a) new evidence has been discovered which materially affects the decision rendered; (b) the decision is not supported by the evidence on record; or (c) error of law or irregularities have been committed which are prejudicial to the interest of the respondent: Provided, That only one petition for reconsideration shall be entertained.

Review of final orders of the Ombudsman

(1) In administrative disciplinary cases, the rulings of the Office of the Ombudsman are appealable to the Court of Appeals. Sec. 27 of RA 6770 (Ombudsman Act of 1987) insofar as it allowed a direct appeal to the SC was declared unconstitutional in *Fabian vs. Desierto* because the statute, being one which increased the appellate jurisdiction of the SC was enacted without the advice and concurrence of the Court. Instead, appeals from decisions of the Ombudsman in administrative disciplinary actions should be brought to the CA under Rule 43 *(Gonzales vs. Rosas, 423 SCRA 288)*.

   (a) The CA has jurisdiction over orders, directives and decisions of the Office of the Ombudsman in administrative cases only. It cannot, therefore, review the orders, directives or decisions of the OO in criminal or non-administrative cases *(Golangco vs. Fung, GR 147640-762, 10/12/2006)*.

   (b) Although as a consequence of *Fabian,* appeals from the Ombudsman in administrative cases are now cognizable by the CA, nevertheless in cases in which it is alleged that the Ombudsman has acted with grave abuse of discretion amounting to lack or excess of jurisdiction amounting to lack or excess of jurisdiction, a special civil action of *certiorari* under Rule 65 may be filed with the SC to set aside the Ombudsman's order or resolution *(Nava vs. NBI, 455 SCRA 377)*.

(2) In criminal cases, the ruling of the Ombudsman shall be elevated to the SC by way of Rule 65. The SC's power to review over resolutions and orders of the Office of the Ombudsman is restricted on to determining whether grave abuse of discretion has been committed by it. The Court is not authorized to correct every error or mistake of the Office of the Ombudsman other than grave abuse of discretion *(Villanueva vs. Ople, GR 165125, 11/18/2005)*. The remedy is not a petition for review on certiorari under Rule 45.

Administrative cases	Rule 43, to the CA	15 days
Criminal cases	Rule 65, to the SC	30 days

(3) The Ombudsman's decision imposing the penalty of removal shall be executed as a matter of course and shall not be stopped by an appeal thereto. An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal. A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course *(Office of the Ombudsman vs. Valencerina, GR No. 178348, 07/14/2014)*.

(4) Appeals from decisions in administrative disciplinary cases of the Office of the Ombudsman should be taken to the CA by way of petition for review under Rule 43 of the 1997 Rules of Civil Procedure, as amended. Rule 43 which prescribes the manner of appeal from quasi-judicial agencies, such as the Ombudsman, was formulated precisely to provide for a uniform rule of appellate procedure for quasi-judicial agencies. Thus, certiorari under Rule 65 will not lie, as appeal under Rule 43 is an adequate remedy in the ordinary course of law *(Ombudsman v. Delos Reyes, GR No. 208976, 10/13/2014)*.

(5) The Court herein ruled that decisions of the Ombudsman are executory pending appeal. Moreover, since there is no vested right in a public office, the retroactive application of the AO does not prejudice the rights of the accused *(Villaseñor vs. Ombudsman, GR No. 202303, 06/04/2014)*.

(6) The Ombudsman has defined prosecutorial powers and possesses adjudicative competence over administrative disciplinary cases filed against public officers. The

nature of the case before the Office of the Ombudsman determines the proper remedy available to the aggrieved party and with which court it should be filed. In administrative disciplinary cases, an appeal from the Ombudsman's decision should be taken to the Court of Appeals (CA) under Rule 43, unless the decision is not appealable owing to the penalty imposed *(Gupilan-Aguilar vs. Ombudsman, GR No. 197307, 02/26/2014).*

Review of final orders of the National Labor Relations Commission (NLRC)

(1) The remedy of a party aggrieved by the decision of the National Labor Relations Commission is to promptly move for the reconsideration of the decision and if denied to timely file a special civil action of certiorari under Rule 65 within 60 days from notice of the decision. In observance of the doctrine of hierarchy of courts, the petition for certiorari should be filed with the Court of Appeals *(St. Martin Funeral Homes vs. NLRC, GR 130866, 09/16/1998).*

(2) In ruling for legal correctness, we have to view the CA decision in the same context that the petition for certiorari it ruled upon was presented to it; we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct. In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it. This is the approach that should be basic in a Rule 45 review of a CA ruling in a labor case. In question form, the question to ask is: Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case? *(Arabit, et al. vs. Jardine Pacific Finance, Inc., GR No. 181719, 04/21/2014).*

(3) The jurisdiction of the Supreme Court (SC) in cases brought before it from the Court of Appeals (CA) via Rule 45 of the 1997 Rules of Civil Procedure is generally limited to reviewing errors of law. This principle applies with greater force in labor cases, where this Court has consistently held that findings of fact of the NLRC are accorded great respect and even finality, especially if they coincide with those of the Labor Arbiter and are supported by substantial evidence. Judicial review by the SC does not extend to a reevaluation of the sufficiency of the evidence upon which the proper labor tribunal has based its determination. Factual issues are beyond the scope of the SC's authority to review on certiorari *(Angeles vs. Bucad, GR No. 196249, 07/21/2014).*

(4) "Preliminarily, the Court stresses the distinct approach in reviewing a CA's ruling in a labor case. In a Rule 45 review, the Court examines the correctness of the CA's Decision in contrast with the review of jurisdictional errors under Rule 65. Furthermore, Rule 45 limits the review to questions of law. In ruling for legal correctness, the Court views the CA Decision in the same context that the petition for *certiorari* was presented to the CA. Hence, the Court has to examine the CA's Decision from the prism of whether the CA correctly determined the presence or absence of grave abuse of discretion in the NLRC decision."

"Case law states that grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law."

"In labor cases, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions are not supported by substantial evidence, which refers to that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion. Thus, if the NLRC's ruling has basis in the evidence and the applicable law

and jurisprudence, then no grave abuse of discretion exists and the CA should so declare and, accordingly, dismiss the petition."

Guided by the foregoing considerations, the Court finds that the CA correctly ascribed grave abuse of discretion on the part of the NLRC as the evidence of record show that petitioner retired from the service, as will be explained hereunder *(Barroga vs. Quezon Colleges of the North, GR No. 235572, 12/05/2018)*.

Review of final orders of the quasi-judicial agencies

(1) Appeals from judgments and final orders of quasi-judicial bodies/agencies are now required to be brought to the CA under the requirements and conditions set forth in Rule 43. This rule was adopted precisely to provide a uniform rule of appellate procedure from quasi-judicial bodies *(Carpio vs. Sulu Resource Devt. Corp., 387 SCRA 128)*.

(2) The appeal (by notice of appeal) under Rule 43 may be taken to the CA whether the appeal involves a question of fact, a question of law, or mixed questions of fact and law. The appeal shall be taken by filing a verified petition for review with the CA. The appeal shall not stay the award, judgment, final order or resolution sought to be reviewed unless the CA shall direct otherwise upon such terms as it may deem just.

(3) Non-submission of documents does not warrant dismissal of the petition for review. In filing the petition for review as an appeal from awards, judgments, final orders, or resolutions of any quasi-judicial agency in the exercise of its quasi-judicial functions, it is required under Sec. 6(c), Rule 43 of the Rules of Court that it be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order, or resolution appealed from, with certified true copies of such material protions of the record referred to in the petition, as well as the documents that should accompany the petition, shall be sufficient ground for its dismissal as stated in sec. 7, Rule 43 of the Rules.

In the case at bar, the issues raised before the CA would show that the foregoing documents required by the appellate court (*e.g.*, the writ of execution, the order nullifying the writ of execution, and such material portions of the record referred to in the petition and other supporting papers) are not necessary for the proper disposition of the case. The original documents submitted with the petition for review are sufficient and compliant with the requirements under Sec. 6(c) of Rule 43. Moreover, the subsequent submission of the documents required by the CA with the MR constitutes substantial compliance with such rule. A strict and rigid application of the technicalities must be avoided if it tends to frustrate rather than promote substantial justice *(Heirs of Deleste v. Land Bank of the Philippines, GR No. 169913, 06/08/2011)*.

(4) Under Rule 43 of the Rules of Court, an appeal from the awards, judgments, final orders or resolutions, authorized by any quasi-judicial agency such as the Office of the President, in the exercise of its quasi-judicial functions shall be filed to the CA within a period of fifteen (15) days from notice of, publication or denial of a motion for new trial or reconsideration. The appeal may involve questions of fact, of law, or mixed questions of fact and law. A direct resort to this Court, however, may be allowed in cases where only questions of law are raised *(Almero v. Heirs of Pacquing, GR No. 199008, 11/19/2014)*.

(5) The period to appeal decisions of the HLURB Board of Commissioners is fifteen (15) days from receipt thereof pursuant to Section 15 of PD No. 957 and Section 2 of PD No. 1344 which are special laws that provide an exception to Section 1 of Administrative Order No. 18. Concomitantly, Section 1 of Administrative Order No. 18 provides that the time during which a motion for reconsideration has been pending with the ministry or agency concerned shall be deducted from the period for appeal. Swire received the HLURB Board Resolution denying its Motion for Reconsideration on July 23, 2007 and filed its appeal only on August 7, 2007. Consequently therefore, Swire had only four days from

July 23, 2007, or until July 27, 2007, within which to file its appeal to the OP as the filing of the motion for reconsideration merely suspended the running of the 15-day period. Thus, while there may be exceptions for the relaxation of technical rules principally geared to attain the ends of justice, Swire's fatuous belief that it had a fresh 15-day period to elevate an appeal with the OP is not the kind of exceptional circumstance that merits relaxation *(Swire Realty Development Corporation vs. Yu, GR No. 207133, 03/09/2015).*

(6) **2006 Bar**: Explain each mode of certiorari: As a mode of review of the decisions of the National Labor Relations Commission and the Constitutional Commissions. (2.5%)

Answer: Certiorari as a mnode of review of the decision of the NLRC is elevated to the Court of Appeals under Rule 65, as held in the case of St. Martin's Funeral Home v. NLRC *(GR No. 130865, 09/16/1998)*. Certiorari as a mode of review from the Commission of Audit (COA) and COMELEC is elevated to the Supreme Court within 30 days from notice of the judgment, decision or final order or resolution sought to be reviewed, as provided for under Rule 64 of the Rule of Civil Procedure. In the case of the Civil Service Commission (CSC), review of its judgments is through petitions for review under Sec. 5, Rule 43.

Dismissal, Reinstatement, and Withdrawal of Appeal

(1) Section 1 of Rule 50 states the grounds for dismissal of appeal. – An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

(a) Failure of the record on appeal to show on its face that the appeal was taken within the period fixed by the Rules'
(b) Failure to file the notice of appeal or the record on appeal within the period prescribed by the Rules;
(c) Failure of the appellant to pay the docket and other lawful fees as provided in section 5 of rule 40 and section 4 of Rule 41;
(d) Unauthorized alterations, omissions or additions in the approved record on appeal as provided in section 4 of Rule 44;
(e) Failure of the appellant to serve and file the required number of copies of his brief or memorandum within the time provided by the Rules;
(f) Absence of specific assignment of errors in the appellant's brief, or of page references to the record as required in section 13, paragraphs (a), (c), (d), and (f) of Rule 44;
(g) Failure of the appellant to take the necessary steps for the correction or completion of the record within the time limited by the court in its order;
(h) Failure ot the appellant to appear at the preliminary conference under Rule 48 or to comply with orders, criculars, or directives of the court without justifiable cause; and
(i) The fact that the order or judgment appealed from is not appealable.

(2) An appeal under Rule 41 taken from the Regional Trial Court to the Court of Appeals raising only questions of law shall be dismissed, issues purely of law not being reviewable by said court. Similarly, an appeal by notice of appeal instead of by petition for review from the appellate judgment of a Regional Trial Court shall be dismissed.

An appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright. *(Section 2, Rule 50)*

(3) Withdrawal of appeal. – An appeal may be withdrawn as of right at any time before the filing of the appellee's brief. Thereafter, the withdrawal may be allowed in the discretion of the court *(Section 3, Rule 50).*

(4) The failure of the petitioner to comply with any of the foregoing requirements regarding of the docket and other lawful fees, deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

The Supreme Court may on its own initiative deny the petition on the ground that the appeal is without merit, or is prosecuted manifestly for delay, or that the questions raised therein are too unsubstantial to require consideration. [Emphasis supplied] *(Section 5, Rule 45)*

(5) Notwithstanding perfection of the appeal, the Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court, or Municipal Circuit Trial Court, as the case may be, may allow the appellant to withdraw his appeal before the record has been forwarded by the clerk of court to the proper appellate court as provided in section 8, in which case the judgment shall become final. The Regional Trial Court may also, in its discretion, allow the appellant from the judgment of the MTC, MTC in cities, MTC, or MCTC to withdraw his appeal, provided a motion to that effect is filed before rendition of the judgment in the case on appeal, in which case the judgment of the court of origin shall become final and the case shall be remanded to the latter court for execution of the judgment. *(Section 12, Rule 122)*

(6) The Court of Appeals may, upon motion of the appellee or *motu proprio* and with notice to the appellant in either case, dismiss the appeal if the appellant fails to file his brief within the time prescribed by this Rule, except where the appellant is represented by a counsel *de oficio*.

The Court of Appeals may also, upon motion of the appellee or *motu proprio*, dismiss the appeal if the appellant escapes from prison or confinemtne, jumps bail or flees to a foreign country during the pendency of the appeal. *(Section 8, Rule 124)*

(7) In view of such nature of the question being sought to be presented for review, the appeal to the CA was improper. The dismissal of the appeal by the CA was the only proper and unavoidable outcome. Indeed, Section 2, Rule 50 of the *Rules of Court* mandates the dismissal, *viz.:*

> Section 2. *Dismissal of improper appeal to the Court of Appeals.* - An appeal under Rule 41 taken from the Regional Trial Court to the Court of Appeals raising only questions of law shall be dismissed, issues purely of law not being reviewable by said court. Similarly, an appeal by notice of appeal instead of by petition for review from the appellate judgment of a Regional Trial Court shall be dismissed.

An appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright *(Escoto vs. Philippine Amusement and Gaming Corporation, GR No. 192679, 10/17/2016).*

(8) Rule 50, Section 1(e) of the Rules of Court is the basis for dismissing an appeal for failure to file the appeallant's brief within the required period: xand xx

With the use of the permissive "may," it has been held that the dismissal is directory, not mandatory, with the discretion to be exercised soundly and "in accordance with the tenets of justice and fair play" and "having in mind the circumstances obtaining in each case."

In *Bigornia vs. Court of Appeals*, this Court ordered the reinstatement of the appeal despite the late filing of the appellant's brief. The petitioners in *Bigornia* were police officers who, this Court said, "receive meager salaries for risking life and limb." With the police officers having been adjudged liable for substantial amounts in damages, this Court said that "[i]t is but fair that [petitioners] be heard on the merits of their case before being made to pay damages, for what could be, faithful performance of duty."

The appeal was likewise reinstated in *Aguam vs. Court of Appeals (388 Phil 693 [2000])* where a motion for extension of time to file appellant's brief was denied by the Court of Appeals for having been filed nine (9) days beyond the period for filing the appellant's brief. The motion for reconsideration with attached appellant's brief was likewise denied. However, it was established that the notice to file appellant's brief was received by an employee of the realty firm with whom the appellant's lawyer was sharing office, not by the appelllant's lawyer who was a solo practitioner. Thus, this Court ordered the Court of Appeals to admit the appellant's brief in the higher interest of justice *(Sindophil, Inc. vs. Republic, GR No. 204594, 11/07/2018)*.

(9) **Comparative provisions on dismissal of appeal**

Rule 41	Rule 42	Rule 43	Rule 45	Rule 50
Prior to the transmittal of the original record on appeal to the appellate court, the trail court may, *motu proprio* or on motion, dismiss the appeal for having been taken out of time or for non-payment of the docket and other lawful fees within the reglementary period. *(Sec. 13)*	The failure of the petitioner to comply with any of the forgoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of the documents which should accompany the petition shall be sufficient ground for the dismissal thereof. ***(Section 3)*** The Court of Appeals may require the respondent to file a comment on the petition, not a motion to dismiss, within ten (10) days from notice, or dismiss the petition if it finds the same to be patently without merit, prosecuted manifestly for delay, or that the questions raised therein are too unsubstantial to require consideration. ***(Section 4)***	The failure of the petitioner to comply with any of the forgoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of the documents which should accompany the petition shall be sufficient ground for the dismissal thereof. ***(Section 7)*** The Court of Appeals may require the respondent to file a comment on the petition, not a motion to dismiss, within ten (10) days from notice, or dismiss the petition if it finds the same to be patently without merit, prosecuted manifestly for delay, or that the questions raised therein are too unsubstantial to require consideration. ***(Section 8)***	The failure of the petitioner to comply with any of the forgoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of the documents which should accompany the petition shall be sufficient ground for the dismissal thereof. The Supreme Court may on its own initiative deny the petition on the ground that the appeal is without merit, or is prosecuted manifestly for delay, or that the questions raised therein are too unsubstantial to require consideration. ***(Section 5)***	An appeal under Rule 41 taken from the Regional Trial Court to the Court of Appeals raising only questions of law shall be dismissed, issues purely of law not being reviewable by said court. Similarly, an appeal by notice of appeal instead of by petition for review from the appellate judgment of a Regional Trial Court shall be dismissed. An appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright. *(Section 2)*

The "Harmless Error Rule" in Appellate Decisions

(1) No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything doen or omitted by the trial court or by any of the parties is ground for granting of new trial or for setting aside, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceedings must disregard any error or defect which does not affect the substantial rights of the parties. *(Section 6, Rule 51)*

Reliefs from Judgments, Orders and Other Proceedings *(Rule 38)*

(1) A petition for relief from judgment is an equitable remedy that is allowed only in exceptional cases when there is no other available or adequate remedy. When a party has another remedy available to him, which may be either a motion for new trial or appeal from an adverse decision of the trial court, and he was not prevented by fraud, accident, mistake or excusable negligence from filing such motion or taking such appeal, he cannot avail himself of this petition *(Trust International Paper Corp. vs. Pelaez, GR 164871, 08/22/2006).*

(2) Under Sec. 5, Rule 38, the court in which the petition is filed, may grant such *preliminary injunction* to preserve the rights of the parties upon the filing of a bond in favor of the adverse party. The bond is conditioned upon the payment to the adverse party of all damages and costs that may be awarded to such adverse party by reason of the issuance of the injunction *(Sec. 5).*

(3) Delayed New Trial. This is not a substitute for lost appeal.

(4) Equitable remedies may be availed of only when petitioner has not been given the chance to avail of other remedies not because of his own fault.

(5) A petition for relief from judgment must be filed within 60 days after petitioner learns of the judgment, final order, or proceeding and within six (6) months from entry of judgment or final order. The double period required under Section 3, Rule 38 is jurisdictional and should be strictly complied with. A petition for relief of judgment filed beyond the reglementary period is dismissed outright. Under Section 1, Rule 38, a petition for relief from judgment may be filed on the ground of fraud, accident, mistake, or excusable negligence. A motion for reconsideration is required before a petition for certiorari is filed to grant the court which rendered the assailed judgment or order an opportunity to correct any actual or perceived error attributed to it by the re-examination of the legal and factual circumstances of the case *(Madarang v. Sps. Morales, GR No. 199283, 06/09/2014).*

(6) A party filing a petition for relief from judgment must strictly comply with two (2) reglementary periods: first, the petition must be filed within sixty (60) days from knowledge of the judgment, order or other proceeding to be set aside; and second, within a fixed period of six (6) months from entry of such judgment, order or other proceeding. Strict compliance with these periods is required because a petition for relief from judgment is a final act of liberality on the part of the State, which remedy cannot be allowed to erode any further the fundamental principle that a judgment, order or proceeding must, at some definite time, attain finality in order to put an end to litigation. *(Philippine Amanah Bank v. Contreras, GR No. 173168, 09/29/2014).*

(7) A petition for relief from judgment, order, or other proceedings is an equitable remedy which is allowed only in exceptional circumstances. The petition is the proper remedy of a party seeking to set aside a judgment rendered against him by a court whenever he was unjustly deprived of a hearing, was prevented from taking an appeal, or a judgment or final order entered because of fraud, accident, mistake or excusable negligence.

However, as an equitable remedy, strict compliance with the applicable reglementary periods for its filing must be satisfactorily shown because a petition for relief from judgment is a final act of liberality on the part of the State, which remedy cannot be allowed to erode any further the fundamental principle that a judgment, order, or proceeding must, at some definite time, attain finality in order to put an end to litigation. As such, it is incumbent upon the petitioner to show that the petition was filed within its reglementary periods, otherwise, the petition may be dismissed outright.

In this regard, Section 3, Rule 38 of the Rules of Court provides that a petition for relief from judgment must be filed within: (1) 60 days from knowledge of the judgment, order or other proceeding to be set aside; and (2) six months from the entry of such judgment, order or other proceeding. These two periods must concur. Further, these periods could not be extended and could never be interrupted.

Unfortunately for Lasam, she failed to comply with these two periods when she filed her petition for relief from a final order before the RTC. It must be emphasized that the subject of Lasam's petition for relief is the RTC's February 23, 2010 Order. Accordingly, the reglementary periods provided in Section 3, Rule 38 of the Rules of Court must be reckoned from Lasam's knowledge of the said order, as well as on the date it was entered.

Xxx From the foregoing, it is clear that Lasam failed to comply with the 60-day period provided under Section 3, Rule 38 of the Rules of Court when she filed her petition for relief on January 22, 2013, or almost three years from the time she acquired knowledge of the order sought to be set aside. Likewise, she failed to comply with the six-month period provided in the same Rule when she filed her petition for relief more than eight months from the date of entry of the order sought to be set aside. *(Dr. Lasam vs. Philippine National Bank, GR No. 207433, 12/05/2018)*.

Grounds for availing of the remedy (petition for relief)

(1) When a judgment or final order is entered, or any other proceeding is thereafter taken against a party in any court through (a) fraud, (b) accident, (c) mistake, or (c) excusable negligence, he may file a petition in such court and in the same case praying that the judgment, order or proceeding be set aside *(Sec. 1, Rule 38)*.

(2) When the petitioner has been prevented from taking an appeal by fraud, mistake, or excusable negligence *(Sec. 2)*.

Time to file petition

(1) A petition for relief from judgment, order or other proceedings must be verified, 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, or such proceeding was taken; and must be accompanied with affidavits showing the fraud, accident, mistake, or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be *(Sec. 3, Rule 38)*.

Contents of petition

(1) The petition must be verified and must be accompanied with affidavits [Affidavit of Merits] showing fraud, accident, mistake or excusable negligence relied upon, and the facts

constituting the petitioner's good and substantial cause of action or defense, as the case may be *(Sec. 3).*

Annulment of Judgments, or Final Orders and Resolutions *(Rule 47)*

(1) It is settled that the negligence and mistakes of the counsel are binding on the client. It is only in cases involving gross or palpable negligence of the counsel or where the interests of justice so require, when relief is accorded to a client who has suffered thereby. Furthermore, for a claim of a counsel's gross negligence to prosper, nothing short of clear abandonment of the client's cause must be shown and it should not be accompanied by the client's own negligence or malice. It is a correlative duty of clients to be in contact with their counsel from time to time to inform themselves of the status of their case especially, when what is at stake is their liberty. Hence, diligence is required not only from lawyers but also from their clients. As such, the failure of the lawyer to communicate with his clients for nearly three years and to inform them about the status of their case, does not amount to abandonment that qualifies as gross negligence. If at all, the omission is only an act of simple negligence, and not gross negligence that would warrant the annulment of the proceedings below *(Resurreccion v. People, GR No. 192866, 07/09/2014).*

(2) The general rule is that 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 may, however, be invalidated via a Petition for Relief or a Petition to Annul the same under Rules 38 or 47, respectively, of the Rules of Court. Rule 47 of the Rules of Court is a remedy granted only under exceptional circumstances where a party, without fault on his part, has failed to avail of the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies. The same petition is not available as a substitute for a remedy which was lost due to the party's own neglect in promptly availing of the same. There is here no attempted substitution; annulment of judgment is the only remedy available to petitioner. Requisite elements for the filing of a petition for annulment of judgment on the grounds of extrinsic fraud, lack of jurisdiction, and want of due process, are present in this case All the requisite elements for the filing of a petition for annulment of judgment on the grounds of extrinsic fraud, lack of jurisdiction, and want of due process, are present in this case *(Genato Investments, Inc. v. Barre-Toss, GR No. 207443, 07/23/2014).*

(3) A petition for annulment of judgment is a remedy in equity so exceptional in nature that it may be availed of only if the judgment, final order, or final resolution sought to be annulled was rendered by a court lacking jurisdiction or through extrinsic fraud, and only when other remedies are wanting. In the present case, Sibal was able to avail of other remedies when he filed before the RTC a motion to quash the writ of execution and a motion to annul judgment.

Moreover, parties aggrieved by final judgments, orders or resolutions cannot be allowed to easily and readily abuse a petition for annulment of judgment. Thus, the Court has instituted safeguards by limiting the grounds for annulment of judgment to lack of jurisdiction and extrinsic fraud, and by prescribing in Section 1, Rule 47 of the Rules of Court that the petitioner should show that the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available without fault on the part of the petitioner. A petition for annulment that ignores or disregards any of the safeguards cannot prosper.

Further, it must be emphasized tthout fault on the part of the petitioner. A petition for annulment that ignores or disregards any of the safeguards cannot prosper.

Further, it must be emphasized that not every kind of fraud justifies the action of annulment of judgment. Only extrinsic fraud does. According to *Cosmic Lumber Corporation vs. CA,* fraud is extrinsic when the unsuccessful party has been prevented from fully exhibiting his case, by fraud or deception practiced on him by his opponent, as by keeping him away from court, a false promise of a compromise, or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff; or where an attorney fraudulently or without authority connives at his defeat; these and similar cases which show that there has never been a real contest in the trial or hearing of the case are reasons for which a new suit may be sustained to set aside and annul the former judgment and open the case for a new and fair hearing.

As a ground for annulment of judgment, extrinsic fraud must5 arise from an act of the adverse party, and the fraud must be of such nature as to have deprived the petitioner of its day in court. The fraud is not extrinsic if the act was committed by the petitioner's own counsel *(Sibal vs. Buquel, GR No. 197825, 01/11/2016).*

(4) Under Section 2 of Rule 47, the original action for annulment may be based only on extrinsic fraud or lack of jurisdiction, but extrinsic fraud, to be valid ground, should not have been availed of, or could not have been availed of in a motion for new trial or petition for relief. If the ground relied up is extrinsic fraud, the action must be filed within four years from the discovery of the extrinsic fraud; if the ground is lack of jurisdiction, the action must be brought before it is barred by laches or estoppels.39 Regardless of the ground for the action, the remedy under Rule 47 is to be availed of only if the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner. Ostensibly, the respondent could have availed himself of the petition for relief from judgment under Rule 38 of the *Rules of Court*. Hence, his failure to resort to such remedy precluded him from availing himself of the remedy to annul the judgment based on the compromise agreement *(Chung vs. Huang, GR No. 170679, 03/09/2016).*

(5) Claiming to be completely unaware of the proceedings before the RTC of Balayan, Batangas, nullifying her marriage with Philip on the ground of her psychological incapacity, Viveca filed a Petition for Annulment of Judgment9 before the CA seeking to annul the Decision dated August 20, 2008 of said court. According to Viveca, jurisdiction over her person did not properly vest since she was not duly served with Summons. She alleged that she was deprived of her right to due process when Philip fraudulently declared that her address upon which she may be duly summoned was still at their conjugal home, when he clearly knew that she had long left said address for the United States of America. Viveca likewise maintained that had Philip complied with the legal requirements for an effective service of summons by publication, she would have been able to rightly participate in the proceedings before the Batangas court.

Annulment of judgment is a recourse equitable in character, allowed only in exceptional cases as where there is no available or other adequate remedy. Section 2, Rule 47 of the 1997 Rules of Civil Procedure provides that judgments may be annulled only on grounds of extrinsic fraud and lack of jurisdiction or denial of due process. The objective of the remedy of annulment of judgment or final order is to undo or set aside the judgment or final order, and thereby grant to the petitioner an opportunity to prosecute his cause or to ventilate his defense. If the ground relied upon is lack of jurisdiction, the entire proceedings are set aside without prejudice to the original action being refiled in the proper court. If the judgment or final order or resolution is set aside on the ground of extrinsic fraud, the CA may on motion order the trial court to try the case as if a timely motion for new trial had been granted therein.

Extrinsic fraud exists when there is a fraudulent act committed by the prevailing party outside of the trial of the case, whereby the defeated party was prevented from presenting fully his side of the case by fraud or deception practiced on him by the prevailing party.

Fraud is extrinsic where the unsuccessful party had been prevented from exhibiting folly his case, by means of fraud or deception, as by keeping him away from court, or by a false promise of a compromise; or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff or where an attorney fraudulently or without authority assumes to represent a party and connives at his defeat; these and similar cases which show that there has never been a real contest in the trial or hearing of the case are reasons for which a new suit may be sustained to set aside and annul the former judgment and open the case for a new and fair hearing. Ultimately, the overriding consideration is that the fraudulent scheme of the prevailing litigant prevented a party from having his day in court *(Yu vs. Yu, GR No. 200072, 06/20/2016).*

(6) An action for the annulment of a void judgment, like the remedy of appeal, is a statutory right. No party may invoke it unless a law expressly grants the right and identifies the tribunal which has jurisdiction over this action. While a void judgment is no judgment at all in legal contemplation, any action to challenge it must be done through the correct remedy and filed before the appropriate tribunal. Procedural remedies and rules of jurisdiction are in place in order to ensure that litigants are able to employ the proper legal tools to obtain complete relief from the tribunal fully equipped to grant it *(Imperial vs. Judge Armes, GR No. 178842; Cruz v. Imperial, GR No. 195509, 01/30/2017).*

(7) Rule 47 of the Rules of Court states that an action for the annulment of judgment may be filed before the CA to annul a void judgment of regional trial courts even after it has become final and executor. If the ground invoked is lack of jurisdiction, which we have explained as pertaining to both lack of jurisdiction over the subject matter and over the person, the action for the annulment of the judgment may be filed at any time for as long as estoppel has not yet set in *(Imperial vs. Judge Armes, GR No. 178842; Cruz v. Imperial, GR No. 195509, 01/30/2017).*

(8) Simply stated, petitioner Coombs sought to annul the RTC Decision for being rendered without jurisdiction. According to her, the RTC did not acquire jurisdiction over the subject matter of LRC Case No. 04-035--one for the reconstitution of a lost certificate of title-because the owner's duplicate copy of TCT No. 6715 was never lost in the first place, which argument has been upheld by the Court in a catena of cases that she cited to support her assertion.

To Our mind, the above-stated allegations made out a prima facie case of annulment of judgment to warrant the Court of Appeals' favorable consideration.

In *Manila v. Manzo*, the Court held that in a petition for annulment of judgment grounded on lack of jurisdiction, it is not enough that there is an abuse of jurisdictional discretion. It must be shown that the court should not have taken cognizance of the case because the law does not confer it with jurisdiction over the subject matter.

It is doctrinal that jurisdiction over the nature of the action or subject matter is conferred by law. Section 10 of Republic Act No. 2622 vests the RTC with jurisdiction over the judicial reconstitution of a lost or destroyed owner's duplicate of the certificate of title. However, the Court of Appeals erred when it ruled that the subject matter of LRC Case No. 04-035 was within the RTC's jurisdiction, being a court of general jurisdiction.

…when a petition for annulment of judgment is grounded on lack of jurisdiction, the petitioner need not allege that the ordinary remedy of new trial or reconsideration of the judgment sought to be annulled are no longer available through no fault of her own. This is because a judgment rendered when a petition for annulment of judgment is grounded on lack of jurisdiction, the petitioner need not allege that the ordinary remedy of new trial or reconsideration of the judgment sought to be annulled are no longer available through no fault of her own. This is because a judgment rendered *(Coombs vs, Castañeda, 192353, 03/15/2017).*

Prior to *Batas Pambansa Bilang* 129 (BP 129), we had the chance to rule on the question of jurisdiction over the annulment of judgment of quasijudicial bodies in *BF Northwest Homeowners Association, Inc.* v. *Intermediate Appellate Court.* In that case, we held that regional trial courts can annul the judgment of quasi-judicial bodies which are of the same rank as courts of first instance. This ruling established two things: first, an action for the annulment of judgment is a remedy available against a void judgment of a quasi-judicial body. Second, regional trial courts had jurisdiction whenever the quasi-judicial body involved is of inferior rank.

With the passage of BP 129, this doctrine appears to have been altered. Section 9(a) of BP 129 expressly vested the CA with jurisdiction over annulment of judgments of regional trial courts. Notably, it does not mention jurisdiction over annulment of judgment of quasi-judicial bodies. In fact, quasi-judicial bodies are mentioned only in Section 9(3) which provides for the CA's appellate jurisdiction over their judgments, orders, resolutions and awards.

In 1997, the new rules of civil procedure took effect. These rules provided, for the first time, a remedy called annulment of judgment on the ground of extrinsic fraud and lack of jurisdiction. Rule 47, however, limits its application to regional trial courts and municipal trial courts. We had the opportunity to apply these relevant provisions in the 2000 case of *Cole v. Court of Appeals.* In this case, we explained that the CA has no jurisdiction over a petition for annulment of judgment under Rule 4 7 against a decision of the Housing and Land Use Regulatory Board, a quasijudicial body. Rule 47 allows a resort to the CA only in instances where the judgment challenged was rendered by regional trial courts. This was also the import of our ruling in *Elcee Farms, Inc. v. Semillano* when we held that the CA has no jurisdiction over the annulment of judgment of the National Labor Relations Commission.

This was reiterated in the 2005 case *Galang v. Court of Appeals* which dealt with decisions rendered by the SEC. In that case, we categorically ruled that the CA has no jurisdiction over annulment of a void judgment rendered by the SEC since Rule 47 of the Rules of Court clearlystates that this jurisdiction only pertains to judgments rendered by regional trial courts.

Springfield Development Corporation, Inc. vs. Presiding Judge, RTC, Misamis Oriental, Br. 40, Cagayan de Oro City summarized our foregoing rulings in determining whether the CA has jurisdiction to annul a void judgment of the Department of Agrarian Reform Adjudication Board (DARAB). This case was a significant development in the then growing jurisprudence which all merely said that an action to annul a judgment of a quasi-judicial body cannot be brought before the CA, and which did not categorically state whether the action may be filed before any other court.

In *Springfield,* we explained that regional trial courts have no jurisdiction to annul judgments of quasi-judicial bodies of equal rank. It then proceeded to state that the CA also has no jurisdiction over such an action. *Springfield* emphasized that Section 9 of BP 129 and Rule 47 of the Rules of Court both state that the CA has jurisdiction over annulment of judgments of regional trial courts only. We ruled in this case that the "silence of B.P. Blg. 129 on the jurisdiction of the CA to annul judgments or final orders and resolutions of quasi-judicial bodies like the DARAB indicates its lack of such authority." While this case explained that neither the regional trial courts nor the CA possess jurisdiction over an action to annul the judgment of quasi-judicial bodies, it did not categorically state that the remedy itself does not exist in the first place. Notably, we disposed of this case by remanding the action filed before us-a special civil action for prohibitionto the CA because the matter required a determination of facts which this Court cannot do. We then held that the CA may rule upon the validity of the judgment by noting that a void judgment may be collaterally attacked in a proceeding such as an action for prohibition.

(9) A petition for annulment of judgment or final order under Rule 47 is an extraordinary remedy that may be availed of only under certain exceptional circumstances. Under the Rules, there are three requirements that must be satisfied before a Rule 47 petition can prosper. ***First,*** the remedy is available only when the petitioner can no longe,r resort to the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies through no fault of the petitioner. This means that a Rule 47 petition is a remedy of last resort-it is not an alternative to the ordinary remedies under Rules 37, 38, 40, 41, 42, 43, and 45. ***Second,*** an action for annulment of judgment may be based only on two grounds: extrinsic fraud and lack of jurisdiction. *Third,* the action must be filed within the temporal window allowed by the Rules. If based on extrinsic fraud, it must be filed within four years from the discovery of the extrinsic fraud; if based on lack of jurisdiction, must be brought before it is barred by laches or estoppel. There is also a formal requisite that the petition be verified, and must allege with particularity the facts and the law relied upon for annulment, as well as those supporting the petitioner's good and substantial cause of action or defense, as the case may be *(Mejia-Espinosa vs. Cariño, GR No. 193397, 01/25/2017).*

(10) The remedy of annulment of judgment, embodied in Rule 47 of the Rules, is extraordinary in character, and does not so easily and readily lend itself to abuse by parties aggrieved by final judgments. The grounds for a Rule 47 petition are: (i) extrinsic fraud and (ii) lack of jurisdiction. Extrinsic fraud cannot be a valid ground if it had been availed of, or could have been availed of, in a motion for new trial or petition for relief. On the other hand, lack of jurisdiction means either lack of jurisdiction over the subject matter or nature of the action, or lack of jurisdiction over the person of the defendant.

In the Petition filed by petitioner Yap, she did not specify her exclusive reliance on extrinsic fraud as basis of her Petition under Rule 47. To be precise, petitioner Yap's claim of defective service of Summons brings to fore the lack of jurisdiction of the RTC over her person *(Yap v. Lagtapon, GR No. 196347, 01/23/2017).*

(11) From the foregoing, it can be easily discerned that the petition for annulment of judgment instituted by the petitioners before the Court cannot prosper.

First, an appropriate remedy to question the decision in the petition for certiorari was available. In fact, the petitioners filed a petition for review on certiorari before this Court, docketed as G.R. No. 150695, which, however, was denied on the ground of lack of affidavit of service of copies of the motion for extension.

Further, neither extrinsic fraud nor lack of jurisdiction exists in this case. Extrinsic fraud refers to any fraudulent act of the prevailing party in litigation committed outside of the trial of the case, whereby the defeated party is prevented from fully exhibiting his side of the case by fraud or deception practiced on him by his opponent, such as by keeping him away from court; by giving him a false promise of a compromise; or where the defendant never had the knowledge of the suit, being kept in ignorance by the acts of the plaintiff; or where an attorney fraudulently or without authority connives at his defeat. The petitioners were able to properly and fully ventilate their claims before the PARAD and the DARAB. The two administrative tribunals even ruled in their favor. When the respondents filed a petition for review as well as a petition for certiorari before the CA, there is no showing that the petitioners were deprived of any opportunity to answer the petitions.

Finally, a petition for certiorari alleging grave abuse of discretion on the part of the DARAB squarely falls within the jurisdiction of the CA. Hence, a petition to annul the judgment of the appellate court in the certiorari action has no leg to stand on.

Notwithstanding the unavailability of the remedy of annulment of judgment, the Court resolves to give due course to this petition in order to cure the grave injustice suffered by the petitioners brought about by the respondents' blatant disrespect of the rules of

procedure, which they now invoke to defeat the petitioners' claim *(Heirs of Fermin Arania vs. Intestate Estate of Sangalang, GR No. 193208, 12/13/2017)*.

(12) **1999 Bar**: A filed a complaint for the recovery of ownership of land against B who was represented by her counsel X. In the course of the trial, B died. However, X failed to notify the court of B's death. The court proceeded to hear the case and rendered judgment against B. After the judgment became final, a writ of execution was issued against C, who being B's sole heir, acquired the property.

If you were the counsel of C, what course of action would you take?

Answer: As counsel of C, I would move to set aside the writ of execution and the judgment for lack of jurisdiction and lack of due process I the same court because the judgment is void. If X had notified the court of B's death, the court would have ordered the substitution of the deceased by C, the sole heir of B *(Rule 3, Section 16)*. The court acquired no jurisdiction over C upon whom the trial and the judgment are not binding *(Lawas vs. Court of Appeals, 146 SCRA 173)*.

I would also file an action to annul the judgment for lack of jurisdiction because C, as the successor of B, was deprived of due process and should have been heard before judgment.

Grounds for annulment

(1) The annulment may be based only on the grounds of extrinsic fraud and lack of jurisdiction. Extrinsic fraud shall not be a valid ground if it was availed of, or could have been availed of, in a motion for new trial or petition for relief *(Sec. 2, Rule 47)*.

(2) No annulment of judgments of quasi-judicial agencies is allowed. Rule 47 can only be taken to the Court of Appeals.

(3) A compromise agreement has the effect and authority of *res judicata* between the parties, and is immediately final and executory, unless rescinded upon grounds that vitiate consent. Once stamped with judicial *imprimatur*, it is more than a mere contract between the parties. Any effort to annul the judgment based on compromise on the ground of extrinsic fraud must proceed in accordance with Rule 47 of the Rules of Court *(Tung Hui Chung vs. Shih Chiu Huang, GR No. 170679, 03/09/2016)*.

(4) *First,* when a petition for annulment of judgment is grounded on lack of jurisdiction, the petitioner need not allege that the ordinary remedy of new trial or reconsideration of the judgment sought to be annulled are no longer available through no fault of her own. This is because a judgment rendered without jurisdiction is fundamentally void. Thus, it may be questioned any time unless laches has already set in *(Coombs vs. Castañeda, GR No. 192353, 03/15/2017)*.

Period to file action

(1) If based on extrinsic fraud, the action must be filed within four (4) years from its discovery; and if based on lack of jurisdiction, before it is barred by laches or estoppels *(Sec. 3)*.

Effects of judgment of annulment

(1) A judgment of annulment shall set aside the questioned judgment or final order or resolution and render the same null and void, without prejudice to the original action being refiled in the proper court. However, where the judgment or final order or resolution is set

aside on the ground of extrinsic fraud, the court may on motion order the trial court to try the case as if a timely motion for new trial had been granted therein *(Sec. 7, Rule 47)*.

Collateral attack of judgments

(1) A collateral attack is made when, in another action to obtain a different relief, an attack on the judgment is made as an incident in said action. This is proper only when the judgment, on its face, is null and void, as where it is patent that the court which rendered said judgment has no jurisdiction *(Co vs. CA, 196 SCRA 705)*. Examples: A petition for *certiorari* under Rule 65 is a direct attack. It is filed primarily to have an order annulled. An action for annulment of a judgment is likewise a direct attack on a judgment. A motion to dismiss a complaint for collection of a sum of money filed by a corporation against the defendant on the ground that the plaintiff has no legal capacity to sue is a collateral attack on the corporation. A motion to dismiss is incidental to the main action for sum of money. It is not filed as an action intended to attack the legal existence of the plaintiff *(Co vs. CA, 196 SCRA 705)*.

(2) A non-party may file the petition when he can show that he is adversely affected by the judgment *(Islamic vs. CA, 178 SCRA 178)*.

(3) Void judgments may also be collaterally attacked. A collateral attack is done through an action which asks for a relief other than the declaration of the nullity of the judgment but requires such a determination if the issues raised are to be definitively settled *(Imperial vs. Judge Armes, Gr No. 178842; Cruz vs. Imperial, GR No. 195509, 01/30/2017)*.

Q. EXECUTION, SATISFACTION AND EFFECT OF JUDGMENTS *(Rule 39)*

(1) The denial of execution of judgment is a ground for *Mandamus* because execution is a ministerial duty of the court.

Difference between finality of judgment for purpose of appeal; for purposes of execution

(1) The term "final" when used to describe a judgment may be used in two senses. In the first, it refers to a judgment that disposes of a case in a manner that leaves nothing more to be done by the court in respect thereto. In this sense, a final judgment is distinguished from an interlocutory order which does not finally terminate or dispose of the case *(Rudecon Management Corp. vs. Singson, 455 SCRA 612)*. Since the finality of a judgment has the effect of ending the litigation, an aggrieved party may then appeal from the judgment. Under Sec. 1, Rule 41, an appeal may be taken from a judgment or final order that completely disposes of the case. Under the same rule, an appeal cannot be taken from an interlocutory order.

(2) In another sense, the word "final" may refer to a judgment that is no longer appealable and is already capable of being executed because the period for appeal has elapsed without a party having perfected an appeal or if there has been appeal, it has already been resolved by a highest possible tribunal *(PCGG vs. Sandiganbayan, 455 SCRA 526)*. In this sense, the judgment is commonly referred to as one that is final and executory.

When execution shall issue; Execution as a matter of right *(Sec. 1)*

(1) When a judgment becomes final and executory, all the issues between the parties are deemed resolved and laid to rest. All that remains is the execution of the decision which is a matter of right. However, the Court enumerates the instances where a writ of execution may be appealed, one of which is when there has been a change in the situation of the parties making execution inequitable or unjust. Also, Sec. 5, Rule 135 of the Rules of Court states that it is an inherent power of a court to amend and control its process and orders so as to make them conformable to law and justice *(Parel v. heirs of Simeon Prdencio, GR No. 192217, 03/02/2011)*.

(2) Execution is a matter of right upon the expiration of the period to appeal and no appeal was perfected from a judgment or order that disposes of the action or proceeding *(Sec. 1, Rule 39)*. Once a judgment becomes final and executory, the prevailing party can have it executed as a matter of right, and the issuance of a writ of execution becomes the ministerial duty of the court. Once a decision becomes final and executory, it is the ministerial duty of the presiding judge to issue a writ of execution except in certain cases, as when subsequent events would render execution of judgment unjust *(Mangahas vs. Paredes, GR 157866, 02/14/2007)*.

(3) The above principles have been consistently applied. Thus, in a subsequent ruling the Court declared, "Once a judgment becomes final, it is basic that the prevailing party is entitled as a matter of right to a writ of execution the issuance of which is the trial court's ministerial duty, compellable by mandamus" *(Greater Metropolitan Manila Solid Waste Management Committee vs. Jancom Environmental Corp., GR 2163663, 01/30/2006)*.

(4) Judgments and orders become final and executory by operation of law and not by judicial declaration. The trial court need not even pronounce the finality of the order as the same

becomes final by operation of law. Its finality becomes a fact when the reglementary period for appeal lapses, and no appeal is perfected within such period *(Testate of Maria Manuel Vda. De Biascan, 374 SCRA 621; Vlason Enterprises vs. CA, 310 SCRA 26)*.

(5) Execution is a matter or right after expiration of period to appeal and no appeal is perfected, except in the following cases:
   (a) Where judgment turns out to be incomplete or conditional;
   (b) Judgment is novated by the parties;
   (c) Equitable grounds (i.e., change in the situation of the parties–supervening fact doctrine)
   (d) Execution is enjoined (i.e., petition for relief from judgment or annulment of judgment with TRO or writ of preliminary injunction);
   (e) Judgment has become dormant; or
   (f) Execution is unjust or impossible.

Discretionary execution *(Sec. 2)*

(1) The concept of discretionary execution constitutes an exception to the general rule that a judgment cannot be executed before the lapse of the period for appeal or during the pendency of an appeal. Under Sec. 1, Rule 39, execution shall issue only as a matter of right upon a judgment or final order that finally disposes of the action or proceeding upon the execution of the period to appeal therefrom if no appeal has been duly perfected.

(2) A discretionary execution is called "discretionary" precisely because it is not a matter of right. The execution of a judgment under this concept is addressed to the discretionary power of the court *(Bangkok Bank Public Company Ltd. vs. Lee, GR 159806, 01/29/2006)*. Unlike judgments that are final and executory, a judgment subject to discretionary execution cannot be insisted upon but simply prayed and hoped for because a discretionary execution is not a matter of right.

(3) A discretionary execution like an execution pending appeal must be strictly construed because it is an exception to the general rule. It is not meant to be availed of routinely because it applies only in extraordinary circumstances. It should be interpreted only insofar as the language thereof fairly warrants, and all doubts should be resolved in favor of the general rule *(Planters Products, Inc. vs. CA, GR 106052, 10/22/1999)*. Where the execution is not in conformity with the rules, the execution is null and void *(Bangkok Bank vs. Lee, supra.)*.

(4) Requisites for discretionary execution:
   (a) There must be a motion filed by the prevailing party with notice to the adverse party;
   (b) There must be a hearing of the motion for discretionary execution;
   (c) There must be good reasons to justify the discretionary execution; and
   (d) The good reasons must be stated in a special order *(Sec. 2, Rule 39)*.

(5) The execution of a judgment pending appeal is an exception to the general rule that only a final judgment may be executed; hence, under Section 2, Rule 39 of the Rules of Court (Rules), the existence of "good reasons" for the immediate execution of a judgment is an indispensable requirement as this is what confers discretionary power on a court to issue a writ of execution pending appeal. Good reasons consist of compelling circumstances justifying immediate execution, lest judgment becomes illusory, that is, the prevailing party's chances for recovery on execution from the judgment debtor are altogether nullified. The "good reason" yardstick imports a superior circumstance demanding urgency that will outweigh injury or damage to the adverse party and one such "good reason" that has been held to justify discretionary execution is the imminent danger of insolvency of the defeated party. The factual findings that NSSC is under a state of rehabilitation and had ceased business operations, taken together with the information

that NSSC President and General Manager Orimaco had permanently left the country with his family, constitute such superior circumstances that demand urgency in the execution of the October 31, 2007 Decision because respondents now run the risk of its non-satisfaction by the time the appeal is decided with finality *(Centennial Guarantee Assurance Corporation v. Universal Motors Corporation, GR No. 189358, 10/082014).*

(6) It bears emphasis that an execution pending appeal is deemed an exception to the general rule, which allows an execution as a matter of right only in any of the follbwing instances: (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.

Corollary thereto, jurisprudence provides rules that are generally applied in resolving litigants' pleas for executions pending appeal, specifically:

The general rule is that only judgments which have become final and executory may be executed. However, discretionary execution of appealed judgments may be allowed under Section 2 (a) of Rule 39 of the Revised Rules of Civil Procedure upon concurrence of the following requisites: (a) there must be a motion by the prevailing party with notice to the adverse party; (b) there must be a good reason for execution pending appeal; and (c) the good reason must be stated in a special order. The yardstick remains the presence or the absence of good reasons consisting of exceptional circumstances of such urgency as to outweigh the injury or damage that the losing party may suffer, should the appealed judgment be reversed later. Since the execution of a judgment pending appeal is an exception to the general rule, the existence of good reasons is essential *(Abenion v. Pilipinas Shell Petroleum Corp., GR No. 200749, 02/06/2017).*

(7) In now declaring that the execution pending appeal was unsupported by sufficient grounds, the Court restates the rule that the trial court's discretion in allowing execution pending appeal must be strictly construed. Its grant must be firmly grounded on the existence of "good reasons," which 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."

The sufficiency of "good reasons" depends upon the circumstances of the case and the parties thereto. Conditions that are personal to one party, for example, may be insufficient to justify an execution pending appeal that would affect all parties to the case and the property that is the subject thereof *(Abenion v. Pilipinas Shell Petroleum Corp., GR No. 200749, 02/06/2017).*

(8) The Court of Appeals properly upheld the Regional Trial Court's issuance of a writ of execution pending appeal.

Under Rule 39, Section 2(a), a judgment appealed before the Court of Appeals may still be executed by the Regional Trial Court, provided there are good reasons for the judgment's execution.

The Regional Trial Court found that respondents have been deprived of their land since 1999. 161 They were dispossessed of the beneficial use, fruits, and income of their properties, which were taken from them 19 years ago without compensation. Thus, the denial of the execution pending appeal will infringe on their constitutional right against taking of private property without compensation.

Xxx

The Rules of Court does not enumerate the circumstances which would justify the execution of the judgment or decision pending appeal. However, we have held that "good reasons" consist of compelling or superior circumstances demanding urgency which will

outweigh the injury / or damages suffered should the losing party secure a reversal of the judgment or final order. The existence of good reasons is what confers discretionary power on a court to issue a writ of execution pending appeal. These reasons must be stated in the order granting the same. Unless they are divulged, it would be difficult to determine whether judicial discretion has been properly exercised *(Landbank of the Philippines vs. Manzano, GR No. 188243, 01/24/2018).*

Residual Jurisdiction *(Sec. 2)*

(1) Residual jurisdiction refers to the authority of the trial court to issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal; to approve compromises; to permit appeals by indigent litigants; to order execution pending appeal in accordance with Section 2, Rule 39; and to allow the withdrawal of the appeal, provided these are done prior to the transmittal of the original record or the record on appeal, even if the appeal has already been perfected or despite the approval of the record on appeal or in case of a petition for review under Rule 42, before the CA gives due course to the petition.

The "residual jurisdiction" of the trial court is available at a stage in which the court is normally deemed to have lost jurisdiction over the case or the subject matter involved in the appeal. This stage is reached upon the perfection of the appeals by the parties or upon the approval of the records on appeal, but prior to the transmittal of the original records or the records on appeal. In either instance, the trial court still retains its socalled residual jurisdiction to issue protective orders, approve compromises, permit appeals of indigent litigants, order execution pending appeal, and allow the withdrawal of the appeal *(Development Bank of the Philippines vs. Judge Carpio, GR No. 195450, 02/01/2017).*

How a judgment is executed *(Sec. 4)*

(1) Judgments in actions for injunction, receivership, accounting and support, and such other judgments as are now or may hereafter be declared to be immediately executory, shall be enforceable after their rendition and shall not be stayed by an appeal taken therefrom, unless otherwise ordered by the trial court. On appeal therefrom, the appellate court in its discretion may make an order suspending, modifying, restoring or granting the injunction, receivership, accounting, or award of support. The stay of execution shall be upon such terms as to bond or otherwise as may be considered proper for the security or protection of the rights of the adverse party.

(2) Judgments that may be altered or modified after becoming final and executory:
   (a) Facts and circumstances transpire which render its execution impossible or unjust;
   (b) Support;
   (c) Interlocutory judgment.

Execution by motion or by independent action *(Sec. 6)*

(1) A final and executory judgment or order may be executed on motion within 5 years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within 5 years from the date of its entry and thereafter by action before it is barred by the statute of limitations.

(2) File for **revival of judgment** within ten (10) years after finality of judgment which is a new and separate action filed with the RTC.

By motion	Within 5 years
By revival of judgment	Within 10 years from date of entry

(3) A judgment unenforced within 10 years after its finality shall be barred. However an exception is when a registered owner of land cannot invoke the protection accorded by the Statute of Limitations when he derived his right from misrepresentation *(Campit v. Gripa, GR No. 195443, 09/17/2014).*

(4) An action to revive a judgment is an action whose exclusive purpose is to enforce a judgment which could no longer be enforced by mere motion. Section 6, Rule 39 of the Revised Rules of Court provides:

> Sec. 6. *Execution by motion or by independent action.* - A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations.

Section 6 is clear. Once a judgment becomes final and executory, the prevailing party can have it executed as a matter of right by mere motion within five years from the date of entry of judgment. If the prevailing party fails to have the decision enforced by a motion after the lapse of five years, the said judgment is reduced to a right of action which must be enforced by the institution of a complaint in a regular court within 10 years from the time the judgment becomes final.

Further, a revival suit is a new action, having for its cause of action the judgment sought to be revived. It is different and distinct from the original judgment sought to be revived or enforced. It is a new and independent action, wherein the cause of action is the decision itself and not the merits of the action upon which the judgment sought to be enforced is rendered. Revival of judgment is premised on the assumption that the decision to be revived, either by motion or by independent action, is already final and executory *(Anama vs. Citibank, GR No. 192048, 12/13/2017).*

(1) **2003 Bar**: A filed with the Metropolitan Trial Court (MTC) of Manila an action for specific performance against B, a resident of Quezon City, to compel the latter to execute a deed of conveyance covering a parcel of land situated in Quezon City having an assessed value of P19,000. B received the summons and a copy of the Complaint on 02 January 2003. On January 2003, B filed a motion to dismiss the complaint on the ground of lack of jurisdiction contending that the subject matter of the suit was incapable of pecuniary estimation. The court denied the motion. In due time, B filed with the RTC a petition for certiorari praying that the said Order be set aside because the MTC had no jurisdiction over the case.

On 13 February 2003, A filed with the MTC a motion to declare B in default. The motion was opposed by B on the ground that his Petition for Certiorari was still pending. (6%)

a. Was the denial of the Motion to Dismiss the Complaint correct?

b. Resolve the Motion to Declare the Defendant in Default.

Answer: The denial of the Motion to Dismiss the Complaint was not correct. Although the assessed value of the parcel of land involved was P19,000, within the jurisdiction of the MTC of Manila, the action filed by A for Specific Performance against B to compel the latter to execute a Deed of Conveyance of said parcel of land was not capable of

pecuniary estimation and, therefore, the action was within the jurisdiction of the RTC *(Copioso v. Copioso, GR No. 149243, 10/282002).*

(2) **2007 Bar**: A filed a case against B. While awaiting decision on the case, A goes to the United States to work. Upon her return to the Philippines seven years later, A discovered that a decision was rendered by the court in her favor a few months after she had left. Can A file a motion for execution of the judgment? Reason briefly. (5%)

Answer: No, A cannot file a motion for execution of the judgment seven years after the entry of the judgment. She can only do that within five (5) years from entry of judgment. However, she can file a case for revival of the judgment, which can be done before it is barred by the statute of limitations *(Rule 39, Section 6)* which is within ten (10) years from the date of finality of the judgment *(Macias vs. Lim, GR No. 139284, 06/04/2004).*

Issuance and contents of a writ of execution *(Sec. 8)*

(1) The writ of execution shall: (i) issue in the name of the Republic of the Philippines from the court which granted the motion; (ii) state the name of the court, the case number and title, the dispositive part of the subject judgment or order; and (iii) require the sheriff or other proper officer to whom it is directed to enforce the writ according to its term, in the manner hereinafter provided:

(a) If the execution be against the property of the judgment obligor, to satisfy the judgment, with interest, out of the real or personal property of such judgment obligor;

(b) If it be against real or personal property in the hands of personal representatives, heirs, devisees, legatees, tenants, or trustees of the judgment obligor, to satisfy the judgment, with interest, out of such property;

(c) If it be for the sale of real or personal property, to sell such property, describing it, and apply the proceeds in conformity with the judgment, the material parts of which shall be recited in the writ of execution;

(d) If it be for the delivery of the possession of real or personal property, to deliver the possession of the same, describing it, to the party entitled thereto, and to satisfy any costs, damages, rents, or profits covered by the judgment out of the personal property of the person against whom it was rendered, and if sufficient personal property cannot be found, then out of the real property; and

(e) In all cases, the writ of execution shall specifically state the amount of the interest, costs, damages, rents, or profits due as of the date of the issuance of the writ, aside from the principal obligation under the judgment. For this purpose, the motion for execution shall specify the amounts of the foregoing reliefs sought by the movants.

(2) **2005 Bar**: A obtained a money judgment against B. After the finality of the decision, the court issued a writ of execution for the enforcement thereof. Conformably with the said writ, the sheriff levied upon certain properties under B's name. C filed a third-party claim over said properties claiming that B had already transferred the same to him.

A moved to deny the third-party claim and to hold B and C jointly and severally liable to him for the money judgment alleging that B had transferred said properties to C to defraud him (A).

After due hearing, the court denied the third-party claim and rendered an amended decision declaring B and C jointly and severally liable to A for the money judgment. (4%)

Answer: No, C has not been properly impleaded as a party defendant. He cannot be held liable for damages against A without a trial. In fact, since no bond was filed by B, the sheriff is liable to C for damages. C can file a separate action to enforce his third-party claim. It is in that suit that B can properly raise the ground of fraud against C.

However, the execution may proceed where there is a finding that the claim is fraudulent *(Tanongan v. Samson, 382 SCRA 130 [2002])*. Besides, judgment is already final.

Execution of judgment for money *(Sec. 9)*

(1) In executing a judgment for money, the sheriff shall follow the following steps:

(a) Demand from the judgment obligor the immediate payment of the full amount stated in the judgment including the lawful fees in cash, certified check payable to the judgment obligee or any other form of payment acceptable to him *(Sec. 9)*. In emphasizing this rule, the SC held that in the execution of a money judgment, the sheriff is required to first make a demand on the obligor for the immediate payment of the full amount stated in the writ of execution *(Sibulo vs. San Jose, 474 SCRA 464)*.

(b) If the judgment obligor cannot pay all or part of the obligation in cash, certified check or other mode of payment, the officer shall levy upon the properties of the judgment obligor. The judgment obligor shall have the option to choose which property or part thereof may be levied upon. If the judgment obligor does not exercise the option, the officer shall first levy on the personal properties, if any, and then on the real properties if the personal properties are insufficient to answer for the personal judgment but the sheriff shall sell only so much of the property that is sufficient to satisfy the judgment and lawful fees *(Sec. 9[b])*.

(2) The sheriff should demand from the judgment obligor the immediate payment in cash, certified bank check or any other mode of payment acceptable to the judgment obligee. If the judgment obligor cannot pay by these methods immediately or at once, he can exercise his option to choose which of his property can be levied upon. If he does not exercise this option immediately or when he is absent or cannot be located, he waives such right, and the sheriff can now first levy his personal properties, if any, and then the real properties if the personal properties are insufficient to answer for the judgment. *(Quicho vs. Reyes, AM No. P-14-3246, 10/15/2014)*.

Execution of judgment for specific acts *(Sec. 10)*

(1) If the judgment requires a person to perform a specific act, said act must be performed but if the party fails to comply within the specified time, the court may direct the act to be done by someone at the cost of the disobedient party and the act when so done shall have the effect as if done by the party *(Sec 10[a])*. If the judgment directs a conveyance of real or personal property, and said property is in the Philippines, the court in lieu of directing the conveyance thereof, may by an order divest the title of any party and vest it in others, which shall have the force and effect of a conveyance executed in due form of law *(Sec. 10[a], Rule 39)*.

(2) **2002 Bar**: The trial court rendered judgment ordering the defendant to pay the plaintiff moral and exemplary damages. The judgment was served on the plaintiff on October 1, 2001, and on the defendant on October 5, 2001. On October 8, 2001, the defendant filed a notice of appeal from the judgment, but the following day, October 9, 2001, the plaintiff moved for the execution of the judgment pending appeal. The trial court granted the motion upon the posting by the plaintiff of a bond to indemnify the defendant for damages it may suffer as a result of the execution. The court gave as a special reason for its order the imminent insolvency of the defendant. Is the order of execution pending appeal correct? Why? (5%)

Answer: No, because awards for moral and exemplary damages cannot be the subject of execution pending appeal. The execution of any award for moral and exemplary damages is dependent on the outcome of the main case. Liabilities for moral and exemplary damages, as well as the exact amounts remain uncertain and indefinite pending resolution by the Court of Appeals or Supreme Court *(RCPI vs. Lantin, 134 SCRA 395 [1985]; International School, Inc. vs. Court of Appeals, 309 SCRA 474 [1999]).*

Execution of special judgments *(Sec. 11)*

(1) When a judgment requires the performance of any act other than those mentioned in the two preceding sections, a certified copy of the judgment shall be attached to the writ of execution and shall be served by the officer upon the party against whom the same is rendered, or upon any other person required thereby, or by law, to obey the same, and such party or person may be punished for contempt if he disobeys such judgment.

(2) **2001 Bar**: An amicable settlement was signed before a Lupon Tagapamayapa on January 3, 2001. On July 6, 2001, the prevailing party asked the Lupon to execute the amicable settlement because of the non-compliance of the other party with the terms of the agreement. The Lupon concerned refused to execute the settlement/agreement. Is the Lupon correct in refusing to execute the settlement / agreement. (3%)

What should be the course of action of the prevailing party in such a case? (2%)

Answer: Yes, the Lupon is correct in refusing to execute the settlement/agreement because the execution sought is already beyond the period of six months from the date of the settlement within which the Lupon is authorized to execute *(Sec. 417, Local Government Code).* After the six-month period, the prevailing party should move to execute the settlement/agreement in the appropriate city or municipal court.

Effect of levy on third persons *(Sec. 12)*

(1) The levy on execution shall create a lien in favor of the judgment obligee over the right, title and interest of the judgment obligor in such property at the time of the levy, subject to liens and encumbrances then existing.

(2) A lien is a "legal claim or charge on property, either real or personal, as a collateral or security for the payment of some debt or obligation. A lien, until discharged, follows the property. Hence, when petitioner acquired the property, the bank also acquired the liabilities attached to it, among them being the tax liability to the Bureau of Internal Revenue. That the unpaid taxes were incurred by the defunct Marinduque Industrial and Mining Corporation is immaterial. In acquiring the property, petitioner assumed the obligation to pay for the unpaid taxes *(Development Bank of the Philippines vs. Clarges Realty Corporation, GR No. 170060, 08/17/2016).*

Properties exempt from execution *(Sec. 13)*

(1) There are certain properties exempt from execution enumerated under Sec. 13, Rule 39:
   (a) The judgment obligor's family home as provided by law, or the homestead in which he resides, and the land necessarily used in connection therewith;
   (b) Ordinary tools and implements personally used by him in his trade, employment, or livelihood;

(c) Three horses, or three cows, or three carabaos, or other beasts of burden, such as the judgment obligor may select necessarily used by him in his ordinary occupation;
(d) His necessary clothing and articles for ordinary personal use, excluding jewelry;
(e) Household furniture and utensils necessary for housekeeping, and used for that purpose by the judgment obligor and his family, such as the judgment obligor may select, of a value not exceeding 100,000 pesos.
(f) Provisions for individual or family use sufficient for four months;
(g) The professional libraries and equipment of judges, lawyers, physicians, pharmacists, dentists, engineers, surveyors, clergymen, teachers, and other professionals, not exceeding 300,000 pesos;
(h) One fishing boat and accessories not exceeding the total value of 100,000 pesos owned by a fisherman and by the lawful use of which he earns his livelihood;
(i) So much of the salaries, wages, or earnings of the judgment obligor for his personal services with 4 months preceding the levy as are necessary for the support of his family;
(j) Lettered gravestones;
(k) Monies, benefits, privileges, or annuities accruing or in any manner growing out of any life insurance;
(l) The right to receive legal support, or money or property obtained as such support, or any pension or gratuity from the government; and
(m) Properties specially exempted by law *(Sec. 13, Rule 39)*.

(2) If the property mentioned in Sec. 13 is the subject of execution because of a judgment for the recovery of the price or upon judgment of foreclosure of a mortgage upon the property, the property is not exempt from execution.

Sections 15 - 34	Sale
Sections 35 - 43	How to satisfy judgment
Sections 44 - 45	Meaning of satisfaction of judgment

Proceedings where property is claimed by third persons *(Sec. 16)*

(1) If the property levied on is claimed by any person other than the judgment obligor or his agent, and such person makes an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serves the same upon the officer making the levy and a copy thereof upon the judgment obligee, the officer shall not be bound to keep the property, unless such judgment obligee, on demand of the officer, files a bond approved by the court to indemnify the third-party claimant in a sum not less than the value of the property levied on. In case of disagreement as to such value, the same shall be determined by the court issuing the writ of execution. No claim for damages for the taking or keeping of the property may be enforced against the bond unless the action therefor is filed within one hundred twenty (120) days from the date of the filing of the bond.

The officer shall not be liable for damages for the taking or keeping of the property, to any third-party claimant if such bond is filed. Nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property in a separate action, or prevent the judgment obligee from claiming damages in the same or a separate action against a third-party claimant who filed a frivolous or plainly spurious claim.

When the writ of execution is issued in favor of the Republic of the Philippines, or any officer duly representing it, the filing of such bond shall not be required, and in case the sheriff or levying officer is sued for damages as a result of the levy, he shall be

represented by the Solicitor General and if held liable therefor, the actual damages adjudged by the court shall be paid by the National Treasurer out of such funds as may be appropriated for the purpose.

(2) **Requisites for a claim by a third person** (Relate with Rule 57, Sec. 14, and Rule 60, Sec. 7):
   (a) The property is levied;
   (b) The claimant is a person other than the judgment obligor or his agent;
   (c) An affidavit of his title thereto or right to the possession thereof stating the grounds of such right or title; and
   (d) The claimant serves the affidavit upon the officer making the levy and the judgment obligee.

(3) Section 16, Rule 39 of the Rules of Court allows third-party claimants of properties under execution to vindicate their claims to the property in a separate action with another court. Xxx

Clearly, the availability of the remedy provided under the foregoing provision requires only that that the claim is a third-party or a "stranger" to the case. The poser then is this: is the husband, who was not a party to the suit but whose conjugal property was executed on account of the other spouse's debt, a "stranger" to the suit? In *Buado v. Court of Appeals,* this Court had the opportunity to clarify that, to resolve the issue, it must first be determined whether the debt had redounded to the benefit of the conjugal partnership or not. In the negative, the spouse is a stranger to the suit who can file an independent separate action, distinct from the action in which the writ was issued *(Borlongan vs. Banco De Oro, GR Nos. 217617 & 218540, 04/05/2017).*

In relation to third party claim in attachment and replevin

(1) Certain remedies available to a third person not party to the action but whose property is the subject of execution:
   (a) ***Terceria*** - By making an affidavit of his title thereto or his right to possession thereof, stating the grounds of such right or title. The affidavit must be served upon the sheriff and the attaching party *(Sec. 14, Rule 57).* Upon service of the affidavit upon him, the sheriff shall not be bound to keep the property under attachment except if the attaching party files a bond approved by the court. the sheriff shall not be liable for damages for the taking or keeping of the property, if such bond shall be filed.
   (b) **Exclusion or release of property** - Upon application of the third person through a motion to set aside the levy on attachment, the court shall order a summary hearing for the purpose of determining whether the sheriff has acted rightly or wrongly in the performance of his duties in the execution of the writ of attachment. The court may order the sheriff to release the property from the erroneous levy and to return the same to the third person. In resolving the application, the court cannot pass upon the question of title to the property with any character of finality but only insofar as may be necessary to decide if the sheriff has acted correctly or not *(Ching vs. CA, 423 SCRA 356).*
   (c) ***Accion Reinvindicatoria*** - The third party claimant is not precluded by Sec. 14, Rule 57 from vindicating his claim to the property in the same or in a separate action. He may file a separate action to nullify the levy with damages resulting from the unlawful levy and seizure. This action may be a totally distinct action from the former case.

(1) Real property sold, or any part thereof sold separately, may be redeemed by the following persons:

(a) Judgment obligor, or his successor in interest in the whole or any part of the property;

(b) Redemptioner – a creditor having a lien by virtue of an attachment, judgment or mortgage on the property sold, or on some part thereof, subsequent to the lien under which the property was sold.

A mortgagee can be a redemptioner even if his mortgage has not yet matured, but his mortgage contract must have been executed after the entry of judgment. Generally in judicial foreclosure sale, there is no right of redemption, but only equity of redemption. In sale of estate property to pay off debts of the estate, there is no redemption at all. Only in extrajudicial foreclosure sale and sale on execution is there the right of redemption.

(2) The judgment obligor, or redemptioner, may redeem the property from the purchaser at any time within 1 year from the date of the registration of the certificate of sale by paying the purchaser (a) the amount of his purchase; (b) amount of any assessments or taxes which the purchaser may have paid after purchase; (c) if the purchaser be also a creditor having a prior lien to that of the redemptioner, other than the judgment under which such purchase was made, the amount of such other lien; and (d) with 1 percent per month interest up to the time of redemption.

(3) Property redeemed may again be redeemed within 60 days after the last redemption by a redemptioner, upon payment of: (a) the sum paid on the last redemption, with additional 2 percent; (b) the amount of any assessments or taxes which the last redemptioner may have paid thereon after redemption by him, with interest; (c) the amount of any liens held by said last redemptioner prior to his own, with interest.

(4) **Effect of Redemption**. If the judgment obligor redeems, he must make the same payments as are required to effect a redemption by a redemptioner, whereupon, no further redemption shall be allowed and he is restored to his estate. The person to whom the redemption payment is made must execute and deliver to him a certificate of redemption acknowledged before a notary public or other officer authorized to take acknowledgments of conveyances of real property. Such certificate must be filed and recorded in the registry of deeds of the place in which the property is situated, and the registrar of deeds must note the record thereof on the margin of the record of the certificate of sale. The payments mentioned in this and the last preceding sections may be made to the purchaser or redemptioner, or for him to the officer who made the sale *(Sec. 29)*.

(5) **Proof required of redemptioner**. A redemptioner must produce to the officer, or person from whom he seeks to redeem, and serve with his notice to the officer a copy of the judgment or final order under which he claims the right to redeem, certified by the clerk of the court wherein the judgment or final order is entered; or, if he redeems upon a mortgage or other lien, a memorandum of the record thereof, certified by the registrar of deeds; or an original or certified copy of any assignment necessary to establish his claim; and an affidavit executed by him or his agent, showing the amount then actually due on the lien *(Sec. 30)*.

(6) **Manner of using premises pending redemption**. Until the expiration of the time allowed for redemption, the court may, as in other proper cases, restrain the commission of waste on the property by injunction, on the application of the purchaser or the judgment obligee, with or without notice; but it is not waste for a person in possession of the property at the time of the sale, or entitled to possession afterwards, during the period allowed for redemption, to continue to use it in the same manner in which it was previously used; or

to use it in the ordinary course of husbandry; or to make the necessary repairs to buildings thereon while he occupies the property *(Sec. 31)*.

(7) Rents, earnings and income of property pending redemption. The purchaser or a redemptioner shall not be entitled to receive the rents, earnings and income of the property sold on execution, or the value of the use and occupation thereof when such property is in the possession of a tenant. All rents, earnings and income derived from the property pending redemption shall belong to the judgment obligor until the expiration of his period of redemption *(Sec. 32)*.

(8) Deed and possession to be given at expiration of redemption period; by whom executed or given. If no redemption be made within one (1) year from the date of the registration of the certificate of sale, the purchaser is entitled to a conveyance and possession of the property; or, if so redeemed whenever sixty (60) days have elapsed and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner is entitled to the conveyance and possession; but in all cases the judgment obligor shall have the entire period of one (1) year from the date of the registration of the sale to redeem the property. The deed shall be executed by the officer making the sale or by his successor in office, and in the latter case shall have the same validity as though the officer making the sale had continued in office and executed it.

Upon the expiration of the right of redemption, the purchaser or redemptioner shall be substituted to and acquire all the rights, title, interest and claim of the judgment obligor to the property as of the time of the levy. The possession of the property shall be given to the purchaser or last redemptioner by the same officer unless a third party is actually holding the property adversely to the judgment obligor *(Sec. 33)*.

Examination of judgments obligor when judgment is unsatisfied *(Sec. 36)*

(1) When the return of a writ of execution issued against property of a judgment obligor, or any one of several obligors in the same judgment, shows that the judgment remains unsatisfied, in whole or in part, the judgment obligee, at any time after such return is made, shall be entitled to an order from the court which rendered the said judgment, requiring such judgment obligor to appear and be examined concerning his property and income before such court or before a commissioner appointed by it, at a specified time and place; and proceedings may thereupon be had for the application of the property and income of the judgment obligor towards the satisfaction of the judgment. But no judgment obligor shall be so required to appear before a court or commissioner outside the province or city in which such obligor resides or is found.

(2) **2002 Bar**: The plaintiff, a Manila resident, sued the defendant, a resident of Malolos, Bulacan, in the RTC-Manila for a sum of money. When the sheriff tried to serve the summons with a copy of the complaint on the defendant at his Bulacan residence, the sheriff was told that the defendant had gone to Manila for business and would not be back until the evening of that day. So, the sheriff served the summons, together with a copy of the complaint, on the defendant's 18-year old daughter, who was a college student. For the defendant's failure to answer the complaint within the reglementary period, the trial court, on motion of the plaintiff, declared the defendant in default. A month later, the trial court rendered judgment holding the defendant liable for the entire amount prayer for in the complaint.

After the judgment had become final, a writ of execution was issued by the court. As the writ was returned unsatisfied, the plaintiff filed a motion for an order requiring the defendant to appear before it and to be examined regarding his property and income. How should the court resolve the motion? (2%)

Answer: The RTC-Manila should deny the motion because it is in violation of the rule that no judgment obligor shall be required to appear before a court, for the purpose of examination concerning his property and income, outside the province or city in which such obligor resides. In this case, the judgment obligor resides in Bulacan *(Rule 39, Section 36)*.

Examination of obligor of judgment obligor *(Sec. 37)*

(1) When the return of a writ of execution against the property of a judgment obligor shows that the judgment remains unsatisfied, in whole or in part, and upon proof to the satisfaction of the court which issued the writ, that person, corporation, or other juridical entity has property of such judgment obligor or is indebted to him, the court may, by an order, require such person, corporation, or other juridical entity, or any officer or member thereof, to appear before the court or a commissioner appointed by it, at a time and place within the province or city where such debtor resides or is found, and be examined concerning the same. The service of the order shall bind all credits due the judgment obligor and all money and property of the judgment obligor in the possession or in control of such person, corporation, or juridical entity from the time of service; and the court may also require notice of such proceedings to be given to any party to the action in such manner as it may deem proper.

(2) **2008 Bar**: The writ of execution was returned unsatisfied. The judgment obligee subsequently received information that a bank holds a substantial deposit belonging to the judgment obligor. If you are the counsel of the judgment obligee, what steps would you take to reach the deposit to satisfy the judgment? (3%)

Answer: I would ask for a writ of garnishment against the deposit in the bank *(Rule 57, Section 9[c])*

b. If the bank denies holding the deposit in the name of the judgment obligor but your client's informant is certain that the deposit belongs to the judgment obligor under an assumed name, what is your remedy to reach the deposit? (3%)

Answer: I will move for the examination under oath of the bak as a debtor of the judgment debtor *(Rule 39, Section 37)*. I will ask the court to issue an order requiring the judgment obligor, or the person who has the property of such judgment obligor, to appear before the court and be examined in accordance with Sections 36 and 37 of Rule 39, for the complete satisfaction of the judgment award *(Co v. Salvador, AM No. P-07-2342, 08312007)*.

Effect of judgment or final orders: *Res Judicata (Sec. 47)*

(1) In case of a judgment or final order against a specific thing, or in respect to the probate of a will, or the administration of the estate of a deceased person, or in respect to the personal, political, or legal condition or status of a particular person or his relationship to another, the judgment or final order is conclusive upon the title to the thing, the will or administration, or the condition, status or relationship of the person; however, the probate of a will or granting of letters of administration shall only be prima facie evidence of the truth of the testator or intestate;

(2) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and

(3) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

(4) Res judicata has two concepts. The first is bar by prior judgment under Rule 39, Section 47(b), and the second is conclusiveness of judgment under Rule 39, Section 47(c). Jurisprudence taught us well that res judicata under the first concept or as a bar against the prosecution of a second action exists when there is identity of parties, subject matter and cause of action in the first and second actions. The judgment in the first action is final as to the claim or demand in controversy, including the parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose and of all matters that could have been adjudged in that case. The case at hand satisfies the essential requisites of res judicata under the first concept. The RTC is therefore correct in dismissing the case on the ground of res judicata *(Samson vs. Sps. Gabor, GR No. 182970, 07/23/2014).*

(5) The doctrine of *res judicata* by conclusiveness of judgment postulates that when a right or fact has been judicially tried and determined by a court of competent jurisdiction, or when an opportunity for such trial has been given, the judgment of the court, as along as it remains unreversed, should be conclusive upon the parties and those in privity with them *(LZK Holdings and Development Corp. vs. Planters Development Bank, GR No. 187973, 01/20/2014).*

(6) A compromise agreement has the effect and authority of *res judicata* between the parties, and is immediately final and executory, unless rescinded upon grounds that vitiate consent. Once stamped with judicial *imprimatur,* it is more than a mere contract between the parties. Any effort to annul the judgment based on compromise on the ground of extrinsic fraud must proceed in accordance with Rule 4 7 of the Rules of Court *(Tung Hui Chung v. Shih Chiu Huang, GR No. 170679, 03/09/2016).*

(7) In both cases, we applied the time-honored principle of *stare decisis et non quieta movere,* which literally means "to adhere to precedents, and not to unsettle things which are established," to settle the issue of whether Banco Filipino can recover the properties subject of the void trust agreement. The rule of *stare decisis* is a bar to any attempt to re-litigate the same issue where the same questions relating to the same event have been put forward by parties similarly situated as in a previous case litigated and decided by a competent court. Thus, the Court's ruling in G.R. No. 137533 regarding the nullity of the trust agreement--the very same agreement which Banco Filipino seeks to enforce in the proceedings *a quo*--applies with full force to the present case. Consequently, Banco Filipino's action for reconveyance of the Sta. Cruz property based on the void trust agreement cannot prosper and must be dismissed for lack of cause of action.

In addition to the principle of *stare decisis,* the doctrine of conclusiveness of judgment, otherwise known as "preclusion of issues" or "collateral estoppel," bars the re-litigation of Banco Filipino's claim based on the void trust agreement. This concept is embodied in the third paragraph of Rule 39, Section 47 of the Rules of Civil Procedure.

Conclusiveness of judgment is a species of *res judicata* and it applies where there is identity of parties in the first and second cases, but there is no identity of causes of action. Any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits is conclusively settled by the judgment therein, and cannot again be litigated between the parties and their privies whether or not the claim, demand, purpose, or subject matter of the two actions is the same. Thus, if a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second if that same point or question was in issue and

adjudicated in the first suit. Identity of cause of action is not required but merely identity of issue *(Tala Realty Services Corp. vs. Banco Filipino Savings & Mortgage Bank, GR No. 181369, 06/22/2016).*

(1) In a catena of cases, the Court discussed the doctrine of conclusiveness of judgment, as a concept of *res judicata* as follows:

> The second concept - conclusiveness of judgment - states that a fact or question which was in issue in a former suit and was there judicially passed upon and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein as far as the parties to that action and persons in privity with them are concerned and cannot be again litigated in any future action between such parties or their privies, in the same court or any other court of concurrent jurisdiction on either the same or different cause of action, while the judgment remains unreversed by proper authority. It has been held that in order that a judgment in one action can be conclusive as to a particular matter in another action between the same parties or their privies, it is essential that the issue be identical. If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit x x x. Identity of cause of action is not required but merely identity of issue. . . *(Yap v. Republic, GR No. 199810, 03/15/2017).*

Enforcement and effect of foreign judgments or final orders *(Sec. 48)*

(1) In case of a judgment or final order upon a specific thing, the judgment or final order is conclusive upon the title to the thing; and

(2) In case of a judgment or final order against a person, the judgment or final order is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title. In either case, the judgment or final order may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact.

(3) A foreign judgment on the mere strength of its promulgation is not yet conclusive, as it can be annulled on the grounds of want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact. It is likewise recognized in Philippine jurisprudence and international law that a foreign judgment may be barred from recognition if it runs counter to public policy *(Republic vs. Gingoyon, GR 166429, 06/27/2006).*

(4) Arbitral award from a foreign jurisdiction is not enforceable and covered by Rule 39, Sec. 48. It can only be recognized prior to its enforcement, unless contrary to public policy *(Mijares vs. Rañada).*

(5) In an action for enforcement of foreign judgment, the Court has limited review over the decision rendered by the foreign tribunal. The Philippine courts cannot pass upon the merits of the case pursuant to the incorporation clause of the Constitution, unless there is proof of want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact *(Bank of Philippine Islands vs. Guevara, GR No. 167052, 03/11/2015).*

(6) Under Rule 39, Section 48, a foreign judgment or order against a person is merely presumptive evidence of a right as between the parties. It may be repelled, among others, by want of jurisdiction of the issuing authority or by want of notice to the party against whom it is enforced. The party attacking a foreign judgment has the burden of overcoming the presumption of its validity *(St. Aviation Services vs. Grand International Airways, GR No. 140288, 10/23/2006).*

(7) A divorce decree obtained abroad by an alien spouse is a foreign judgment relating to the status of a marriage. As in any other foreign judgment, a divorce decree does not have

an automatic effect in the Philippines. Consequently, recognition by Philippine courts may be required before the effects of a divorce decree could be extended in this jurisdiction.30

Recognition of the divorce decree, however, need not be obtained in a separate petition filed solely for that purpose. Philippine courts may recognize the foreign divorce decree when such was invoked by a party as an integral aspect of his claim or defense.

Before the divorce decree can be recognized by our courts, the party pleading it must prove it as a fact and demonstrate its conformity to the foreign law allowing it. Proving the foreign law under which the divorce was secured is mandatory considering that Philippine courts cannot and could not be expected to take judicial notice of foreign laws. For the purpose of establishing divorce as a fact, a copy of the divorce decree itself must be presented and admitted in evidence. This is in consonance with the rule that a foreign judgment may be given presumptive evidentiary value only after it is presented and admitted in evidence.

In particular, to prove the divorce and the foreign law allowing it, the party invoking them must present copies thereof and comply with Sections 24 and 25, Rule 132 of the Revised Rules of Court. Pursuant to these rules, the divorce decree and foreign law may be proven through (1) an official publication or (2) or copies thereof attested to by the officer having legal custody of said documents. If the office which has custody is in a foreign country, the copies of said documents must be (a) accompanied by a certificate issued by the proper diplomatic or consular officer in the Philippine foreign service stationed in the foreign country in which the record is kept; and (b) authenticated by the seal of his office *(Misalucha vs. People, GR No. 206284, 02/28/2018).*

(8) **2007 Bar**: What are the rules on the recognition and enforcement of foreign judgments in our courts? (6%)

Answer: The rules on the recognition and enforcement of foreign judgments in our courts are as follows:

(a) In case of a judgment or final order upon a specific thing, the judgment or final order is conclusive upon the title to the thing *(Sect 48[a])*;

(b) In case of a judgment or final order against a person, the judgment or final order is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title *(Section 48[b])*.

In either case, the judgment or final order may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, or fraud, or clear mistake of law or fact.

b. Can a foreign arbitral award be enforced in the Philippines under those rules? Explain briefly. (2%)

Answer: No. Foreign arbitral awards are not enforced like foreign court judgments under Rule 39 of the Rules of Court, but they can be enforced under Section 44. A foreign arbitral award, when confirmed by the RTC, shall be enforced in the same manner as final and executory decisions of courts of the Philippines. Said law provides that the case shall be filed with the RTC as a special proceeding, and if the 1958 New York Convention on the Recognition and Enforcement of Foreign Judgments is not applicable, the court may, on grounds of comity and reciprocity, recognizes a non-convention award as a convention award.

c. How about a global injunction issued by a foreign court to prevent dissipation of funds against a defendant therein who has assets in the Philippines? Explain briefly. (2%)

Answer: Yes, a global injunction, also known as the Mareva Injunction, should be considered as an order of foreign court. Therefore, the rules on recognition and enforcement of foreign judgments under Rule 39 must apply. However, to prevent dissipation of funds, the action to enforce must be accompanied with an application for preliminary injunction *(Asiavest Merchant Bankers vs. Ca, GR No. 110263, 07/20/2001).*

R. PROVISIONAL REMEDIES *(Rules 57-61)*

Nature of provisional remedies

(1) Provisional remedies are temporary, auxiliary, and ancillary remedies available to a litigant for the protection and preservation of his rights while the main action is pending. They are writs and processes which are not main actions and they presuppose the existence of a principal action.

(2) Provisional remedies are resorted to by litigants for any of the following reasons:

(a) To preserve or protect their rights or interests while the main action is pending;
(b) To secure the judgment;
(c) To preserve the status quo; or
(d) To preserve the subject matter of the action.

(3) Provisional remedies specified under the rules are:

(a) Preliminary attachment *(Rule 57)*; A
(b) Preliminary injunction *(Rule 58)*; I
(c) Receivership *(Rule 59)*; R
(d) Replevin *(Rule 60)*; and R
(e) Support *pendente lite* *(Rule 61)*. S

(4) **1999 Bar**: What are the provisional remedies under the rules? (2%)

The provisional remedies under the Rules are preliminary attachment, preliminary injunction, receivership, replevin, and support pendente lite.

Jurisdiction over provisional remedies

(1) The court which grants or issues a provisional remedy is the court which has jurisdiction over the main action. Even an inferior court may grant a provisional remedy in an action pending with it and within its jurisdiction.

Preliminary Attachment *(Rule 57)*

(1) Preliminary attachment is a provisional remedy issued upon order of the court where an action is pending to be levied upon the property of the defendant so the property may be held by the sheriff as security for the satisfaction of whatever judgment may be rendered in the case *(Davao Light and Power, Inc. vs. CA, 204 SCRA 343)*.

(2) When availed of and is granted in an action purely *in personam*, it converts the action to one that is *quasi in rem*. In an action *in rem* or *quasi in rem*, jurisdiction over the *res* is sufficient. Jurisdiction over the person of the defendant is not required *(Villareal vs. CA, 295 SCRA 511)*.

(3) Preliminary attachment is designed to:

(a) Seize the property of the debtor before final judgment and put the same in *custodial legis* even while the action is pending for the satisfaction of a later judgment *(Insular Bank of Asia and America vs. CA, 190 SCRA 629)*;

(b) To enable the court to acquire jurisdiction over the res or the property subject of the action in cases where service in person or any other service to acquire jurisdiction over the defendant cannot be affected.

(4) Preliminary attachment has three types:

(a) Preliminary attachment – one issued at the commencement of the action or at any time before entry of judgment as security for the satisfaction of any judgment that may be recovered. Here the court takes custody of the property of the party against whom attachment is directed.

(b) Garnishment – plaintiff seeks to subject either the property of defendant in the hands of a third person (garnishee) to his claim or the money which said third person owes the defendant. Garnishment does not involve actual seizure of property which remains in the hands of the garnishee. It simply impounds the property in the garnishee's possession and maintains the *status quo* until the main action is finally decided. Garnishment proceedings are usually directed against personal property, tangible or intangible and whether capable of manual delivery or not.

(c) Levy on execution – writ issued by the court after judgment by which the property of the judgment obligor is taken into custody of the court before the sale of the property on execution for the satisfaction of a final judgment. It is the preliminary step to the sale on execution of the property of the judgment debtor.

(5) The grant of the remedy is addressed to the discretion of the court whether or not the application shall be given full credit is discretionary upon the court. in determining the propriety of the grant, the court also considers the principal case upon which the provisional remedy depends.

(6) Attachment is defined as a provisional remedy by which the property of an adverse party is taken into legal custody, either at the commencement of an action or at any time thereafter, as a security for the satisfaction of any judgment that may be recovered by the plaintiff or any proper party. Being merely ancillary to a principal proceeding, the attachment must fail if the suit itself cannot be maintained as the purpose of the writ can no longer be justified. The attachment itself cannot be the subject of a separate action independent of the principal action because the attachment was only an incident of such action. In this case, with the RTC's loss of jurisdiction over the Civil Case No. Q-05-53699 necessarily comes its loss of jurisdiction over all matters merely ancillary thereto. *(Northern Islands Co., Inc., vs. Sps. Dennis and Cherylin Garcia, GR No. 203240, 03/18/2015).*

(7) A writ of preliminary attachment is a provisional remedy issued upon the order of the court where an action is pending. Through the writ, the property or properties of the defendant may be levied upon and held thereafter by the sheriff as security for the satisfaction of whatever judgment might be secured by the attaching creditor against the defendant. The provisional remedy of attachment is available in order that the defendant may not dispose of the property attached, and thus prevent the satisfaction of any judgment that may be secured by the plaintiff from the former.

. . . For a writ of preliminary attachment to issue under the above-quoted rule, the applicant must sufficiently show the factual circumstances of the alleged fraud. It is settled that fraudulent intent cannot be inferred from the debtor's mere non-payment of the debt or failure to comply with his obligation.

While fraud cannot be presumed, it need not be proved by direct evidence and can well be inferred from attendant circumstances. Fraud by its nature is not a thing susceptible of ocular observation or readily demonstrable physically; it must of necessity be proved in many cases by inferences from circumstances shown to have been involved in the transaction in question *(Security Bank Corp. vs. Great Wall Commercial Press Co., Inc., GR No. 219345, 01/30/2017).*

(8) While the Court finds that Security Bank has substantiated its allegation of fraud against respondents to warrant the issuance of writ or preliminary attachment, this finding should not in any manner affect the merits of the principal case. The writ of preliminary attachment is only a provisional remedy, which is not a cause of action in itself but is merely adjunct to a main suit *(Security Bank Corp. vs. Great Wall Commercial Press Co., Inc., GR No. 219345, 01/30/2017).*

(9) **2000 Bar**: JFK's real property is being attached by the sheriff in a civil action for damages against LM. JK claims that he is not involved in said case; and that he is the sole registered owner of said property. Under the Rules of Court, what must JK do to prevent the sheriff from attaching his property?

Answer: If the real property has been attached, the remedy is to file a third party claim. The third-party claimant should make an affidavit of his title to the property attached, stating the grounds of his title thereto, and serve such affidavit upon the sheriff while the latter has possession of the attached property, and a copy thereof upon the attaching party *(Rule 57, Section 1)*. The third-party claimant may also intervene or file a separate civil action to vindicate his claim to the property involved and secure the necessary reliefs, such as preliminary injunction, which will not be considered as interference with a court of coordinate jurisdiction *(Ong v. Tating, 149 SCRA 265).*

(10) **1999 Bar**: Distinguish attachment from garnishment. (2%)

Answer: Attachment and garnishment are distinguished from each other as follows: Attachment is a provisional remedy that effects a levy on property of a party as security for the satisfaction of any judgment that may be recovered, while garnishment is a levy on debts due to the judgment obligor or defendant and other credits, including bank-deposits, royalties, and other personal property not capable of manual delivery under a writ of execution or a writ of attachment.

(11) **1999 Bar**: In a case, the property of an incompetent under guardianship was in custodia legis. Can it be attached? Explain. (2%)

Answer: Although the property of an incompetent under guardianship is in custodia legis, it may be attached as in fact it is provided that in such case, a copy of the writ of attachment shall be filed with the proper court and notice of the attachment served upon the custodian of such property *(Rule 57, Section 7).*

(12) **1999 Bar**: May damages be claimed by a party prejudiced by a wrongful attachment even if the judgment was adverse to him? Explain. (2%)

Answer: Yes, damages may be claimed by a party prejudiced by a wrongful attachment even if the judgment is adverse to him. This is authorized by the Rules. A claim for damages may be made on account of improper, irregular, excessive attachment, which shall be heard with notice to the adverse party and his surety or sureties *(Rule 57, Section 20; Javellana v. D.O. Plaza Enterprises, Inc., 32 SCRA 281).*

(13) **2001 Bar**: May a preliminary attachment be issued *ex parte*? Briefly state the reason(s) for your answer. (3%)

May a writ of preliminary injunction be issued *ex parte*? (2%)

Answer: Yes, an order of attachment may be issued ex parte or upon motion with notice and hearing *(Section 2)*. The reason why the order may be issued ex parte is that requiring notice to the adverse party and hearing would defeat the purpose of the provisional remedy and enable the adverse party to abscond or dispose of his property before a writ of attachment or dispose of his property before a writ of attachment issues *(Mindanao Savings and Loan Assn. v. Court of Appeals, 172 SCRA 480).*

b. No, a writ of preliminary injunction may not be issued ex parte. As provided in the Rules, no preliminary injunction shall be granted without hearing and prior notice to the party or person sought be adjoined *(Rule 58, Section 5).* The reason is that a preliminary injunction may cause grave and irreparable injury to the party enjoined.

(12) **2002 Bar**: The plaintiff obtained a writ of preliminary attachment upon a bond of P1 million. The writ was levied on the defendant's property, but it was discharged upon the posting by the defendant of a counter bond in the same amount of P1 million. After trial, the court rendered judgment finding that the plaintiff had no cause of action against the defendant and that he had sued out the writ of attachment maliciously. Accordingly, the court dismissed the complaint and ordered the plaintiff and its surety to pay jointly to the defendant P1.5 million as actual damages, P0.5 million as moral damages and P0.5 million as exemplary damages.

Evaluate the soundness of the judgment from the point of view of procedure. (5%)

Answer: The judgment against the surety is not sound if due notice was not given to him of the application for damages *(Rule 57, Section 20)*.

Moreover, the judgment against the surety cannot exceed the amount of its counterbond of P1 million.

2002 Bar: A default judgment was rendered by the RTC ordering D to pay P a sum of money. The judgment became final, but D filed a petition for relief and obtained a writ of preliminary injunction staying the enforcement of the judgment. After hearing, the RTC dismissed D's petition, whereupon P immediately moved for the execution of the judgment in his favor. Should P's motion be granted? Why (3%)

Answer: P's immediate motion for execution of the judgment in his favor should be granted because the dismissal of D's petition for relief also dissolves the writ of preliminary injunction staying the enforcement of the judgment, even if the dismissal is not yet final *(Golez vs. Leonidas, 107 SCRA 187 [1981])*.

(30) **2005 Bar**: Katy filed an action against Tyrone for collection of the sum of P1 million in the Regional Trial Court, with an ex parte application for a writ of preliminary attachment. Upon posting of an attachment bond, the court granted the application and issued a writ of preliminary attachment.

Apprehensive that Tyron might withdraw his savings deposit with the bank, the sheriff immediately served a notice of garnishment on the bank to implement the writ of preliminary attachment. The following day, the sheriff proceeded to Tyrone's house and served him the summons, with copies of the complaint containing the application for writ of preliminary containing the application for writ of preliminary attachment, Katy's affidavit, order of attachment, writ of preliminary attachment and attachment bond.

Within fifteen (15) days from service of the summons, Tyrone filed a motion to dismiss and to dissolve the writ of preliminary attachment on the following grounds: (i) the court did not acquire jurisdiction over his person because the writ was served ahead of the summons; (ii) the writ was improperly implemented; and (iii) said writ was improvidently issued because the obligation in question was already fully paid.

Resolve the motion with reasons. (4%)

Answer: The fact that the writ of attachment was served ahead of the summons did not affect the jurisdiction of the court over the defendant. The effect is that the writ is not enforceable *(Rule 57, Sec. 5)*. But, as pointed out by jurisprudence, all that is needed to be done is to re-serve the writ (*Onate v. Abrogar, 241 SCRA 659 [1985])*.

The writ was improperly implemented. Serving a notice of garnishment, particularly before summons is served, is not proper. What should be served on the defendant are a copy of the writ of attachment and notice that the bank deposits are attached pursuant to the writ *(Rule 57, Section 7[d])*.

The proper remedy where there is a payment is a motion to dismiss under Rule 16, Section 1[h]. A motion to discharge on the ground that the writ was improvidently issued will not lie, since such a motion would be tantamount to trial on the merits of the action which cannot be ventilated at a mere hearing of the motion instead of a regular trial. The

writ is only ancillary to the main case *(Rule 57, Section 3; Mindanao Savings and Loans Assn. vs. Court of Appeals, 172 SCRA 480 [1989]; Davao Light & Power Co. vs. Court of Appeals, 204 SCRA 343 [1991]).*

(31) **2008 Bar**: After his properties were attached, defendant Porfirio filed a sufficient counterbond. The trial court discharged the attachment. Nonetheless, Porfirio suffered substantial prejudice due to the unwarranted attachment. In the end, the trial court rendered a judgment in Porfirio's favor by ordering the plaintiff to pay damages because the plaintiff was not entitled to the attachment. Profirio moved to charge the plaintiff's attachment bond. The plaintiff and his sureties opposed the motion, claiming that the filing of the counterbond had relieved the plaintiff's attachment bond from all liability for the damages. Rule on Porfirio's motion. (4%)

Answer: Porfirio's motion to charge the plaintiff's attachment bond is proper. The filing of the counterbond by the defendant does not mean that he has waived his right to proceed against the attachment bond for damages. The attachment bond is posted to answer for any damage that a party may suffer if the attachment is wrongful or improper *(DM Wenceslao & Associates, Inc. vs. Readycon Trading & Construction Corp., GR No. 154106, 06/29/2004)*

(32) **2008 Bar:** The writ of execution was returned unsatisfied. The judgment obligee subsequently received information that a bank holds a substantial deposit belonging to the judgment obligor. If you were the counsel of the judgment obligee, what steps would you take to reach the deposit to satisfy the judgment? (3%)

Answer: I would ask for a writ of garnishment against the deposit in the bank *(Rule 57, Section 9[c]).*

Grounds for issuance of writ of attachment

(1) At the commencement of the action or at any time before entry of judgment, a plaintiff or any proper party may have the property of the adverse party attached as security for the satisfaction of any judgment that may be recovered in the following cases:

(a) In an *action for* the recovery of a specified amount of money or damages, other than moral and exemplary, on a cause of action arising from law, contract, quasi-contract, delict or quasi-delict against a party who is about to depart from the Philippines with intent to defraud his creditors;

(b) In an *action for* money or property embezzled or fraudulently misapplied or converted to his own use by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity, or for a willful violation of duty;

(c) In an *action to* recover the possession of property unjustly or fraudulently taken, detained or converted, when the property, or any party thereof, has been concealed, removed, or disposed of to prevent its being found or taken by the applicant or an authorized person;

(d) In an *action against* a party who has been guilty of a fraud in contracting the debt or incurring the obligation upon which the action is brought, or in the performance thereof;

(e) In an action against a party who has removed or disposed of his property, or is about to do so, with intent to defraud his creditors; or

(f) In an *action against* a party who does not reside and is not found in the Philippines, or on whom summons may be served by publication *(Sec. 1).*

(2) The Sandiganbayan held that "the allegations in support of the grounds for the issuance of a writ of preliminary attachment [were] couched in general terms and devoid of particulars upon which [to] discern whether The Sandiganbayan is mistaken. The allegations in the admitted Complaint fall within Section 1(b) and (c) of Rule 57. Given the

peculiarities of the Marcos cases, the allegations of Former President Marcos taking advantage of his powers as President, gravely abusing his powers under martial law, and embarking on a systematic plan to accumulate illgotten wealth suffice to constitute the case as one under Rule 57. The allegation that the Cabuyao property was registered under the names of respondents-minors at the time of registration-is sufficient to allege that the Cabuyao property was concealed, thus satisfying Rule 57, Section 1(c) of the Rules of Court.

The Sandiganbayan should have issued an order of preliminary attachment considering that the requisites of the law-including that of Executive Order No. 14-have been substantially met, and that there is factual basis for the issuance of the preliminary attachment. The Sandiganbayan committed grave abuse of discretion in denying petitioner's Motion for issuance of a writ of preliminary attachment *(Republic vs. Sandiganbayan, Fourth Division, GR No. 195295, 10/05/2016).*

(3) While the Court agrees that mere violations of the warranties and representations contained in the credit agreement and the continuing suretyship agreement do not constitute fraud under Section 1(d) of Rule 57 of the Rules of Court, the same cannot be said with respect to the violation of the trust receipts agreements.
…The present case, however, only deals with the civil fraud in the noncompliance with the trust receipts to warrant the issuance of a writ of preliminary attached. *A fortiori,* in a civil case involving a trust receipt, the entrustee's failure to comply with its obligations under the trust receipt constitute as civil fraud provided that it is alleged, and substantiated with specificity, in the complaint, its attachments and supporting evidence.

...The Court is of the view that Security Bank's allegations of violation of the trust receipts in its complaint was specific and sufficient to assert fraud on the part of respondents. These allegations were duly substantiated by the attachments thereto and the testimony of Security Bank's witness.

… Previously, Section 1(d), Rule 57 of the 1964 Rules of Court provided that a writ of preliminary attachment may be issued "[i]n an action against a party who has been guilty of a fraud in contracting the debt or incurring the obligation upon which the action is brought xxx" Thus, the fraud that justified the issuance of a writ of preliminary attachment then was only fraud committed in contracting an obligation *(dolo casuante).* 28 When the 1997 Rules of Civil Procedure was issued by the Court, Section 1(d) of Rule 57 conspicuously included the phrase "in the performance thereof." Hence, the fraud committed in the performance of the obligation *(dolo incidente)* was included as a ground for the issuance of a writ of preliminary attachment *(Security Bank Corp. vs. Great Wall Commercial Press Co., Inc., GR No. 219345, 01/30/2017).*

Requisites

(1) The issuance of an order/writ of attachment requires the following:
   (a) The case must be any of those where preliminary attachment is proper;
   (b) The applicant must file a motion (*ex parte* or with notice and hearing);
   (c) The applicant must show by affidavit (under oath) that there is no sufficient security for the claim sought to be enforced; that the amount claimed in the action is as much as the sum of which the order is granted above all counterclaims; and
   (d) The applicant must post a bond executed to the adverse party. This is called an attachment bond, which answers for all damages incurred by the party against whom the attachment was issued and sustained by him by reason of the attachment *(Carlos vs. Sandoval, 471 SCRA 266).*

Issuance and contents of order of attachment; affidavit and bond

(1) An order of attachment may be issued either *ex parte* or upon motion with notice and hearing by the court in which the action is pending, or by the CA or the SC, and must require the sheriff of the court to attach so much of the property in the Philippines of the party against whom it is issued, not exempt from execution, as may be sufficient to satisfy the applicant's demand, unless such party makes deposit or gives a bond in an amount equal to that fixed in the order, which may be the amount sufficient to satisfy the applicant's demand or the value of the property to be attached as stated by the applicant, exclusive of costs. Several writs may be issued at the same time to the sheriffs of the courts of different judicial regions *(Sec. 2)*.

(2) An order of attachment shall be granted only when it appears by the affidavit of the applicant, or of some other person who personally knows the facts:

(a) that a sufficient cause of action exists,
(b) that the case is one of those mentioned in Section1,
(c) that there is no other sufficient security for the claim sought to be enforced by the action, and
(d) that the amount due to the applicant, or the value of the property the possession of which he is entitled to recover, is as much as the sum for which the order is granted above all legal counterclaims.

The affidavit, and the bond must be filed with the court before the order issues *(Sec. 3)*.

(3) The requirement under Section 4, Rule 5 7 of the Rules of Court that the applicant's bond be executed to the adverse party necessarily pertains only to the attachment bond itself and not to any underlying reinsurance contract. With or without reinsurance, the obligation of the surety to the party against whom the writ of attachment is issued remains the same *(Communication Information Corporation v. Mark Sensing Australia PTY. Ltd., GR No. 192159, 01/25/2017)*.

Rule on prior or contemporaneous service of summons

(1) The requirement of prior or contemporaneous service of summons shall not apply in the following instances:
(a) Where the summons could not be served personally or by substituted service despite diligent efforts;
(b) The defendant is a resident of the Philippines who is temporarily out of the country;
(c) The defendant is a non-resident; or
(d) The action is one *in rem* or *quasi in rem* *(Sec. 5)*.

(2) No levy on attachment pursuant to the writ of preliminary attachment shall be enforced unless it is preceded, or contemporaneously accompanied, by the service of summons, together with a copy of the complaint, the application for attachment, the applicant's affidavit and bond, and the order and writ of attachment, on the defendant within the Philippines.

Manner of attaching real and personal property; when property attached is claimed by third person

(1) Real and personal property shall be attached by the sheriff executing the writ in the following manner:

(a) Real property, or growing crops thereon, or any interest therein, standing upon the record of the registry of deeds of the province in the name of the party against whom attachment is issued, or not appearing at all upon such records, or belonging to the party against whom attachment is issued and held by any other person, or standing on the records of the registry of deeds in the name of any other person, by filing with the registry of deeds a copy of the order, together with a description of the property attached, and a notice that it is attached, or that such real property and any interest therein held by or standing in the name of such other person are attached, and by leaving a copy of such order, description, and notice with the occupant of the property, if any, or with such other person or his agent if found within the province. Where the property has been brought under the operation of either the Land Registration Act or the Property Registration Decree, the notice shall contain a reference to the number of the certificate of title, the volume and page in the registration book where the certificate is registered, and the registered owner or owners thereof.

The registrar of deeds must index attachments filed under this section in the names of the applicant, the adverse party, or the person by whom the property is held or in whose name it stands in the records. If the attachment is not claimed on the entire area of the land covered by the certificate of title, a description sufficiently accurate for the identification of the land or interest to be affected shall be included in the registration of such attachment;

(b) Personal property capable of manual delivery, by taking and safely keeping it in his custody, after issuing the corresponding receipt therefor;

(c) Stocks or shares, or an interest in stocks or shares, of any corporation or company, by leaving with the president or managing agent thereof, a copy of the writ, and a notice stating that the stock or interest of the party against whom the attachment is issued is attached in pursuance of such writ;

(d) Debts and credits, including bank deposits, financial interest, royalties, commissions and other personal property not capable of manual delivery, by leaving with the person owing such debts, or having in his possession or under his control, such credits or other personal property, or with his agent, a copy of the writ, and notice that the debts owing by him to the party against whom attachment is issued, and the credits and other personal property in his possession, or under his control, belonging to said party, are attached in pursuance of such writ;

(e) The interest of the party against whom attachment is issued in property belonging to the estate of the decedent, whether as heir, legatee, or devisee, by serving the executor or administrator or other personal representative of the decedent with a copy of the writ and notice that said interest is attached. A copy of said writ of attachment and of said notice shall also be filed in the office of the clerk of the court in which said estate is being settled and served upon the heir, legatee or devisee concerned.

If the property sought to be attached is in *custodia legis,* a copy of the writ of attachment shall be filed with the proper court or quasi-judicial agency, and notice of the attachment served upon the custodian of such property *(Sec. 7).*

(2) Certain remedies available to a third person not party to the action but whose property is the subject of execution:

(a) **Terceria** - by making an affidavit of his title thereto or his right to possession thereof, stating the grounds of such right or title. The affidavit must be served upon the sheriff and the attaching party *(Sec. 14).* Upon service of the affidavit upon him, the sheriff shall not be bound to keep the property under attachment except if the attaching party

files a bond approved by the court. The sheriff shall not be liable for damages for the taking or keeping of the property, if such bond shall be filed.

(b) **Exclusion or release of property** – Upon application of the third person through a motion to set aside the levy on attachment, the court shall order a summary hearing for the purpose of determining whether the sheriff has acted rightly or wrongly in the performance of his duties in the execution of the writ of attachment. The court may order the sheriff to release the property from the erroneous levy and to return the same to the third person. In resolving the application, the court cannot pass upon the question of title to the property with any character of finality but only insofar as may be necessary to decide if the sheriff has acted correctly or not *(Ching vs. CA, 423 SCRA 356)*.

(c) **Intervention** – this is possible because no judgment has yet been rendered and under the rules, a motion for intervention may be filed any time before the rendition of the judgment by the trial court *(Sec. 2, Rule 19)*.

(d) **Accion Reinvindicatoria** - The third party claimant is not precluded by Sec. 14, Rule 57 from vindicating his claim to the property in the same or in a separate action. He may file a separate action to nullify the levy with damages resulting from the unlawful levy and seizure. This action may be a totally distinct action from the former case.

Discharge of attachment and the counter-bond

(1) If the attachment has already been enforced, the party whose property has been attached may file a motion to discharge the attachment. This motion shall be with notice and hearing. After due notice and hearing, the court shall discharge the attachment if the movants make a cash deposit or files a counter-bond executed to the attaching party with the clerk of court where the application is made in an amount equal to that fixed by the court in the order of attachment, exclusive of costs. Counter-bonds are replacements of the property formerly attached, and just as the latter, may be levied upon after final judgment. Note that the mere posting of counterbond does not automatically discharge the writ of attachment. It is only after the hearing and after the judge has ordered the discharge of attachment that the same is properly discharged *(Sec. 12)*.

(2) Attachment may likewise be discharged without the need for filing of a counter-bond. This is possible when the party whose property has been attached files a motion to set aside or discharge the attachment and during the hearing of the motion, he proves that:

(a) The attachment was improperly or irregularly issued or enforced; or
(b) The bond of the attaching creditor is insufficient; or
(c) The attachment is excessive and must be discharged as to the excess *(Sec. 13)*; or
(d) The property is exempt from execution, and as such is also exempt from preliminary attachment *(Sec. 2)*.

(3) Grounds for discharge of an attachment

(a) Counterbond posted
(b) improperly issued
(c) irregularly issued or enforced
(d) insufficient applicant's bond

"Improperly" (e.g. writ of attachment was not based on the grounds in Sec. 1)

"Irregularly" (e.g. writ of attachment was executed without previous or contemporaneous service of summons

Satisfaction of judgment out of property attached

(1) If judgment be recovered by the attaching party and execution issued thereon, the sheriff may cause the judgment to be satisfied out of the property attached, if it be sufficient for that purpose in the following manner:

(a) By paying to the judgment obligee the proceeds of all sales of perishable or other property sold in pursuance of the order of the court, or so much as shall be necessary to satisfy the judgment;

(b) If any balance remains due, by selling so much of the property, real or personal, as may be necessary to satisfy the balance, if enough for that purpose remain in the sheriff's hands, or in those of the clerk of the court;

(c) By collecting from all persons having in their possession credits belonging to the judgment obligor, or owing debts to the latter at the time of the attachment of such credits or debts, the amounts of such credits and debts as determined by the court in the action, and stated in the judgment, and paying the proceeds of such collection over to the judgment obligee *(Sec. 15)*.

(2) Order of satisfaction of judgment of attached property
(1) perishable or other property sold in pursuance of the order of the court;
(2) property, real or personal, as may be necessary to satisfy the balance;
(3) collecting from debtors of the judgment obligor;
(4) ordinary execution.

Preliminary Injunction *(Rule 58)*

Definitions and Differences: Preliminary Injunction and Temporary Restraining Order

(1) A preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or a person to refrain from a particular act or acts. It may also require the performance of a particular act or acts, in which case it shall be known as a preliminary mandatory injunction *(Sec. 1)*.

(2) As a provisional remedy, preliminary injunction aims to preserve the *status quo* or to prevent future wrongs in order to preserve and protect certain interests or rights during the pendency of the action *(Cortez-Estrada vs. Heirs of Domingo, 451 SCRA 275 [2005])*. The status quo is the last, actual, peaceable and uncontested situation which precedes a controversy. The injunction should not establish a new relation between the parties, but merely should maintain or re-establish the pre-existing relationship between them.

(3) A writ of preliminary injunction remains until it is dissolved; a temporary restraining order (TRO) has a lifetime only of 20 days (RTC and MTC) or 60 days (Court of Appeals). A TRO issued by the Supreme Court shall be effective until further orders. A TRO is issued to preserve the *status quo* until the hearing of the application for preliminary injunction. The judge may issue a TRO with a limited life of 20 days from date of issue. If before the expiration of the 20 day period, the application for preliminary injunction is denied, the TRO would be deemed automatically vacated. If no action is taken by the judge within the 20 day period, the TRO would automatically expire on the 20th day by the sheer force of law, no judicial declaration to that effect being necessary *(Bacolod City Water District vs. Labayen, 446 SCRA 110)*.

(4) The following must be proved before a writ of preliminary injunction, be it mandatory or prohibitory, will issue:

(a) The applicant must have a clear and unmistakable right to be protected, that is a right in *esse*;

(b) There is a material and substantial invasion of such right;

(c) There is an urgent need for the writ to prevent irreparable injury to the applicant; and

(d) No other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury *(St. James College of Parañaque vs. EPCIB, GR No. 179441, 08/09/2010).*

(5) Status quo order is merely intended to maintain the last, actual, peaceable and uncontested state of things which preceded the controversy, not to provide mandatory or injunctive relief. In this case, it cannot be applied when the respondent was already removed prior to the filing of the case. The directive to reinstate respondent to her former position as school director and curriculum administrator is a command directing the undoing of an act already consummated which is the exclusive province of prohibitory or mandatory injunctive relief and not of a status quo order *(Bro. Bernard Oca vs. Custodio, GR No. 174996, 12/03/2014).*

(6) For a writ of preliminary injunction to be issued, the applicant must show, by prima facie evidence, an existing right before trial, a material and substantial invasion of this right, and that a writ of preliminary injunction is necessary to prevent irreparable injury.

A writ of preliminary injunction is issued in order to: [P]revent threatened or continuous irremediable injury to some of the parties *before their claims can be thoroughly studied and adjudicated.* Its sole aim is to preserve the status quo until the merits of the case can be heard fully. Thus, it will be issued only upon a showing of a clear and unmistakable right that is violated. Moreover, an urgent necessity for its issuance must be shown by the applicant *(First Global Realty and Development Corp. vs. San Agustin, 427 Phil. 593 [2002] cited in DPWH vs. City Advertising Ventures Corp., GR No. 182944, 11/09/2016).*

(7) **1998 Bar**: A TRO is an order to maintain the *status quo* between and among the parties until the determination of the prayer for a writ of preliminary injunction. A writ of preliminary injunction cannot be granted without notice and hearing. A TRO may be granted *ex parte* if it shall appear from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court in which the application for preliminary injunction was made may issue a TRO *ex parte* for a period not exceeding 20 days from service to the party sought to be enjoined.

(8) **2001 Bar**: An application for a writ of preliminary injunction with a prayer for a temporary restraining order is included in a complaint and filed in a multi-sala Regional Trial Cout (RTC) consisting of Branches 1, 2, 3, and 4. Being urgent in nature, the Executive Judge, who was sitting in Branch 1, upon the filing of the aforesaid application, immediately raffled the case in the presence of the judges of Branches 2, 3, and 4. The case was raffled to Branch 4 and the judge thereof immediately issued a temporary restraining order.

Is the temporary restraining order valid? Why? (5%)

Answer: No. It is only the Executive Judge who can issue immediately a temporary restraining order effective only for seventy-two (72) hours from issuance. No other judge has the right or power to issue a temporary restraining order ex parte. The judge whom the case is assigned will then conduct a summary hearing to determine whether the temporary restraining order shall be extended. But in no case beyond 20 days, including the original 72 hour period *(Rule 58, Section 5).*

(9) **2001 Bar**: May a writ of preliminary injunction be issued ex parte. Why? (2%)

Answer: No, a writ of preliminary injunction may not be issued ex parte. As provided in the Rules, no preliminary injunction shall be granted without hearing and prior notice to

the party or person sought to be enjoined *(Rule 58, Section 5).* The reason is that a preliminary injunction may cause grave and irreparable injury to the party enjoined.

(10) **2003 Bar**: Can a suit for injunction be aptly filed with the Supreme Court to stop the President of the Philippines from entering into a peace agreement with the National Democratic Front? (4%)

Answer: No, a suit for injunction cannot be aptly filed with the Supreme Court to stop the Supreme Court to stop the President of the Philippines from entering into a peace agreement with the National Democratic Front, which is purely political question. The President of the Philippines is immune from suit during his term *(Madarang v. Santamaria, 37 Phil. 304 [1917]).*

(11) **2006 Bar**: What are the requisites for the issuance of (a) a writ of preliminary injunction; and (b) a final writ of injunction? (2.5%)

Answer: Requisites for the issuance of a writ of preliminary injunction are a verified complaint showing the existence of a right in esse, violation or threat of violation of such right, damages or injuries sustained or that will be sustained by reason of such violation, notice to all parties of raffle and of hearing, hearing on the application, and filing of an appropriate bond and service thereof.

On the other hand, a final writ of injunction may be rendered by judgment after trial, showing applicant to be entitled to the writ *(Rule 58, Section 9).*

(12) **2006 Bar**: May the Regional Trial Court issue injunction without bond (2%)

Answer: Yes, if the injunction that is issued is a final injunction. Generally, however, preliminary injunction cannot issue without bond unless exempted by the trial court *(Rule 58, Section 4[b]).*

(13) **2006 Bar**: What is the duration of a TRO issued by the Executive Judge of a Regional Trial Court? (2%)

Differentiate a TRO from a status quo order. (2%)

Answer: In cases of extreme urgency, when the applicant will suffer grave injustice and irreparable injury, the duration of a TRO issued ex parte by and Executive Judge of a Regional Trial Court (RTC) is 72 hours *(Rule 58, Section 5).* In the exercise of his regular functions over cases assigned to his sala, an Executive Judge may issue a TRO for a duration not exceeding a total of 20 days.

A status quo order (SQO) is more in the nature of a cease and desist order, since it does not direct the doing or undoing of acts, as in the case of prohibitory or mandatory injunctive relief. A TRO is only good for 20 days if issued by the RTC; 60 days if issued by the CA; until further notice if issued by the Supreme Court. The SQO is without any prescriptive period and may be issued without a bond. A TRO dies a natural death after the allowable period; the SQO does not. A TRO is provisional. SQO lasts until revoked. A TRO is not extendible, but the SQO may be subject to agreement of the parties.

Requisites

(1) A preliminary injunction or temporary restraining order may be granted only when:

(a) The application in the action or proceeding is verified, and shows facts entitling the applicant to the relief demanded; and

(b) Unless exempted by the court, the applicant files with the court where the action or proceeding is pending, a bond executed to the party or person enjoined, in an amount to be fixed by the court, to the effect that the applicant will pay to such party or person all damages which he may sustain by reason of the injunction or temporary restraining order if the court should finally decide that the applicant was not entitled

thereto. Upon approval of the requisite bond, a writ of preliminary injunction shall be issued.

(c) When an application for a writ of preliminary injunction or a temporary restraining order is included in a complaint or any initiatory pleading, the case, if filed in a multiple-sala court, shall be raffled only after notice to and in the presence of the adverse party or the person to be enjoined. In any event, such notice shall be preceded, or contemporaneously accompanied, by service of summons, together with a copy of the complaint or initiatory pleading and the applicant's affidavit and bond, upon the adverse party in the Philippines.

However where the summons could not be served personally or by substituted service despite diligent efforts, or the adverse party is a resident of the Philippines temporarily absent therefrom or is a nonresident thereof, the requirement of prior or contemporaneous service of summons shall not apply.

(d) The application for a temporary restraining order shall thereafter be acted upon only after all parties are heard in a summary hearing which shall be conducted within twenty-four (24) hours after the sheriff's return of service and/or the records are received by the branch selected by raffle and to which the records shall be transmitted immediately *(Sec. 4)*.

(e) The applicant must establish that there is a need to restrain the commission or continuance of the acts complied of and if not enjoined would work injustice to the applicant *(Barbajo vs. Hidden View Homeowners, Inc., 450 SCRA 315)*.

(f) The plaintiff must further establish that he or she has a present clear unmistakable right to be protected; that the facts against which injunction is directed violate such right; and there is a special and paramount necessity for the writ to prevent serious damages. In the absence of proof of legal right and the injury sustained by the plaintiff, an order for the issuance of a writ of preliminary injunction will be nullified. Thus, where the plaintiff's right is doubtful or disputed, a preliminary injunction is not proper. The possibility of irreparable damage without proof of an actual existing right is not a ground for preliminary injunction *(Sps. Nisce vs. Equitable PCI Bank, 02/19/2007)*.

Kinds of Injunction

(1) **Prohibitory** - its purpose is to prevent a person from the performance of a particular act which has not yet been performed. Here, the status quo is preserved or restored and this refers to the last peaceable, uncontested status prior to the controversy.
   (a) Preliminary – secured before the finality of judgment.
   (a) Final – issued as a judgment, making the injunction permanent. It perpetually restrains a person from the continuance or commission of an act and confirms the previous preliminary injunction. It is one included in the judgment as the relief or part of the relief granted as a result of the action, hence, granted only after trial *(Sec. 10)*, and no bond is required.

(2) **Mandatory** - its purpose is to require a person to perform a particular positive act which has already been performed and has violated the rights of another.
   (a) Preliminary
   (b) Final

(3) Requisites for the issuance of mandatory preliminary injunction
   (a) The invasion of the right is material and substantial;
   (b) The right of a complainant is clear and unmistakable;
   (c) There is an urgent and permanent necessity for the writ to prevent serious damage *(Rivera vs. Florendo, 144 SCRA 643)*.

(4) Cases when injunction may not issue:
(a) Labor cases
(b) Government infrastructure projects, unless stopped by the Supreme Court
(c) Prosecution of criminal case, unless unconstitutional
(d) Collection of taxes, unless unconstitutional
(e) Stop court of equal rank
(f) Customs cases

(5) The main action for injunction is distinct from the provisional or ancillary remedy of preliminary injunction which cannot exist except only as part or an incident of an independent action or proceeding. As a matter of course, in an action for injunction, the auxiliary remedy of preliminary injunction, whether prohibitory or mandatory, may issue. Under the law, the main action for injunction seeks a judgment embodying a final injunction which is distinct from, and should not be confused with, the provisional remedy of preliminary injunction, the sole object of which is to preserve the status quo until the merits can be heard. A preliminary injunction is granted at any stage of an action or proceeding prior to the judgment or final order. It persists until it is dissolved or until the termination of the action without the court issuing a final injunction. The, SC therefore, ruled that the CA did not commit any error in treating Jadewell's Petition for Certiorari as an original action for injunction *(Sangguniang Panlunsod ng Baguio City v. Jadewell Parking Systems Corporation, GR 160025, 04/23/2014).*

(6) In *Philippine National Bank v. RJ Ventures Realty and Development Corporation, et al. (534 Phil. 769 [2006],* this Court exhaustively discussed the nature of a writ of preliminary injunction, thus:

Foremost, we reiterate that the sole object of a preliminary injunction is to maintain the *status quo* until the merits can be heard. A preliminary injunction 10 is an order granted at any stage of an action prior to judgment or final order, requiring a party, court, agency, or person to refrain from a parti.cular act or acts. It is a preservative remedy to ensure the protection of a party's substantive rights or interests pending the final judgment in the principal action. A plea for an injunctive writ lies upon the existence of a claimed emergency or extraordinary situation which should be avoided for otherwise, the outcome of a litigation would be useless as far as the party applying for the writ is concerned *(Cahambing vs. Espinosa, GR No. 215807, 01/25/2017).*

When writ may be issued

(1) A writ of injunction may be issued when:
(a) The complaint in the action is verified, and shows facts entitling the plaintiff to the relief demanded; and
(b) The plaintiff files a bond which the court may fix, conditioned for the payment of damages to the party enjoined, if the court finds that the plaintiff is not entitled thereto *(Sec. 4).*

Grounds for issuance of preliminary injunction

(1) The applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts either for a limited period or perpetually; or

The commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

A party, court, agency or a person is doing, threatening or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual *(Sec. 3)*.

(2) The conditions for the issuance of the injunctive writ are: (a) that the right to be protected exists prima facie; (b) that the act sought to be enjoined is violative of that right; and (c) that there is an urgent and paramount necessity for the writ to prevent serious damage. Under the circumstances averred in the complaint, the issuance of the writ of preliminary injunction upon the application of the spouses Borbon was improper. They had admittedly constituted the real estate and chattel mortgages to secure the performance of their loan obligation to the BPI, and, as such, they were fully aware of the consequences on their rights in the properties given as collaterals should the loan secured be unpaid *(Bank of Philippine Islands v. Hontanosas, GR 157163, 06/25/2014)*.

(3) In a prayer for preliminary injunction, the plaintiff is not required to submit conclusive and complete evidence. He is only required to show that he has an ostensible right to the final relief prayed for.

In this case, the petitioners have adequately shown their entitlement to a preliminary injunction. First, the relief demanded consists in restraining the execution of the RTC decision ordering their ejectment from the disputed land. Second, their ejectment from the land from which they derive their source of livelihood would work injustice to the petitioners. Finally, the execution of the RTC decision is probably in violation of the rights of the petitioners, tending to render the MTC judgment dismissing the forcible entry cases ineffectual *(Novecio vs. Hon. R. Lim, GR No. 193809, 03/23/2015)*.

(4) A preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order requiring a party or a court, an agency, or a person to refrain from a particular act or acts. Its essential role is preservative of the rights of the parties in order to **protect the ability of the court to render a meaningful decision, or in order to guard against a change of circumstances that will hamper or prevent the granting of the proper relief after the trial on the merits.** In a sense, it is a regulatory process meant to prevent a case from being mooted by the interim acts of the parties.
The controlling reason for the existence of the judicial power to issue the writ of injunction is that the court may thereby **prevent a threatened or continuous irremediable injury to some of the parties before their claims can be thoroughly investigated and advisedly adjudicated.** The application for the writ rests upon an alleged existence of an emergency or of a special reason for such an order to issue before the case can be regularly heard, and the essential conditions for granting such temporary injunctive relief are that the complaint alleges facts that appear to be sufficient to constitute a cause of action for injunction and that on the entire showing from both sides, it appears, in view of all the circumstances, that the injunction is reasonably necessary to protect the legal rights of plaintiff pending the litigation *(Sps. Espiritu vs. Sps. Sazon, GR No. 204965, 03/02/20016)*.

(5) From the foregoing provision [Section 3, Rule 58], it is clear that a writ of preliminary injunction is warranted where there is a showing that there exists a right to be protected and that the acts against which the writ is to be directed violate an established right. Otherwise stated, for a court to decide on the propriety of issuing a TRO and/or a WPI, it must only inquire into the existence of two things: (1) a clear and unmistakable right that must be protected; and (2) an urgent and paramount necessity for the writ to prevent serious damage *(Borlongan vs. Banco De Oro, GR Nos. 217617 & 218540, 04/05/2017)*.

Grounds for objection to, or for the dissolution of injunction or restraining order

(1) The application for injunction or restraining order may be denied, upon a showing of its insufficiency. The injunction or restraining order may also be denied, or, if granted, may be dissolved, on other grounds upon affidavit of the party or person enjoined, which may be opposed by the applicant also by affidavits. It may further be denied, or, if granted, may be dissolved, if it appears after hearing that although the applicant is entitled to the injunction or restraining order, the issuance or continuance thereof, as the case may be, would cause irreparable damage to the party or person enjoined while the applicant can be fully compensated for such damages as he may suffer, and the former files a bond in an amount fixed by the court conditioned that he will pay all damages which the applicant may suffer by the denial or the dissolution of the injunction or restraining order. If it appears that the extent of the preliminary injunction or restraining order granted is too great, it may be modified *(Sec. 6)*.

(2) Grounds for objection to, or for motion of dissolution of, injunction or restraining order

(a) Upon showing of insufficiency of the application;
(b) Other grounds upon affidavit of the party or person enjoined;
(c) Appears after hearing that irreparable damage to the party or person enjoined will be caused while the applicant can be fully compensated for such damages as he may suffer, and the party enjoined files a counterbond;
(d) Insufficiency of the bond;
(e) Insufficiency of the surety or sureties.

Duration of TRO

(1) The lifetime of a TRO is 20 days, which is non-extendible *(AM 02-02-07-SC)*.

MTC or RTC	20 days
Court of Appeals	60 days
Supreme Court	Until lifted

In relation to RA 8975, Ban on issuance of TRO or Writ of Injunction in cases involving government infrastructure projects

(1) Under PD 1818 and RA 8735, injunction is not available to stop infrastructure projects of the government including arrastre and stevedoring operations *(Malayan Integrated Industries vs. CA, GR 101469, 09/04/1992; PPA vs. vs. Pier 8 Arrastre and Stev edoring Services, 475 SCRA 426)*.

Rule on prior or contemporaneous service of summons in relation to attachment

(1) It is not available where the summons could not be served personally or by substituted service despite diligent efforts or where the adverse party is a resident of the Philippines temporarily absent therefrom or is a non-resident thereof *(Sec. 4)*.

Stages of Injunction

(1) **Seventy-two (72) hour Temporary Restraining Order**

(a) If the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury;

(b) Issued by executive judge of a multi-sala court or the presiding judge of a single-sala court;

(c) Thereafter must

1) Serve summons and other documents

2) Conduct summary hearing to determine whether the TRO shall be extended to 20 days until the application for preliminary injunction can be heard.

(2) **Twenty (20) day TRO**

(d) If it shall appear from the facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice;

(e) If application is included in initiatory pleading:

1) Notice of raffle shall be preceded, or contemporaneously accompanied, by service of summons, together with a copy of the complaint or initiatory pleading and the applicant's affidavit and bond, upon the adverse party in the Philippines;

2) Raffled only after notice to and in the presence of the adverse party or the person to be enjoined.

(f) Issued with summary hearing (to determine whether the applicant will suffer great or irreparable injury) within 24 hours after sheriff's return of service and/or records are received by the branch selected by raffle;

(g) Within 20-day period, the court must order said person to show cause why the injunction should not be granted, and determine whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order;

(h) Including the original 72 hours, total effectivity of TRO shall:

1) Not exceed 20 days, if issued by an RTC or MTC;

2) Not exceed 60 days, if issued by the CA or a member thereof;

3) Until further orders, if issued by the SC.

(i) TRO is automatically vacated upon expiration of the period and without granting of preliminary injunction;

(j) Effectivity is not extendible without need of any judicial declaration to that effect;

(k) No court shall have authority to extend or renew the same on the same ground for which it was issued.

(3) **Preliminary Injunction**

(l) Hearing and prior notice to the party sought to be enjoined;

(m) If application is included in initiatory pleading;

1) Notice of raffle shall be preceded, or contemporaneously accompanied, by service of summons, together with a copy of the complaint or initiatory pleading and the applicant's affidavit and bond, upon the adverse party in the Philippines.

2) Raffled only after notice to and in the presence of the adverse party or the person to be enjoined

(n) Applicant posts a bond

(4) **Final Injunction**

(o) Note that a bond is required only in preliminary injunctions, but is not required in TROs. After lapse of the 20 day TRO, the court can still grant a preliminary injunction. Note that irreparable injury is always a requisite in TROs. But in the 72 hour TRO, grave injustice must also be shown. In the 20 day TRO, the ground is great or irreparable injury *(Paras v. Roura, 163 SCRA 1 [1988])*. Without a preliminary injunction, a TRO issued by the CA expires without necessity of court action.

Receivership *(Rule 59)*

(1) Receivership is a provisional remedy wherein the court appoints a representative to preserve, administer, dispose of and prevent the loss or dissipation of the real or personal property during the pendency of an action.

(2) It may be the principal action itself or a mere provisional remedy; it can be availed of even after the judgment has become final and executory as it may be applied for to aid execution or carry judgment into effect.

(3) Although Rule 59, Sec. 1(d) is couched in general terms and broad in scope, encompassing instances not covered hy the other grounds enumerated under the said secion, courts must remain mindful of the basic principle that receivership may be granted only when the property sought to be placed in the hands of a receiver is in danger of being lost or because they run the risk of being impaired, and only when there is a clear showing of necessity for it in order to save plantiff from grave and immediate loss or damage *(Caboverde-Tantano v. caboverde, GR No. 203585, 07/29/2013)*.

(4) **2001** Bar: Joaquin filed a complaint against Jose for the foreclosure of a mortgage of a furniture factory with a large number of machinery and equipment. During the pendency of the foreclosure suit, Joaquin learned from reliable sources that Jose was quietly and gradually disposing of some of his machinery and equipment to a businessman friend who was also engaged in furniture manufacturing such that from confirmed reports Joaquin gathered, the machinery and equipment left with Jose were no longer sufficient to answer for the latter's mortgage indebtedness. In the meantime, judgment was rendered by the court in favor of Joaquin but the same is not yet final.

Knowing what Jose has been doing, if you were Joaquin's lawyer, what action would you take to preserve whatever remaining machinery and equipment are left with Jose? Why? (5%)

Answer: To preserve whatever remaining machinery and equipment are left with Jose, Joaquin's lawyer should file a verified application for the appointment by the court of one or more receivers. The Rules provide that receivership is proper in an action by the mortgagee for the foreclosure of a mortgage when it appears that the property is in danger of being wasted or dissipated or materially injured and that its value is probably insufficient to discharge the mortgage debt *(Rule 59, Section 1[b])*.

Cases when receiver may be appointed

(1) The party applying for the appointment of a receiver has an interest in the property or fund which is the subject of the action or proceeding, and that such property or fund is in danger

of being lost, or materially injured unless a receiver be appointed to administer and preserve it;

(2) In an action by the mortgagee for the foreclosure of a mortgage that the property is in danger of being wasted or dissipated or materially injured, and that its value is probably insufficient to discharge the mortgage debt, or that the parties have so stipulated in the contract of mortgage;

(3) After judgment, to preserve the property during the pendency of an appeal, or to dispose of it according to the judgment, or to aid execution when the execution has been returned unsatisfied or the judgment obligor refuses to apply his property in satisfaction of the judgment, or otherwise to carry the judgment into effect;

(4) Whenever in other cases it appears that the appointment of a receiver is the most convenient and feasible means of preserving, administering, or disposing of the property in litigation *(Sec. 1).*

Requisites

(1) Verified application;

(2) Appointed by the court where the action is pending, or by the CA or by the SC, or a member thereof;

During the pendency of an appeal, the appellate court may allow an application for the appointment of a receiver to be filed in and decided by the court or origin and the receiver appointed to be subject to the control of said court.

(3) Applicant's bond conditioned on paying the adverse party all damages he may sustain by the appointment of the receiver in case the appointment is without sufficient cause;

(4) Receiver takes his oath and files his bond.

Requirements before issuance of an Order

(1) Before issuing the order appointing a receiver the court shall require the applicant to file a bond executed to the party against whom the application is presented, in an amount to be fixed by the court, to the effect that the applicant will pay such party all damages he may sustain by reason of the appointment of such receiver in case the applicant shall have procured such appointment without sufficient cause; and the court may, in its discretion, at any time after the appointment, require an additional bond as further security for such damages *(Sec. 2).*

General powers of a receiver

(1) To bring and defend, in such capacity, actions in his own name
(2) To take and keep possession of the property in controversy
(3) To receive rents
(4) To collect debts due to himself as receiver or to the fund, property, estate, person, or corporation of which he is the receiver
(5) To compound for and compromise the same
(6) To make transfer
(7) To pay outstanding debts

(8) To divide the money and other property that shall remain among the persons legally entitled to receive the same
(9) To do such acts respecting the property as the court may authorize.

However, funds in the hands of a receiver may be invested only by order of the court upon the written consent of all the parties to the action. No action may be filed by or against a receiver without leave of the court which appointed him *(Sec. 6)*.

Two (2) kinds of bonds

(1) Applicant's Bond (for appointment of receiver) – To pay the damages the adverse party may sustain by reason of appointment of receiver; and
(2) Receiver's Bond (of the appointed receiver, aside from oath) – To answer for receiver's faithful discharge of his duties *(Sec. 4)*;
(3) Counterbond *(Sec. 3)*.

Termination of receivership

(1) Whenever the court, *motu proprio* or on motion of either party, shall determine that the necessity for a receiver no longer exists, it shall, after due notice to all interested parties and hearing, settle the accounts of the receiver, direct the delivery of the funds and other property in his possession to the person adjudged to be entitled to receive them, and order the discharge of the receiver from further duty as such. The court shall allow the receiver such reasonable compensation as the circumstances of the case warrant, to be taxed as costs against the defeated party, or apportioned, as justice requires *(Sec. 8)*.
(2) Receivership shall also be terminated (a) when its continuance is not justified by the facts and circumstances of the case *(Samson vs. Araneta, 64 Phil. 549)*; or (b) when the court is convinced that the powers are abused *(Duque vs. CFI, Manila, 13 SCRA 420)*.

Replevin *(Rule 60)*

(1) Replevin is a proceeding by which the owner or one who has a general or special property in the thing taken or detained seeks to recover possession in specie, the recovery of damages being only incidental *(Am. Jur. 6)*.
(2) Replevin may be a main action or a provisional remedy. As a principal action its ultimate goal is to recover personal property capable of manual delivery wrongfully detained by a person. Used in this sense, it is a suit in itself.
(3) It is a provisional remedy in the nature of possessory action and the applicant who seeks immediate possession of the property involved need not be the holder of the legal title thereto. It is sufficient that he is entitled to possession thereof *(Yang vs. Valdez, 177 SCRA 141)*.
(4) *"Replevin* is an action whereby the owner or person entitled to repossession of goods or chattels may recover those goods or chattels from one who has wrongfully distrained or taken, or who wrongfully detains such goods or chattels. It is designed to permit one having right to possession to recover property in specie from one who has wrongfully taken or detained the property. The term may refer either to the action itself, for the recovery of personalty, or to the provisional remedy traditionally associated with it, by

which possession of the property may be obtained by the plaintiff and retained during the pendency of the action" *(Malayan Insurance vs. Alibudbud, GR No. 209011, 04/20/2016)*.

(1) Section 10, Rule 60 of the Rules of Court provides that in replevin cases, as in receivership and injunction cases, the damages to be awarded to either party upon any bond filed by the other shall be claimed, ascertained, and granted in accordance with Section 20 of Rule 57 which reads:

> SEC. 20. *Claim for damages on account of illegal attachment.* - If the judgment on the action be in favor of the party against whom attachment was issued, he may recover, upon the bond given or deposit made by the attaching creditor, any damages resulting from the attachment. Such damages may be awarded only upon application and after proper hearing, and shall be included in the final judgment. The application must be filed before the trial or before appeal is perfected or before the judgment becomes executory, with due notice to the attaching creditor and his surety or sureties, setting forth the facts showing his right to damages and the amount thereof.
>
> If the judgment of the appellate court be favorable to the party against whom the attachment was issued, he must claim damages sustained during the pendency of the appeal by filing an application with notice to the party in whose favor the attachment was issued or his surety or sureties, before the judgment of the appellate court becomes executory. The appellate court may allow the application to be heard and decided by the trial court. [Emphases supplied]

In other words, to recover damages on a replevin bond (or on a bond for preliminary attachment, injunction or receivership), it is necessary (1) that the defendant-claimant has secured a favorable judgment in the main action, meaning that the plaintiff has no cause of action and was not, therefore, entitled to the provisional remedy of replevin; (2) that the application for damages, showing claimant's right thereto and the amount thereof, be filed in the same action before trial or before appeal is perfected or before the judgment becomes executory; (3) that due notice be given to the other party and his surety or sureties, notice to the principal not being sufficient; and (4) that there should be a proper hearing and the award for damages should be included in the final judgment *(Development Bank of the Philippines vs. Judge Carpio, GR No. 195450, 02/01/2017)*.

When may Writ be Issued

(1) The provisional remedy of replevin can only be applied for before answer. A party praying for the recovery of possession of personal property may, at the commencement of the action or at any time before answer, apply for an order for the delivery of such property to him *(Sec. 1)*.

Requisites

(1) A party praying for the provisional remedy must file an application for a writ of replevin. His application must be filed at the commencement of the action or at any time before the defendant answers, and must contain an affidavit particularly describing the property to which he is entitled of possession.

(2) The affidavit must state that the property is wrongfully detained by the adverse party, alleging therein the cause of the detention. It must also state that the property has not been destrained or taken for tax assessment or a fine pursuant to law, or seized under a writ of execution or preliminary attachment, or otherwise placed in *custodia legis*. If it has been seized, then the affidavit must state that it is exempt from such seizure or custody.

(3) The affidavit must state the actual market value of the property; and

(4) The applicant must give a bond, executed to the adverse party and double the value of the property.

Affidavit and bond; Redelivery Bond

(1) Affidavit, alleging:
   (a) That the applicant is the owner of property claimed, describing it or entitled to its possession;
   (b) That the property is wrongfully detained by the adverse party, alleging cause of its detention;
   (c) That the property has not been distrained or taken for tax assessment or fine or under writ of execution/attachment or placed under *custodia legis* or if seized, that it is exempt or should be released; and
   (d) The actual market value of the property.

(2) Bond, which must be double the value of property, to answer for the return of property if adjudged and pay for such sum as he may recover from the applicant *(Sec. 2).*

(3) It is required that the redelivery bond be filed within the period of 5 days after the taking of the property. The rule is mandatory *(Yang vs. Valdez, 177 SCRA 141).*

Sheriff's duty in the implementation of the writ; when property is claimed by third party

(1) Upon receiving such order, the sheriff must serve a copy thereof on the adverse party, together with a copy of the application, affidavit and bond, and must forthwith take the property, if it be in the possession of the adverse party, or his agent, and retain it in his custody. If the property or any part thereof be concealed in a building or enclosure, the sheriff must demand its delivery, and if it be not delivered, he must cause the building or enclosure to be broken open and take the property into his possession. After the sheriff has taken possession of the property as herein provided, he must keep it in a secure place and shall be responsible for its delivery to the party entitled thereto upon receiving his fees and necessary expenses for taking and keeping the same *(Sec. 4).*

(2) If within five (5) days after the taking of the property by the sheriff, the adverse party does not object to the sufficiency of the bond, or of the surety or sureties thereon; or if the adverse party so objects and the court affirms its approval of the applicant's bond or approves a new bond, of if the adverse party requires the return of the property but his bond is objected to and found insufficient and he does not forthwith file an approved bond, the property shall be delivered to the applicant. If for any reason the property is not delivered to the applicant, the sheriff must return it to the adverse party *(Sec. 6).*

(3) A third-party claimant may vindicate his claim to the property, and the applicant may claim damages against such third-party, in the same or separate action. A claim on the indemnity bond should be filed within 120 days from posting of such bond.

(4) If the property taken is claimed by any person other than the party against whom the writ of replevin had been issued or his agent, and such person makes an affidavit of his title thereto, or right to the possession thereof, stating the grounds therefor, and serves such affidavit upon the sheriff while the latter has possession of the property and a copy thereof upon the applicant, the sheriff shall not be bound to keep the property under replevin or deliver it to the applicant unless the applicant or his agent, on demand of said sheriff, shall file a bond approved by the court to indemnify the third-party claimant in the sum not less

than the value of the property under replevin as provided in section 2 hereof. In case of disagreement as to such value, the court shall determine the same. No claim for damages for taking or keeping of the property may be enforced against the bond unless the action therefor is filed within one hundred twenty (120) days from the date of the filing of the bond.

The sheriff shall not be liable for damages, for the taking or keeping of such property, to any such third-party claimant if such bond shall be filed. Nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property, or prevent the applicant from claiming damages against a third-party claimant who filed a frivolous or plainly spurious claim, in the same or a separate action *(Sec. 7)*.

S. SPECIAL CIVIL ACTIONS *(Rules 62 - 71)*

Nature of special civil actions

(1) Special civil actions are basically ordinary civil proceedings; what makes them special are the distinct peculiarities inherent in their very nature not found in ordinary civil actions. In *De Fiesta vs. Llorente, 25 Phil. 544*, the Supreme Court observed that partition of real estate , quo warranto, certiorari, prohibition and mandamus, eminent domain (expropriation) and foreclosure of mortgage are actions in themselves, but possessing special matters that required special procedures. For this reason, these proceedings are classified as special civil actions.

(2) Sec. 1, Rule 62 provides that rules provided for ordinary civil actions are applicable in special civil proceedings, which are not inconsistent with or may serve to supplement the provisions of the rules relating to such special civil actions.

Ordinary civil actions versus special civil actions

(1) Although both types of actions are governed by the rules for ordinary civil actions, there are certain rules that are applicable only to specific special civil actions *(Sec. 3[a], Rule 1)*. The fact that an action is subject to special rules other than those applicable to ordinary civil actions is what makes a civil action special.

(2) An ordinary civil action must be based on a cause of action *(Sec. 1, Rule 2)*. This means that the defendant must have performed an act or omitted to do an act in violation of the rights of another *(Sec. 2, Rule 2)*. These definitions do not fit the requirements of a cause of action in certain special civil actions. The cause of action as defined and required of an ordinary civil action finds no application to the special civil action of declaratory relief. It finds no application also in a complaint for interpleader. In this action, the plaintiff may file a complaint even if he has sustained no actual transgression of his rights. In fact, he actually has no interest in the subject matter of the action. This is not so in an ordinary civil action.

(3) Ordinary civil actions may be filed initially in either the MTC or the RTC depending upon the jurisdictional amount or the nature of the action involved. On the other hand, there are special civil actions which can only be filed in an MTC like the actions for forcible entry and unlawful detainer. There are also special civil actions which cannot be commenced in the MTC, foremost of which are the petitions for *certiorari*, prohibition, and *mandamus*.

(4) The venue in ordinary civil actions is determined by either the residence of the parties where the action is personal or by the location of the property where the action is real. This dichotomy does not always apply to a special civil action. For instance, the venue in a petition for *quo warranto* is where the Supreme Court or the Court of Appeals sits if the petition is commenced in any of these courts and without taking into consideration where the parties reside. It is only when the petition is lodged with the RTC that the residence is considered in venue analysis. While in ordinary civil actions the residences of both the plaintiff and the defendant are factored in the determination, a petition for *quo warranto* filed with the RTC merely looks into the residence of the respondent, not that of the petitioner. But if it is the Solicitor General who commences the action, another special rule is followed because the petition may only be commenced in the RTC in Manila, in the Court of Appeals or in the Supreme Court.

(5) While ordinary civil actions when filed are denominated as "complaints", some special civil actions are not denominated as such but "petitions".

(a) Special civil actions initiated by filing of a *Petition*:

1. Declaratory relief other than similar remedies *(Rule 63);*
2. Review of adjudication of the COMELEC and COA *(Rule 64);*
3. *Certiorari*, prohibition and *mandamus* *(R ule 65);*
4. *Quo warranto* *(Rule 66);* and
5. Contempt *(Rule 71)*

(b) Special civil actions initiated by filing of a *Complaint*:

1. Interpleader *(Rule 62);*
2. Expropriation (Rule 61);
3. Foreclosure of real estate mortgage *(Rule 68);*
4. Partition *(Rule 69);* and
5. Forcible entry and unlawful detainer *(Rule 70).*

Jurisdiction and venue

(1) The subject matter of a petition for declaratory relief raises issues which are not capable of pecuniary estimation and must be filed with the Regional Trial Court *(Sec. 19[1], BP 129; Sec. 1, Rule 63).* It would be error to file the petition with the Supreme Court which has no original jurisdiction to entertain a petition for declaratory relief *(Untied Residents of Dominican Hill vs. Commission on the Settlement of Land Problems, 353 SCRA 782; Ortega vs. Quezon City Government, 469 SCRA 388).*

Interpleader *(Rule 62)*

(1) Interpleader is a person who has property in his possession or an obligation to render, wholly or partially without claiming any right therein, or an interest in which in whole or in part is not disputed by the claimants, comes to court and asks that the persons who consider themselves entitled to demand compliance with the obligation be required to litigate among themselves in order to determine finally who is entitled to the same.

(2) Interpleader is a special civil action filed by a person against whom two conflicting claims are made upon the same subject matter and over which he claims no interest, to compel the claimants to interplead and to litigate their conflicting claims among themselves *(Sec. 1).*

Requisites for interpleader

(1) There must be two or more claimants with adverse or conflicting interests to a property in the custody or possession of the plaintiff;

(2) The plaintiff in an action for interpleader has no claim upon the subject matter of the adverse claims or if he has an interest at all, such interest is not disputed by the claimants;

(3) The subject matter of the adverse claims must be one and the same; and

(4) The parties impleaded must make effective claims.

When to file

(1) Whenever conflicting claims upon the same subject matter are or may be made against a person who claims no interest whatever in the subject matter, or an interest which in whole or in part is not disputed by the claimants, he may bring an action against the conflicting claimants to compel them to interplead and litigate their several claims among themselves *(Sec. 1)*.

Declaratory Reliefs and Similar Remedies *(Rule 63)*

(1) An action for declaratory relief is brought to secure an authoritative statement of the rights and obligations of the parties under a contract or a statute for their guidance in the enforcement or compliance with the same *(Meralco vs. Philippine Consumers Foundation, 374 SCRA 262)*. Thus, the purpose is to seek for a judicial interpretation of an instrument or for a judicial declaration of a person's rights under a statute and not to ask for affirmative reliefs like injunction, damages or any other relief beyond the purpose of the petition as declared under the Rules.

(2) The subject matter in a petition for declaratory relief is any of the following:

(a) Deed;
(b) Will;
(c) Contract or other written instrument;
(d) Statute;
(e) Executive order or regulation;
(f) Ordinance; or
(g) Any other governmental regulation *(Sec. 1)*.

(3) The petition for declaratory relief is filed before there occurs any breach or violation of the deed, contract, statute, ordinance or executive order or regulation. It will not prosper when brought after a contract or a statute has already been breached or violated. If there has already been a breach, the appropriate ordinary civil action and not declaratory relief should be filed.

(4) Declaratory relief is not proper in following cases:

(a) Citizenship
(b) Abstract, hypothetical question
(c) Hereditary rights
(d) Based on contingent event
(e) No administrative remedy has been exhausted
(f) Pretends to be declaratory relief
(g) Third-party complaint

(5) Declaratory relief is defined as an action by any person interested in a deed, will, contract or other written instrument, executive order or resolution, to determine any question of construction or validity arising from the instrument, executive order or regulation, or statute; and for a declaration of his rights and duties thereunder. The only issue that may be raised in such a petition is the question of construction or validity of provisions in an instrument or statute. As such, in the same manner that court decisions cannot be the proper subjects of such petition, decisions of quasi-judicial agencies cannot also be its subject for the simple reason that if a party is not agreeable to a decision either on questions of law or of fact, it may avail of the various remedies provided by the Rules of Court. In view of the foregoing, the decision of the BSP Monetary Board, in the exercise

of its quasi-judicial powers or functions, cannot be a proper subject matter for such petition *(Monetary Board vs. Philippine Veterans Bank, GR No. 189571, 01/21/2015).*

Who may file the action

(1) Any person interested under a deed, will, contract or other written instrument or whose rights are affected by a statute, executive order or regulation, ordinance or other governmental regulation may before breach or violation thereof, bring an action in the RTC to determine any question of construction or validity arising and for a declaration of his rights or duties, thereunder *(Sec. 1).*

(2) Those who may sue under the contract should be those with interest under the contract like the parties, the assignees and the heirs as required by substantive law *(Art. 1311, Civil Code).*

(3) If it be a statute, executive order, regulation or ordinance, the petitioner is one whose rights are affected by the same *(Sec. 1, Rule 63).* The other parties are all persons who have or claim any interest which would be affected by the declaration. The rights of person not made parties to the action do not stand to be prejudiced by the declaration *(Sec. 2).*

Requisites of action for declaratory relief

(1) The subject matter must be a deed, will, contract or other written instrument, statute, executive order or regulation or ordinance;

(2) The terms of said document or the validity thereof are doubtful and require judicial construction;

(3) There must have been no breach of said document;

(4) There must be actual justiciable controversy or the ripening seeds of one(there is threatened litigation the immediate future); there must be allegation of any threatened, imminent and inevitable violation of petitioner's right sought to be prevented by the declaratory relief sought;

(5) The controversy is between persons whose interests are adverse;

(6) The issue must be ripe for judicial determination e.g. administrative remedies already exhausted;

(7) The party seeking the relief has legal interest in the controversy; and

(8) Adequate relief is not available thru other means.

Stated otherwise, the requisites are:

(a) There must be a justiciable controversy;
(b) The controversy must be between persons whose interests are adverse;
(c) The party seeking the relief must have legal interest in the controversy; and
(d) The issue is ripe for judicial determination *(Republic vs. Orbecido III, 472 SCRA 114).*

When court may refuse to make judicial declaration

(1) Grounds for the court to refuse to exercise declaratory relief;

(a) A decision would not terminate the uncertainty or controversy which gave rise to the action; or

(b) The declaration or construction is not necessary and proper under the circumstances as when the instrument or the statute has already been breached *(Sec. 5)*.

(2) In declaratory relief, the court is given the discretion to act or not to act on the petition. It may therefore choose not to construe the instrument sought to be construed or could refrain from declaring the rights of the petitioner under the deed or the law. A refusal of the court to declare rights or construe an instrument is actually the functional equivalent of the dismissal of the petition.

(3) On the other hand, the court does not have the discretion to refuse to act with respect to actions described as similar remedies. Thus, in an action for reformation of an instrument, to quiet or to consolidate ownership, the court cannot refuse to render a judgment *(Sec. 5)*.

Conversion to ordinary action

(1) If before final termination of the case, a breach should take place, the action may be converted into ordinary action to avoid multiplicity of suits *(Republic vs. Orbecido, G.R. No. 154380, 10/05/2005)*.

(2) Ordinary civil action – plaintiff alleges that his right has been violated by the defendant; judgment rendered is coercive in character; a writ of execution may be executed against the defeated party.

(3) Special civil action of declaratory relief – an impending violation is sufficient to file a declaratory relief; no execution may be issued; the court merely makes a declaration.

Proceedings considered as similar remedies

(1) Similar remedies are:
(a) Action for reformation of an instrument;
(b) Action for quieting of title; and
(c) Action to consolidate ownership *(Art. 1607, Civil Code)*.

Reformation of an instrument

(1) It is not an action brought to reform a contract but to reform the instrument evidencing the contract. It presupposes that there is nothing wrong with the contract itself because there is a meeting of minds between the parties. The contract is to be reformed because despite the meeting of minds of the parties as to the object and cause of the contract, the instrument which is supposed to embody the agreement of the parties does not reflect their true agreement by reason of mistake, inequitable conduct or accident. The action is brought so the true intention of the parties may be expressed in the instrument *(Art. 1359, CC)*.

(2) The instrument may be reformed if it does not express the true intention of the parties because of lack of skill of the person drafting the instrument *(Art. 1363, CC)*. If the parties agree upon the mortgage or pledge of property, but the instrument states that the property is sold absolutely or with a right of repurchase, reformation of the instrument is proper *(Art. 1365, CC)*.

(3) Where the consent of a party to a contract has been procured by fraud, inequitable conduct or accident, and an instrument was executed by the parties in accordance with the contract, what is defective is the contract itself because of vitiation of consent. The

remedy is not to bring an action for reformation of the instrument but to file an action for annulment of the contract *(Art. 1359, CC)*.

(4) Reformation of the instrument cannot be brought to reform any of the following:
   (a) Simple donation *inter vivos* wherein no condition is imposed;
   (b) Wills; or
   (c) When the agreement is void *(Art. 1666, CC)*.

Consolidation of ownership

(1) The concept of consolidation of ownership under Art. 1607, Civil Code, has its origin in the substantive provisions of the law on sales. Under the law, a contract of sale may be extinguished either by legal redemption *(Art. 1619)* or conventional redemption *(Art. 1601)*. Legal redemption *(retracto legal)* is a statutorily mandated redemption of a property previously sold. For instance, a co-owner of a property may exercise the right of redemption in case the shares of all the other co-owners or any of them are sold to a third person *(Art. 1620)*. The owners of adjoining lands shall have the right of redemption when a piece of rural land with a size of one hectare or less is alienated *(Art. 1621)*. Conventional redemption (pacto de retro) sale is one that is not mandated by the statute but one which takes place because of the stipulation of the parties to the sale. The period of redemption may be fixed by the parties in which case the period cannot exceed ten (10) years from the date of the contract. In the absence of any agreement, the redemption period shall be four (4) years from the date of the contract *(Art. 1606)*. When the redemption is not made within the period agreed upon, in case the subject matter of the sale is a real property, Art. 1607 provides that the consolidation of ownership in the vendee shall not be recorded in the Registry of Property without a judicial order, after the vendor has been duly heard.

(2) The action brought to consolidate ownership is not for the purpose of consolidating the ownership of the property in the person of the vendee or buyer but for the registration of the property. The lapse of the redemption period without the seller a retro exercising his right of redemption, consolidates ownership or title upon the person of the vendee by operation of law. Art. 1607 requires the filing of the petition to consolidate ownership because the law precludes the registration of the consolidated title without judicial order *(Cruz vs. Leis, 327 SCRA 570)*.

Quieting of title to real property

(1) This action is brought to remove a cloud on title to real property or any interest therein. The action contemplates a situation where the instrument or a record is apparently valid or effective but is in truth and in fact invalid, ineffective, voidable or unenforceable, and may be prejudicial to said title to real property. This action is then brought to remove a cloud on title to real property or any interest therein. It may also be brought as a preventive remedy to prevent a cloud from being cast upon title to real property or any interest therein *(Art. 476)*.

(2) The plaintiff need not be in possession of the real property before he may bring the action as long as he can show that he has a legal or an equitable title to the property which is the subject matter of the action *(Art. 477)*.

(1) A judgment or final order or resolution of the Commission on Elections and the Commission on Audit may be brought by the aggrieved party to the Supreme Court on *certiorari* under Rule 65 *(Sec. 2)*. The filing of a petition for *certiorari* shall not stay the execution of the judgment or final order or resolution sought to be reviewed, unless the SC directs otherwise upon such terms as it may deem just *(Sec. 8)*. To prevent the execution of the judgment, the petitioner should obtain a temporary restraining order or a writ of preliminary injunction because the mere filing of a petition does not interrupt the course of the principal case.

(2) Decisions of the Civil Service Commission shall be appealed to the Court of Appeals which has exclusive appellate jurisdiction over all judgments or final orders of such Commission *(RA 7902)*.

(3) The petition shall be filed within thirty (30) days from notice of the judgment or final order or resolution sought to be reviewed. The filing of a motion for new trial or reconsideration of said judgment or final order or resolution, if allowed under the procedural rules of the Commission concerned, shall interrupt the period herein fixed. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of denial *(Sec. 3)*.

(4) Note that petition for review from decisions of quasi-judicial agencies to the CA should be within 15 days and does not stay the decision appealed. Petition for review from decisions of the RTC decided in its appellate jurisdiction filed to the CA should be filed within 15 days and stays execution, unless the case is under the rules of Summary Procedure. Special civil actions of certiorari, prohibition, and mandamus, from Comelec and COA should be filed within 30 days, and does not stay the decision appealed. The bottomline is that decisions of quasi-judicial bodies are not stayed by appeal alone. Decisions of regular courts are stayed on appeal. Although in petition for review on certiorari to the SC via Rule 45, there is no express provision on effect of appeal on execution.

(5) The "not less than 5 days" provision for filing a pleading applies only to:

   (a) filing an answer after a denial of a Motion to Dismiss *(Rule 12);*

   (b) filing an answer after denial or service of a Bill of Particulars *(Rule 12);*

   (c) filing an special civil action for Certiorari from a decision of the COMELEC or COA after denial of a Motion for Reconsideration or Motion for New Trial (R64). It does not apply to filing appeal from decisions of other entities after denial of a Motion for Reconsideration or Motion for New Trial. In such cases, either the parties have a fresh 15 days, or the balance.

(6) Section 5, Rule 64 of the Rules of Court requires that petitions for *certiorari* must be accompanied by a clearly legible duplicate original or certified true copies of such material portions of the record as referred to therein and other documents relevant and pertinent thereto *(Callang vs. Commission on Audit, GR No. 210683, 01/08/2019)*.

Application of Rule 65 under Rule 64

(1) Sec. 7, Art. IX-A of the Constitution reads, "unless otherwise provided by the Constitution or by law, any decision, order or ruling of each commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within 30 days from receipt of a copy thereof." The provision was interpreted by the Supreme Court to refer to certiorari under Rule 65 and not appeal by certiorari under Rule 45 *(Aratuc vs. COMELEC, 88 SCRA 251; Dario*

vs. Mison, 176 SCRA 84). To implement the above constitutional provision, the SC promulgated Rule 64.

Distinction in the application of Rule 65 to judgments of the COMELEC and COA and the application of Rule 65 to other tribunals, persons and officers

Rule 64	Rule 65
Directed only to the judgments, final orders or resolutions of the COMELEC and COA;	Directed to any tribunal, board or officers exercising judicial or quasi-judicial functions;
Filed within 30 days from notice of the judgment;	Filed within 60 days from notice of the judgment;
The filing of a motion for reconsideration or a motion for new trial if allowed, interrupts the period for the filing of the petition for certiorari. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than 5 days reckoned from the notice of denial.	The period within which to file the petition if the motion for reconsideration or new trial is denied, is another 60 days from notice of the denial of the motion.

Certiorari, Prohibition and *Mandamus* (Rule 65)

(1) *Certiorari* is a remedy for the correction of errors of jurisdiction, not errors of judgment. It is an original and independent action that was not part of the trial that had resulted in the rendition of the judgment or order complained of. More importantly, since the issue is jurisdiction, an original action for *certiorari* may be directed against an interlocutory order of the lower court prior to an appeal from the judgment *(New Frontier Sugar Corp. vs. RTC of Iloilo, GR 165001, 01/31/2007).*

(2) Where the error is not one of jurisdiction, but of law or fact which is a mistake of judgment, the proper remedy should be appeal. Hence, if there was no question of jurisdiction involved in the decision and what was being questioned was merely the findings in the decision of whether or not the practice of the other party constitutes a violation of the agreement, the matter is a proper subject of appeal, not *certiorari* *(Centro Escolar University Faculty and Allied Workers Union vs. CA, GR 165486, 05/31/2006).*

(3) Filing of petition for *certiorari* does not interrupt the course of the principal action nor the running of the reglementary periods involved in the proceeding, unless an application for a restraining order or a writ of preliminary injunction to the appellate court is granted *(Sec. 7).* Neither does it interrupt the reglementary period for the filing of an answer nor the course of the case where there is no writ of injunction *(People vs. Almendras, 401 SCRA 555).*

(4) In a summary proceeding, petitions for *certiorari*, prohibition or *mandamus* against an interlocutory order of the court are not allowed *(Sec. 19, RRSP).*

(5) Certiorari is not and cannot be made a substitute for an appeal where the latter remedy is available but was lost through fault or negligence. The remedy to obtain a reversal of judgment on the merits is appeal. This holds true even if the error ascribed to the lower court is its lack of jurisdiction over the subject matter, or the exercise of power in excess thereof, or grave abuse of discretion. The existence and availability of the right to appeal

prohibits the resort to *certiorari* because one of the requirements for *certiorari* is that there is no appeal *(Bugarin vs. Palisoc, GR 157985, 12/05/2005).*

(6) Exceptions to the rule that *certiorari* is not available when the period for appeal has lapsed and *certiorari* may still be invoked when appeal is lost are the following:

(a) Appeal was lost without the appellant's negligence;
(b) When public welfare and the advancement of public policy dictates;
(c) When the broader interest of justice so requires;
(d) When the writs issued are null and void; and
(e) When the questioned order amounts to an oppressive exercise of judicial authority *(Chua vs. CA, 344 SCRA 136).*

(7) The trial court's denial of the motion to dismiss is not a license to file a Rule 65 petition before the CA. An order denying a motion to dismiss cannot be the subject of a petition for certiorari as defendant still has an adequate remedy before the trial court – i.e., to file an answer and to subsequently appeal the case if he loses the case. As exceptions, it may avail of a petition for certiorari if the ground raised in the motion to dismiss is lack of jurisdiction over the person of the defendant or over the subject matter. Under the Rules of Court, entry of judgment may only be made if no appeal or motion for reconsideration was timely filed. In the proceedings before the CA, if a motion for reconsideration is timely filed by the proper party, execution of the CA's judgment or final resolution shall be stayed. This rule is applicable even to proceedings before the Supreme Court, as provided in Section 4, Rule 56 of the Rules of Court. In the present case, Tung Ho timely filed its motion for reconsideration with the CA and seasonably appealed the CA's rulings with the Court through the present petition (G.R. No. 182153). To now recognize the finality of the Resolution of Ting Guan petition (G.R. No. 176110) based on its entry of judgment and to allow it to foreclose the present meritorious petition of Tung Ho, would of course cause unfair and unjustified injury to Tung Ho *(Tung Ho Steel Enterprises Corp. vs. Ting Guan Trading Corp., GR No. 182153, 04/07/2014).*

(8) *Certiorari* generally lies only when there is no appeal nor any other plain, speedy or adequate remedy available to petitioners. Here, appeal was available. It was adequate to deal with any question whether of fact or of law, whether of error of jurisdiction or grave abuse of discretion or error of judgment which the trial court might have committed. But petitioners instead filed a special civil action for *certiorari.*

We have time and again reminded members of the bench and bar that a special civil action for *certiorari* under Rule 65 of the Revised Rules of Court lies only when "there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law." *Certiorari* cannot be allowed when a party to a case fails to appeal a judgment despite the availability of that remedy, *certiorari* not being a substitute for lost appeal.

As *certiorari* is not a substitute for lost appeal, we have repeatedly emphasized that the perfection of appeals in the manner and within the period permitted by law is not only mandatory but jurisdictional, and that the failure to perfect an appeal renders the decision of the trial court final and executory. This rule is founded upon the principle that the right to appeal is not part of due process of law but is a mere statutory privilege to be exercised only in the manner and in accordance with the provisions of the law. Neither can petitioner invoke the doctrine that rules of technicality must yield to the broader interest of substantial justice. While every litigant must be given the amplest opportunity for the proper and just determination of his cause, free from constraints of technicalities, the failure to perfect an appeal within the reglementary period is not a mere technicality. It raises a jurisdictional problem as it deprives the appellate court of jurisdiction over the appeal *(Magestrado vs. People, 554 Phil. 25 [2007] cited in HGL Development Corporation vs. Judge Penuela, GR No. 181353, 06/06/2016).*

(9) The municipality could have appealed the CA's verdict. Under Rule 45 of the Rules of Court, the proper remedy to reverse a judgment, final order, or resolution of the CA is to file a petition for review on *certiorari*, not a petition for *certiorari* under Rule 65.

Certiorari is an extraordinary *remedy of last resort;* it is only available **when there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law**. The availability of an appeal ***precludes*** immediate resort to *certiorari*, even if the ascribed error was lack or excess of jurisdiction or grave abuse of discretion. The municipality did not even bother to explain this glaring defect in its petition *(Municipality of Lista, Ifugao vs. Court of Appeals, GR No. 191442, 07/27/2016).*

(10) **2008 Bar**: Compare the certiorari jurisdiction of the Supreme Court under the Constitution with that under Rule 65 of the Rules of Civil Procedure. (4%)

Answer: The *certiorari* jurisdiction of the Supreme Court under the Constitution is the mode by which the Court exercises its expanded jurisdiction, allowing it to take corrective action through the exercise of its judicial power. Constitutional certiorari jurisdiction applies even if the decision was not rendered by a judicial or quasi-judicial body; hence, it is broader than the writ of certiorari under Rule 65, which is limited to cases involving a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government and there is no other plain and speedy remedy available to a party in the ordinary course of law.

(11) **2007 Bar**: L was charged with illegal possession of shabu before the RTC. Although bail was allowable under his indictment, he could not afford to post bail, and so he remained in detention at the City Jail. For various reasons ranging from the promotion of the Presiding Judge, to the absence of the trial prosecutor, and to the lack of notice to the City Jail Warden, the arraignment of L was postponed nineteen times over a period of two years. Twice during that period, L's counsel filed motions to dismiss, invoking the right of the accused to a speedy trial. Both motions were denied by the RTC. Can L file a petition for mandamus? Reason briefly.

Answer: Yes, L can file a petition for mandamus, invoking the right to speedy trial *(Rule 65, Section 3).* The numerous and unreasonable postponements displayed an abusive exercise of discretion *(Lumanlaw vs. Peralta, GR No. 164953, 02/13/2005).*

(12) **2006 Bar**: In 1996, Congress passed RA 8189, otherwise known as the Voter's Registration Act of 1996, providing for computerization of elections. Pursuant thereto, the COMELEC approved the Voter's Registration and Identification System (VRIS) Project. It issued invitations to pre-qualify and bid for the project. After the public bidding, Fotokina was declared and was issued a Notice of Award. But COMELEC Chairman Gener Go objected to the award on the ground that under the Appropriations Act, the budget for the COMELEC's modernization is only P1 billion. He announced to the public that the VRIS project has been set aside. Two Commissioners sided with Chairman Go, but the majority voted to uphold the contract.

Meanwhile, Fotokina filed with the RTC a petition for mandamus to compel the COMELEC to implement the contract. The Office of the Solicitor General (OSG), representing Chairman Go, opposed the petition on the ground that mandamus does not lie to enforce contractual obligations. During the proceedings, the majority of Commissioners filed a manifestation that Chairman Go was not authorized by the COMELEC En Banc to oppose the petition.

Is a petition for mandamus an appropriate remedy to enforce contractual obligations?

Answer: No, the petition for mandamus is not an appropriate remedy because it is not available to enforce a contractual obligation. Mandamus is directed only to ministerial acts, directing or commanding a person to do a legal duty *(COMELEC vs. Quijano-Ladlla, GR No. 151992, 09/18/2002).*

Definitions and distinctions

Certiorari	Prohibition	Mandamus
Certiorari is an extraordinary writ annulling or modifying the proceedings of a tribunal, board or officer exercising judicial or quasi-judicial functions when such tribunal, board or officer has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, there being no appeal or any other plain, speedy and adequate remedy in the ordinary course of law *(Sec. 1, Rule 65)*.	Prohibition is an extraordinary writ commanding a tribunal, corporation, board or person, whether exercising judicial, quasi-judicial or ministerial functions, to desist from further proceedings when said proceedings are without or in excess of its jurisdiction, or with abuse of its discretion, there being no appeal or any other plain, speedy and adequate remedy in the ordinary course of law *(Sec. 2, Rule 65)*.	Mandamus is an extraordinary writ commanding a tribunal, corporation, board or person, to do an act required to be done: (a) When he unlawfully neglects the performance of an act which the law specifically enjoins as a duty, and there is no other plain, speedy and adequate remedy in the ordinary course of law; or (b) When one unlawfully excludes another from the use and enjoyment of a right or office to which the other is entitled *(Sec. 3, Rule 65)*.
Directed against a person exercising judicial or quasi-judicial functions	Directed against a person exercising judicial or quasi-judicial functions, or ministerial functions	Directed against a person exercising ministerial duties
Object is to correct	Object is to prevent	Object is to compel
Purpose is to annul or modify the proceedings	Purpose is to stop the proceedings	Purpose is to compel performance of the act required and to collect damages
Person or entity must have acted without or in excess of jurisdiction, or with grave abuse of discretion	Person or entity must have acted without or in excess of jurisdiction, or with grave abuse of discretion	Person must have neglected a ministerial duty or excluded another from a right or office

Prohibition	Injunction
Always the main action	May be the main action or just a provisional remedy
Directed against a court, a tribunal exercising judicial or quasi-judicial functions	Directed against a party

Ground must be that the lower court acted without or in excess of jurisdiction	Does not involve a question of jurisdiction

Prohibition	Mandamus
To prevent an act to be done by a respondent	To compel to do an act desired
May be directed against entities exercising judicial or quasi-judicial, or ministerial functions	May be directed against judicial and non-judicial entities
Extends to discretionary functions	Extends only to ministerial functions

Mandamus	Quo warranto
Clarifies legal duties, not legal titles	Clarifies who has legal title to the office, or franchise
Respondent, without claiming any right to the office, excludes the petitioner	Respondent usurps the office

Requisites

Certiorari	Prohibition	Mandamus
That the petition is directed against a tribunal, board or officer exercising judicial or quasi-judicial functions;	The petition is directed against a tribunal, corporation, board or person exercising judicial, quasi-judicial, or ministerial functions;	The plaintiff has a clear legal right to the act demanded;
The tribunal, board or officer has acted without, or in excess of jurisdiction or with abuse of discretion amounting to lack or excess of jurisdiction	The tribunal, corporation, board or person must have acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction;	It must be the duty of the defendant to perform the act, which is ministerial and not discretionary, because the same is mandated by law;
There is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.	There is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.	There is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.
Accompanied by a certified true copy of the judgment or order subject of the petition, copies of all pleadings and documents relevant and pertinent thereto, and sworn certification of non-forum shopping under Rule 46.	Accompanied by a certified true copy of the judgment or order subject of the petition, copies of all pleadings and documents relevant and pertinent thereto, and sworn certification of non-forum shopping under Rule 46.	The defendant unlawfully neglects the performance of the duty enjoined by law;

When petition for *certiorari*, prohibition and *mandamus* is proper

Certiorari	Prohibition	Mandamus
When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require. The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46 *(Sec. 1, Rule 65)*.	When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require. The petition shall likewise be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46. *(Sec. 2, Rule 65)*.	When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent. The petition shall also contain a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46 *(Sec. 3, Rule 65)*.

(1) With respect to the Court, however, the remedies of certiorari and prohibition are necessarily broader in scope and reach, and the writ of certiorari or prohibition may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but also to set right,

undo and restrain any act or grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions. This application is expressly authorized by the text of the second paragraph of Section 1, Article VII of the 1987 Constitution. Thus, petitions for certiorari and prohibition are appropriate remedies to raise constitutional issues and to review and/or prohibit or nullify the acts of legislative and executive officials. Necessarily, in discharging its duty under [the Constitution] to set right and undo any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, the Court is not at all precluded from making the inquiry provided the challenge was properly brought by interested or affected parties. The Court has been thereby entrusted expressly or by necessary implication with both the duty and the obligation of determining, in appropriate cases, the validity of any assailed legislative or executive action. This entrustment is consistent with the Republican system of checks and balances *(Araullo vs. Aquino, GR No., 209287, 07/01/2014).*

(2) A Petition for Certiorari will prosper if the following rules will be observed: 1) the applicant must allege with certainty that there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law, or when any of those are present, allege facts showing that any existing remedy is impossible or unavailing, or that will excuse him for not having availed himself of such remedy; 2) he must also show that the party against whom it is being sought acted in grave abuse of discretion as to amount to lack of jurisdiction; and 3) the hierarchy of courts must be respected. However, it cannot be resorted to when then the lower court acquired jurisdiction over the case and the person of the petitioners for any perceived error in its interpretation of the law and its assessment of evidence would only be considered an error of judgment and not of jurisdiction. Hence, such is correctible by appeal and not by certiorari *(Candelaria vs. RTC-San Fernando Br. 42, GR No. 173861, 07/14/2014).*

(3) For *certiorari* to prosper, the following requisites must concur: (1) the writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions; (2) such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law. In this case, the Court finds no abuse of discretion, grave or simple in nature, committed by the CA in dismissing the petitioners' *certiorari* petition for being the wrong mode of appeal. The CA's dismissal of the *certiorari* petition is, in fact, well-supported by law and jurisprudence. The Court previously held that Rule 43 of the Rules of Court shall govern the procedure for judicial review of decisions, orders, or resolutions of the DAR Secretary, and that an appeal taken to the Supreme Court or the CA by the wrong or inappropriate mode shall be dismissed *(Heirs of Sobremonte vs. Court of Appeals, GR No. 206234, 10/22/2014).*

(4) The RTC issued a writ of execution to which respondent sheriff has reported that it has been fully implemented. Two years after, petitioner filed for another issuance of writ of execution which has been denied. Petitioner filed an action for mandamus to compel the RTC to issue such. The Court dismissed the petition. A writ of mandamus is employed to compel the performance, when refused, of a ministerial duty which is that which an officer or tribunal in obedience to the mandate of legal authority, without regard to or the exercise of his or its own judgment upon the propriety or impropriety of the act done. The writ of execution has already been implemented. The proper remedy is to cite the disobedient party in contempt *(Martinez vs. Judge Martin, GR No. 203022, 12/03/2014).*

(5) When petitioners, a Diocese and its Bishop posted tarpaulins in front of the cathedral which aimed to dissuade voters from electing candidates who supported the RH Law, and the COMELEC twice ordered the latter to dismantle the tarpaulin for violation of its regulation which imposed a size limit on campaign materials, the petitioners may directly file a Rule 65 Petition with the Supreme Court without need for a ruling from the

COMELEC En Banc, as the petitioners are not candidates in the elections but is asserting their right to free speech, and the COMELEC acts not in its quasi-judicial function but in its regulatory function. In addition, the doctrine of hierarchy of courts is not violated, as the case falls under the exceptions thereto. The petitioners also did not violate the principle of exhaustion of administrative remedies, as the same yields in order to protect this fundamental right. Even if it applies, the case falls under the exceptions to the doctrine; namely: it involves a legal question and the application of the doctrine would be unreasonable. Finally, the case is about COMELEC's breach of the petitioners' fundamental right of expression of matters relating to election. Such a violation is grave abuse of discretion; thus the constitutionality of COMELEC's orders are within the Supreme Court's power to review under Rule 65 *(Diocese of Bacolod vs. COMELEC, GR No. 205728, 01/21/2015).*

(6) As can be gleaned from both the Rules of Procedure of the Office of the Ombudsman and the Rules of Court, the respondent is required to be furnished a copy of the complaint and the supporting affidavits and documents. Clearly, these pertain to affidavits of the complainant and his witnesses, not the affidavits of the co-respondent. As such, no grave abuse of discretion can thus be attributed to the Ombudsman for the issuance of an order denying the request of the respondent to be furnished copies of counter-affidavits of his co-respondents. Also, as a general rule, a motion for reconsideration is mandatory before the filing of a petition for certiorari. Absent any compelling reason to justify non-compliance, a petition for certiorari will not lie. All the more, it will lie only if there is no appeal or any other plain, speedy and adequate remedy available in the ordinary course of law. Thus, a failure to avail of the opportunity to be heard due to the respondent's own fault cannot in any way be construed as a violation of due process by the Ombudsman, much less of grave abuse of discretion. Finally, a respondent's claim that his rights were violated cannot be given credence when he flouts the rules himself by resorting to simultaneous remedies by filing Petition for Certiorari alleging violation of due process by the Ombudsman even as his Motion for Reconsideration raising the very same issue remained pending with the Ombudsman *(Estrada vs. Bersamin, GR Nos. 212140-41, 01/21/2015).*

(7) The term "grave abuse of discretion" has a specific meaning. An act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." xx x [T]he use of a petition for *certiorari* is restricted only to "truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void" *(Yu vs. Judge Reyes-Carpio cited in Imperial v. Judge Armes, GR No. 178842; Cruz vs. Imperial, GR No. 195509, 01/30/2017).*

(8) A tribunal acts without jurisdiction if it does not have the legal power to determine the case; there is excess of jurisdiction where a tribunal, being clothed with the power to determine the case, oversteps its authority as determined by law. A void judgment or order has no legal and binding effect, force or efficacy for any purpose. In contemplation of law, it is nonexistent. Such judgment or order may be resisted in anyaction or proceeding whenever it is involved *(Guevarra vs. Sandiganbayan, Fourth Division cited in Imperial vs. Judge Armes, GR No. 178842; Cruz vs. Imperial, GR No. 195509, 01/30/2017).*

(9) The Constitution states that "[n]o person shall be deprived of life, liberty or property without due process of law x x x." It is a fundamental principle that no property shall be taken away from an individual without due process, whether substantive or procedural. The dispossession of property, or in this case the stoppage of the construction of a building in ' one's own property, would violate substantive due process.

The Rules on Civil Procedure are clear that mandamus only issues when there is a clear legal duty imposed upon the office or the officer sought to be compelled to perform an act, and when the party seeking mandamus has a clear legal right to the performance of such act.

In the present case, nowhere is it found in Ordinance No. 8119 or in any law, ordinance, or rule for that matter, that the construction of a building I outside the Rizal Park is

prohibited if the building is within the background sightline or view of the Rizal Monument. Thus, there is no legal duty on the part of the City of Manila "to consider," in the words of the Dissenting Opinion, "the standards set under Ordinance No. 8119" in relation to the application of DMCI-PDI for the Torre de Manila since under the ordinance these standards can never be applied outside the boundaries of Rizal Park. While the Rizal Park has been declared a National Historical Site, the area where Torre de Manila is being built is a privately-owned property that is "not part of the Rizal Park that has been declared as a National Heritage Site in 1995," and the Torre de Manila area is in fact "well-beyond" the Rizal Park, according to NHCP Chairperson Dr. Maria Serena I. Diokno. Neither has the area of the Torre de Manila been designated as a "heritage zone, a cultural property, a historical landmark or even a national treasure" *(Knights of Rizal vs. DMCI Homes, Inc., GR No. 213948, 04/25/2017).*

Injunctive relief

(1) The court in which the petition is filed may issue orders expediting the proceedings, and it may also grant a temporary restraining order or a writ of preliminary injunction for the preservation of the rights of the parties pending such proceedings. The petition shall not interrupt the course of the principal case unless a temporary restraining order or a writ of preliminary injunction has been issued against the public respondent from further proceeding in the case *(Sec. 7).*

(2) The public respondent shall proceed with the principal case within ten (10) days from the filing of a petition for *certiorari* with a higher court or tribunal, absent a Temporary Restraining Order (TRO) or a Writ of Preliminary Injunction, or upon its expiration. Failure of the public respondent to proceed with the principal case may be a ground for an administrative charge *(AM 07-7-12-SC, 12/12/2007).*

Certiorari distinguished from Appeal by *Certiorari*; Prohibition and *Mandamus* distinguished from Injunction; when and where to file petition

Certiorari* as a Mode of Appeal *(Rule 45)	***Certiorari* as a Special Civil Action *(Rule 65)***
Called Petition for Review on Certiorari, is a mode of appeal, which is but a continuation of the appellate process over the original case;	A special civil action that is an original action and not a mode of appeal, not a part of the appellate process but an independent original action.
Seeks to review final judgments or final orders;	May be directed against an interlocutory order of the court or where no appeal or plain or speedy remedy available in the ordinary course of law
Raises only questions of law;	Raises questions of jurisdiction because a tribunal, board or officer exercising judicial or quasi-judicial functions has acted without jurisdiction or in excess of jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction;
Filed within 15 days from notice of judgment or final order appealed from, or	Filed not later than 60 days from notice of judgment, order or resolution sought to be assailed and in case a motion for

of the denial of petitioner's motion for reconsideration or new trial;	reconsideration or new trial is timely filed, whether such motion is required or not, the 60 day period is counted from notice of denial of said motion;
Extension of 30 days may be granted for justifiable reasons	Extension no longer allowed;
Does not require a prior motion for reconsideration;	Motion for Reconsideration is a condition precedent, subject to exceptions
Stays the judgment appealed from;	Does not stay the judgment or order subject of the petition unless enjoined or restrained;
Parties are the original parties with the appealing party as the petitioner and the adverse party as the respondent without impleading the lower court or its judge;	The tribunal, board, officer exercising judicial or quasi-judicial functions is impleaded as respondent
Filed only with the Supreme Court	May be filed with the Supreme Court, Court of Appeals, Sandiganbayan, or Regional Trial Court, following the doctrine of hierarchy of courts
SC may deny the decision *motu proprio* on the ground that the appeal is (1) without merit, or is (2) prosecuted manifestly for delay, or that (3) the questions raised therein are too unsubstantial to require consideration.	May be denied on the ground of being (1) unmeritorious, (2) dilatory, or (3) unsubstantial

(1) The remedies of appeal and *certiorari* are mutually exclusive and not alternative or successive. The antithetic character of appeal and *certiorari* has been generally recognized and observed save only on those rare instances when appeal is satisfactorily shown to be an inadequate remedy. Thus, a petitioner must show valid reasons why the issues raised in his petition for *certiorari* could not have been raised on appeal *(Banco Filipino Savings and Mortgage Bank vs. CA, 334 SCRA 305).*

(2) After seeking relief from the Court of Appeals through the remedy of a petition for certiorari and prohibition under Rule 65 of the 1997 Rules of Civil Procedure, petitioners come to this Court through a petition for review on certiorari under Rule 45. The distinctions between Rule 65 and Rule 45 petitions have long been settled. A Rule 65 petition is an original action, independent of the action from which the assailed ruling arose. A Rule 45 petition, on the other hand, is a mode of appeal. As such, it is a continuation of the case subject of the appeal.

(3) As it is a mere continuation, a Rule 45 petition (apart from being limited to questions of law) cannot go beyond the issues that were subject of the original action giving rise to it. This is consistent with the basic precept that:

As a rule, no question will be entertained on appeal unless it has been raised in the court below. Points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as they cannot be raised for the first time at that late stage. Basic considerations of due process impel this rule *(DPWH vs. City Advertising Ventures Corp., GR No. 182944, 11/09/2016).*

(4) Thus, this is a classic case of resorting to the filing of a petition for *certiorari* when the remedy of an ordinary appeal can no longer be availed of. Jurisprudence is replete with the pronouncement that where appeal is available to the aggrieved party, the special civil

action of *certiorari* will not be entertained - remedies of appeal and *certiorari* are mutually exclusive, not alternative or successive. The proper remedy to obtain a reversal of judgment on the merits, final order or resolution is appeal. This holds true even if the error ascribed to the court rendering the judgment is its lack of jurisdiction over the subject matter, or the exercise of power in excess thereof, or grave abuse of discretion in the findings of fact or of law set out in the decision, order or resolution. The existence and availability of the right of appeal prohibits the resort to *certiorari* because one of the requirements for the latter remedy is the unavailability of appeal. Clearly, petitioner should have moved for the reconsideration of CSC Resolution No. 10-1438 containing the Commission's resolution as to the invalidity of his appointment and, thereafter, should have filed an appeal. Sadly, failing to do so, petitioner utilized the special civil action of *certiorari.* And to make matters worse, petitioner questioned, not the proper resolution of the CSC, but the mere letter-responses of the same Commission *(Cuevas vs. Macatangay, GR No. 208506, 02/22/2017).*

(5) Petitioners are gravely mistaken. The right to appeal is a mere statutory privilege and must be exercised only in the manner and in accordance with the provisions of the law. One who seeks to avail of the right to appeal must strictly comply with the requirement of the rules. Failure to do so leads to the loss of the right to appeal. The case before us calls for the application of the requirements of appeal under Rule 45, to wit:

> Sec. 2. *Time for filing; extension.* - The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Supreme Court may for justifiable reasons grant an extension of thirty (30) days only within which to file the petition.

Petitioners failed to comply with the foregoing provision. They confuse petitions for review on *certiorari* under Rule 45 with petitions for *certiorari* under Rule 65. It is the latter which is required to be filed within a period of not later than 60 days from notice of the judgment, order or resolution. If a motion for new trial or reconsideration is filed, the 60-day period shall be counted from notice of the denial of the motion. Sections 1 and 4 of Rule 65 read:

> Sec. 1. *Petition for certiorari.* - When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.
>
> The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.
>
> xxx
>
> Sec. 4. *When and where petition filed.* - The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion *(Nueva Ecija II Electric cooperative, Inc. vs. Mapagu, GR No. 196084, 02/15/2017).*

Prohibition and *Mandamus* distinguished from Injunction; When and where to file petition

Prohibition	Mandamus	Injunction
Prohibition is an extraordinary writ commanding a tribunal, corporation, board or person, whether exercising judicial, quasi-judicial or ministerial functions, to desist from further proceedings when said proceedings are without or in excess of its jurisdiction, or with abuse of its discretion, there being no appeal or any other plain, speedy and adequate remedy in the ordinary course of law *(Sec. 2, Rule 65)*.	Mandamus is an extraordinary writ commanding a tribunal, corporation, board or person, to do an act required to be done: (a) When he unlawfully neglects the performance of an act which the law specifically enjoins as a duty, and there is no other plain, speedy and adequate remedy in the ordinary course of law; or (b) When one unlawfully excludes another from the use and enjoyment of a right or office to which the other is entitled *(Sec. 3, Rule 65)*.	Main action for injunction seeks to enjoin the defendant from the commission or continuance of a specific act, or to compel a particular act in violation of the rights of the applicant. Preliminary injunction is a provisional remedy to preserve the status quo and prevent future wrongs in order to preserve and protect certain interests or rights during the pendency of an action.
Special civil action	Special civil action	Ordinary civil action
To prevent an encroachment, excess, usurpation or assumption of jurisdiction;	To compel the performance of a ministerial and legal duty;	For the defendant either to refrain from an act or to perform not necessarily a legal and ministerial duty;
May be directed against entities exercising judicial or quasi-judicial, or ministerial functions	May be directed against judicial and non-judicial entities	Directed against a party
Extends to discretionary functions	Extends only to ministerial functions	Does not necessarily extend to ministerial, discretionary or legal functions;
Always the main action	Always the main action	May be the main action or just a provisional remedy
May be brought in the Supreme Court, Court of Appeals, Sandiganbayan, or in the Regional Trial Court which has jurisdiction over the territorial area where respondent resides.	May be brought in the Supreme Court, Court of Appeals, Sandiganbayan, or in the Regional Trial Court which has jurisdiction over the territorial area where respondent resides.	May be brought in the Regional Trial Court which has jurisdiction over the territorial area where respondent resides.

Exceptions to filing of motion for reconsideration before filing petition

(1) The following constitutes the exceptions to the rule:
   (a) When the issue is one purely of law;
   (b) When there is urgency to decide upon the question and any further delay would prejudice the interests of the government or of the petitioner;
   (c) Where the subject matter of the action is perishable;
   (d) When order is a patent nullity, as where the court *a quo* has no jurisdiction or there was no due process;
   (e) When questions have been duly raised and passed upon by the lower court;
   (f) When there is urgent necessity for the resolution of the question;
   (g) When Motion for Reconsideration would be useless, e.g. the court already indicated it would deny any Motion for Reconsideration;
   (h) In a criminal case, where relief from order of arrest is urgent and the granting of such relief by the trial court is improbable;
   (i) Where the proceedings was *ex parte* or in which the petitioner had no opportunity to object;
   (j) When the petitioner is deprived of due process and there is extreme urgency for urgent relief; and
   (k) When the issue raised is one purely of law or when public interest is involved.

(2) The well-established rule is that the motion for reconsideration is an indispensable condition before an aggrieved party can resort to the special civil action for certiorari under Rule 65 of the Rules of Court. The rule is not absolute, however, considering that jurisprudence has laid down exceptions to the requirement for the filing of a petition for certiorari without first filing a motion for reconsideration, namely:

   (a) where the order is a patent nullity, as where the court a quo has no jurisdiction;
   (b) 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;
   (c) where there is an urgent necessity for the resolution of the question, and any further delay would prejudice the interests of the Government, or of the petitioner, or the subject matter of the petition is perishable;
   (d) where, under the circumstances, a motion for reconsideration would be useless;
   (e) where the petitioner was deprived of due process, and there is extreme urgency for relief;
   (f) 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;
   (g) where the proceedings in the lower court are a nullity for lack of due process;
   (h) where the proceeding was ex parte or in which the petitioner had no opportunity to object; and
   (i) where the issue raised is one purely of law or public interest is involved.

   A perusal of the circumstances of the case shows that none of the foregoing exceptions was applicable herein. Hence, Causing should have filed the motion for reconsideration, especially because there was nothing in the COMELEC Rules of Procedure that precluded the filing of the motion for reconsideration in election offense cases *(Causing v. COMELEC, GR No. 199139, 09/09/2014).*

Reliefs petitioner is entitled to

(1) The primary relief will be annulment or modification of the judgment, order or resolution or proceeding subject of the petition. It may also include such other incidental reliefs as

law and justice may require *(Sec. 1).* The court, in its judgment may also award damages and the execution of the award for damages or costs shall follow the procedure in Sec. 1, Rule 39 *(Sec. 9).*

Actions/Omissions of MTC/RTC in election cases

(1) Under Rule 65, the proper party who can file a petition for *certiorari*, prohibition or *mandamus* is the person aggrieved by the action of a trial court or tribunal in a criminal case pending before it. Ordinarily, the petition is filed in the name of the People of the Philippines by the Solicitor General. However, there are cases when such petition may be filed by other parties who have been aggrieved by the order or ruling of the trial courts. In the prosecution of election cases, the aggrieved party is the Comelec, who may file the petition in its name through its legal officer or through the Solicitor General if he agrees with the action of the Comelec *(Comelec vs. Silva, Jr., 286 SCRA 177 [1998]).*

When and where to file petition

Supreme Court	Subject to the doctrine of hierarchy of courts and only when compelling reasons exist for not filing the same with the lower courts
Court of Appeals only	If the petition involves an act or an omission of a quasi-judicial agency, unless otherwise provided by law or rules
Court of Appeals or the Sandiganbayan	Whether or not in aid of appellate jurisdiction
Commission on Elections	In election cases involving an act or an omission of an MTC or RTC
Court of Tax Appeals	In aid of its appellate jurisdiction
Regional Trial Court	If the petition relates to an act or an omission of an MTC, corporation, board, officer or person
As amended by AM No. 07-7-12-SC, Dec. 12, 2007	

(1) A petition for *certiorari* must be based on jurisdictional grounds because as long as the respondent acted with jurisdiction, any error committed by him or it in the exercise thereof will amount to nothing more than an error of judgment which may be reviewed or corrected by appeal *(Microsoft Corp. vs. Best Deal Computer Center Corp., GR No. 148029, 09/24/2002; Estrera vs. CA, GR No. 154235, 08/16/2006).*

(2) The petition for certiorari shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the petition shall be filed not later than sixty (60) days counted from the notice of the denial of the motion. However, the 60-day period may be extended under any of the circumstances. In the instant case, the Order of RTC was received by private complainants on 14 October 2010. Then the Petition for Certiorari was filed one day after the 60-day reglementary period for filing the Petition for Certiorari, since the letter evidencing that the OSG received the documents erroneously stated that the deadline for filing was 14 December 2010, instead of 13 December 2010. On 30 November 2010, counsel for private complainants submitted to the Office of the Prosecutor General the draft petition for certiorari, the verification and certification against

forum shopping, the original copies containing the signatures of the private prosecutors, and the certified copies of the annexes. These documents were received by the OSG on 3 December 2010 only. Given the circumstances, the Court holds that the CA-Cebu should have applied the rules liberally and excused the belated filing *(People v. Espinosa, GR No. 199070, 04/07//2014).*

(3) Under Section 4, Rule 65 of the Rules of Court, an aggrieved party has sixty (60) days from receipt of the assailed decision, order or resolution within which to file a petition for *certiorari*. Well-settled is the rule that if a litigant is represented by counsel, notices of all kinds, including court orders and decisions, must be served on said counsel, and notice to him is considered notice to his client *(Pagdanganan v. Sarmiento, GR No. 206555, 09/17/2014).*

Effects of filing of an unmeritorious petition

(1) The Court may impose *motu propio*, based on *res ipsa loquitur*, other disciplinary sanctions or measures on erring lawyers for patently dilatory and unmeritorious petition for *certiorari* *(AM 07-7-12-SC, Dec. 12, 2007).* The court may dismiss the petition if it finds the same patently without merit or prosecuted manifestly for delay, or if the questions raised therein are too unsubstantial to require consideration. In such event, the court may award in favor of the respondent treble costs solidarily against the petitioner and counsel, in addition to subjecting counsel to administrative sanctions under Rules 139 and 139-B.

Quo Warranto (Rule 66)

(1) *Quo warranto* is a demand made by the state upon some individual or corporation to show by what right they exercise some franchise or privilege appertaining to the state which, according to the Constitution and laws they cannot legally exercise by virtue of a grant and authority from the State *(44 Am. Jur. 88-89).*

(2) The term *"quo warranto"* is Latin for "by what authority." Therefore, as the name suggests, *quo warranto* is a writ of inquiry. It determines whether an individual has the legal right to hold the public office he or she occupies *(Becerra* cited in *Republic vs. Sereno, GR No. 237428, 05/11/2018).*

(3) It is a special civil action commenced by a verified petition against (a) a person who usurps a public office, position or franchise; (b) a public officer who performs an act constituting forfeiture of a public office; or (c) an association which acts as a corporation within the Philippines without being legally incorporated or without lawful authority to do so *(Sec. 1).*

(4) The remedy of *quo warranto* is vested in the people, and not in any private individual or group, because disputes over title to public office are viewed as a public question of governmental legitimacy and not merely a private quarrel among rival claimants.

Newman v. United States ex Rel. Frizzell (238 US 537 [1915], historically traced the nature of *quo warranto* proceedings as a crime which could only be prosecuted in the name of the King by his duly authorized law officers. In time, the criminal features of *quo warranto* proceedings were modified and as such, the writ came to be used as a means to determine which of two claimants was entitled to an office and to order the ouster and the payment of a fine against the usurper. This quasi-criminal nature of *quo warranto* proceedings was adopted in some American states. Nonetheless, *Newman* explains that the Code of the District of Colombia, which was the venue of the case, continues to treat

usurpation of office as a public wrong which can be corrected only by proceeding in the name of the government itself *(Republic vs. Sereno, GR No. 237428, 05/11/2018).*

(5) Section 5, Article VIII of the Constitution, in part, provides that the Supreme Court shall exercise original jurisdiction over petitions for *certiorari, prohibition, mandamus, quo warranto,* and *habeas corpus.* This Court, the Court of Appeals and the Regional Trial Courts have concurrent jurisdiction to issue the extraordinary writs, including *quo warranto.*

Relatedly, Section 7, Rule 66 of the Rules of Court provides that the venue of an action for *quo warranto,* when commenced by the Solicitor General, is either the Regional Trial Court in the City of Manila, in the Court of Appeals, or in the Supreme Court.

While the hierarchy of courts serves as a general determinant of the appropriate forum for petitions for the extraordinary writs, a direct invocation of the Supreme Court's original jurisdiction to issue such writs is allowed when there are special and important reasons therefor, clearly and specifically set out in the petition. 115 In the instant case, direct resort to the Court is justified considering that the action for *quo warranto* questions the qualification of no less than a Member of the Court. The issue of whether a person usurps, intrudes into, or unlawfully holds or exercises a public office is a matter of public concern over which the government takes special interest as it obviously cannot allow an intruder or impostor to occupy a public position *(Republic vs. Sereno, GR No. 237428, 05/11/2018).*

(6) The essence of *quo warranto* is to protect the body politic from the usurpation of public office and to ensure that government authority is entrusted only to qualified individuals. Reason therefore dictates that *quo warranto* should be an available remedy to question the legality of appointments especially of impeachable officers considering that they occupy some of the highest-ranking offices in the land and are capable of wielding vast power and influence on matters of law and policy.
Xxx

Nevertheless, the Court's assumption of jurisdiction over an action for *quo warranto* involving a person who would otherwise be an impeachable official had it not been for a disqualification, is not violative of the core constitut.ional provision that impeachment cases shall be exclusively tried and decided by the Senate.

Again, an action for *quo warranto* tests the right of a person to occupy a public position. It is a direct proceeding assailing the title to a public office. The issue to be resolved by the Court is whether or not the defendant is legally occupying a public position which goes into the questions of whether defendant was legally appointed, was legally qualified and has complete legal title to the office. If defendant is found to be not qualified and without any authority, the relief that the Court grants is the ouster and exclusion of the defendant from office. In other words, while impeachment concerns actions that make the officer unfit to continue exercising his or her office, *quo warranto* involves matters that render him or her ineligible to hold the position to begin with.

Given the nature and effect of an action for *quo warranto,* such remedy is unavailing to determine whether or not an official has committed misconduct in office nor is it the proper legal vehicle to evaluate the person's performance in the office. *Apropos,* an action for *quo warranto* does not try a person's culpability of an impeachment offense, neither does a writ of *quo warranto* conclusively pronounce such culpability *(Republic vs. Sereno, GR No. 237428, 05/11/2018).*

(7) The effect of a finding that a person appointed to an office is ineligible therefor is that his presumably valid appointment will give him color of title that confers on him the status of a *de facto* officer *(Regala vs. CFI of Bataan, 77 Phil. 684 [1946]).*

Tayko v. Capistrano (GR No. 30188, 10/02/1928) through Justice Ostrand, instructs:

> Briefly defined, a de facto judge is one who exercises the duties of a judicial office under color of an appointment or election thereto x x x.

He differs, on the one hand, from a mere usurper who undertakes to act officially without any color of right, and on the others hand, from a judge de jure who is in all respects legally appointed and qualified and whose term of office has not expired xx x. (Citations omitted)

For lack of a Constitutional qualification, respondent is ineligible to hold the position of Chief Justice and is merely holding a colorable right or title thereto. As such, respondent has never attained the status of an impeachable official and her removal from the office, other than by impeachment, is justified. The remedy, therefore, of a *quo warranto* at the instance of the State is proper to oust respondent from the appointive position of Chief Justice *(Republic vs. Sereno, GR No. 237428, 05/11/2018).*

(8) **2001 Bar**: Petitioner Faban was appointed Election Registrar of the Municipality of Sevilla supposedly to replace the respondent Election Registrar Pablo who was transferred to another municipality without his consent and who refused to accept his aforesaid transfer, much less to vacate his position in Bogo town as election registrar, as in fact he continued to occupy his aforesaid position and exercise his functions thereto. Petitioner Fabian then filed a petition for mandamus against Pablo but the trial court dismissed Fabian's petition contending that quo warranto is the proper remedy. Is the court correct in its ruling? Why? (5%)

Answer: Yes, the court is correct in its ruling. Mandamus will not lie. This remedy applies only not when it is doubtful. Pablo was transferred without his consent which is tantamount to removal without cause contrary to the fundamental guarantee on non-removal except for cause. Considering that Pedro continued to occupy the disputed position and exercise his functions therein, the proper remedy is quo warranto, not mandamus *(Garces v. Court of Appeals, 259 SCRA 99 [1996]).*

(9) **2001 Bar**: A group of businessmen formed an association in Cebu City clling itself Cars Co. to distribute/sell cars in said city. It did not incorporate itself under the law nor did it have any government permit or license to conduct its business as such. The Solicitor General filed before a Regional Trial Court (RTC) in Manila a verified petition for quo warranto questioning and seeking to stop the operation of Cars Co. The latter filed a motion to dismiss the petition on the ground of improper venue claiming that its main office and operations are in Cebu City and not in Manila. Is the contention of Cars Co. correct? Why? (5%)

Answer: No. As expressly provided in the Rules, when the Solicitor General commences the action quo warranto, it may be brought in a Regional Trial Court in the City of Manila, as in this case, in the Court of Appeals or in the Supreme Court *(Rule 66, Section 7).*

Distinguished from *Quo Warranto* in the Omnibus Election Code

Quo Warranto (Rule 66)	Quo Warranto (Election Code)
Subject of the petition is in relation to an appointive office;	Subject of the petition is in relation to an elective office;
The issue is the legality of the occupancy of the office by virtue of a legal appointment;	Grounds relied upon are: (a) ineligibility to the position; or (b) disloyalty to the Republic.
Petition is brought either to the Supreme Court, the Court of Appeals or the Regional Trial Court;	May be instituted with the COMELEC by any voter contesting the election qualification of any member of Congress, regional, provincial or city officer; or to the MeTC, MTC or MCTC if against any barangay official;

Filed within one (1) year from the time the cause of ouster, or the right of the petitioner to hold the office or position arose;	Filed within ten (10) days after the proclamation of the results of the election;
Petitioner is the person entitled to the office;	Petitioner may be any voter even if he is not entitled to the office;
The court has to declare who the person entitled to the office is if he is the petitioner.	When the tribunal declares the candidate-elect as ineligible, he will be unseated but the person occupying the second place will not be declared as the one duly elected because the law shall consider only the person who, having duly filed his certificate of candidacy, received a plurality of votes.

When government commence an action against individuals

(1) *Quo warranto* is commenced by a verified petition brought in the name of the Government of the Republic of the Philippines by the Solicitor General, or in some instances, by a public prosecutor *(Secs. 2 and 3)*. When the action is commenced by the Solicitor General, the petition may be brought in the Regional Trial Court of the City of Manila, the Court of Appeals or the Supreme Court *(Sec. 7)*.

(2) An action for the usurpation of a public office, position or franchise may be commenced by a verified petition brought in the name of the Republic of the Philippines thru the Solicitor General against:
   (a) A person who usurps, intrudes into, or unlawfully holds or exercises a public office, position or franchise;
   (b) A public officer who does or suffers an act which, by the provision of law, constitutes a ground for the forfeiture of his office;
   (c) An association which acts a corporation within the Philippines without being legally incorporated or without lawful authority so to act *(Sec. 1)*.

(3) *Prescription does not lie against the State.*

The rules on *quo warranto,* specifically Section 11, Rule 66, provides:

> *Limitations.* - Nothing contained in this Rule shall be construed to authorize an action against a public officer or employee for his ouster from office **unless the same be commenced within one (1) year after the cause of such ouster, or the right of the petitioner to hold such office or position, arose**; nor to authorize an action for damages in accordance with the provisions of the next preceding section unless the same be commenced within one (1) year after the entry of the judgment establishing the petitioner's right to the office in question. (Emphasis supplied)

Since the I 960's the Court had explained in ample jurisprudence the application of the one-year prescriptive period for filing an action for *quo warranto.*

In *Bumanlag v. Fernandez and Sec. of Justice, (110 Phil. 107, 111 [1960])* the Court held that the one-year period fixed in then Section 16, Rule 68 of the Rules of Court is a condition precedent to the existence of the cause of action for *quo warranto* and that the inaction of an officer for one year could be validly considered a waiver of his right to file the same.

Distinctively, the petitioners in these cited cases *(Madrid vs. Auditor General, 109 Phil. 578 [1960]; Torres vs. Quintos, 88 Phil. 436 [1951]); Cristobal vs. Melchor and Arcala, 168 Phil. 328 [1977])* were private individuals asserting their right of office, unlike the instant case where no private individual claims title to the Office of the Chief Justice. Instead, it is the

government itself which commenced the present petition for *quo warranto* and puts in issue the qualification of the person holding the highest position in the Judiciary.

Thµs, the question is whether the one-year limitation is equally applicable when the petitioner is not a mere private individual pursuing a private interest, but the government itself seeking relief for a public wrong and suing for public interest? *The answer is no (Republic vs. Sereno, GR No. 237 438, 05/11/2018).*

(4) Reference must necessarily be had to Section 2, Rule 66 which makes it *compulsory* for the Solicitor General to commence a *quo warranto* action:

> SEC. 2. When Solicitor General or public prosecutor must commence action. - The Solicitor General or a public prosecutor, when directed by the President of the Philippines, or when upon complaint or otherwise he has good reason to believe that any case specified in the preceding section can be established by proof **must** commence such action. (Emphasis supplied)

In other words, when the Solicitor General himself commences the *quo warranto* action either

(1) upon the President's directive,

(2) upon complaint, or

(3) when the Solicitor General has good reason to believe that there is proof that

(a) a person usurps, intrudes into, or unlawfully holds or exercises· a public office, position or franchise;

(b) a public officer does or suffers an act which is a ground for the forfeiture of his office; or

(c) an association acts as a corporation without being legally incorporated or without lawful authority so to act, he does so in the discharge of his task and mandate to see to it that the best interest of the public and the government are upheld.

In these three instances, the Solicitor General is mandated under the Rules to commence the necessary *quo warranto* petition.

That the present Rule 66 on *quo warranto* takes root from Act No. 160, which is a legislative act, does not give the one-year rule on prescription absolute application *(Republic vs. Sereno, GR No. 237 438, 05/11/2018).*

(5) Aptly, in *State ex rel Stovall v. Meneley, (271 Kan. 355, 372, 22 P.3d 124 [2001])* it was held that a *quo warranto* action is a governmental function and not a propriety function, and therefore the doctrine of laches does not apply:

> Governmental functions are those performed for the general public with respect to the common welfare for which no compensation or particular benefit is received. xxx **Quo warranto proceedings seeking ouster of a public official are a governmental function**. (Citations and annotations omitted) **No statute of limitations is, therefore, applicable**. The district court did not err in denying Meneley's motion to dismiss based on the statute of limitations. xxxx
>
> The doctrine of laches, furthermore, does not apply when a cause of action is brought by the State seeking to protect the public. (Citations and annotations omitted) xxx Having already noted that the quo warranto action is a governmental function and not a propriety function, we hold the district court did not err in denying Meneley's motion to dismiss on the basis of laches.

Indeed, when the government is the real party in interest, and is proceeding mainly to assert its rights, there can be no defense on the ground of laches or prescription *(Republic vs. CA, 253 Phil. 689 [1989]).* Indubitably, the basic principle that "prescription does not lie against the State" which finds textual basis under Article 1108 (4) of the Civil Code, applies in this case *(Republic vs. Sereno, GR No. 237 438, 05/11/2018).*

When individual may commence an action

(1) The petition may be commenced by a private person in his own name where he claims to be entitled to the public office or position alleged to have been usurped or unlawfully held or exercised by another *(Sec. 5)*. Accordingly, the private person may maintain the action without the intervention of the Solicitor General and without need for any leave of court *(Navarro vs. Gimenez, 10 Phil. 226; Cui vs. Cui, 60 Phil. 37)*. In bringing a petition for *quo warranto*, he must show that he has a clear right to the office allegedly being held by another *(Cuevas vs. Bacal, 347 SCRA 338)*. It is not enough that he merely asserts the right to be appointed to the office.

Judgment in *Quo Warranto* action

(1) When the respondent is found guilty of usurping, intruding into, or unlawfully holding or exercising a public office, position or franchise, judgment shall be rendered that such respondent be ousted and altogether excluded therefrom, and that the petitioner or relator, as the case may be, recover his costs. Such further judgment may be rendered determining the respective rights in and to the public office, position or franchise of the parties to the action as justice requires *(Sec. 9)*.

Rights of a person adjudged entitled to public office

(1) If the petitioner is adjudged to be entitled to the office, he may sue for damages against the alleged usurper within one (1) year from the entry of judgment establishing his right to the office in question *(Sec. 11)*.

Expropriation *(Rule 67)*

(1) Expropriation is an exercise of the State's power of eminent domain wherein the government takes a private property for public purpose upon payment of just compensation.

(2) **2016 Bar (Civil Law)**: The original landowners may reacquire the subject property because of the abandonment of the public use for which they were previously expropriated and pursuant to their original agreement of repurchase.

In expropriation proceedings, public usage of the property being expropriated is an essential element for the proceedings to be valid. If the genuine public necessity -- the very reason or condition as it were allowing, at the first instance, the expropriation of a private land ceases or disappears, then there is no more cogent point for the government's retention of the expropriated land *(Vda. De Ouano v. Republic, GR No. 168770, 02/09/2011)*.

(3) When the National Power Corporation filed an expropriation case and the same was subsequently dismissed due to failure to prosecute, it is as if no complaint for expropriation was filed. As a result the NPC is considered to have violated procedural requirements, and hence, waived the usual procedure prescribed in Rule 67, including the appointment of commissioners to ascertain just compensation. Thus, the RTC should have fixed the value of the property for the purposes of just compensation at the time

NPC took possession of the same in 1990, and not at the time of the filing of the complaint for compensation and damages in 1994 or its fair market value in 1995 *(National Power Corporation vs. Samar, GR No. 197329, 09/08/2014).*

(4) The determination of just compensation is a judicial function; hence, courts cannot be unduly restricted in their determination thereof. To do so would deprive the courts of their judicial prerogatives and reduce them to the bureaucratic function of inputting data and arriving at the valuation. While the courts should be mindful of the different formulae created by the DAR in arriving at just compensation, they are not strictly bound to adhere thereto if the situations before them do not warrant it. Thus, the RTC is advised that while it should be mindful of the different formulae created by the DAR in arriving at just compensation, it is not strictly bound to adhere thereto if the situations before it do not warrant their application *(Land Bank of the Philippines vs. Heirs of Jesus Alsua, GR No. 211351, 02/04/2015).*

(5) In the present case, NAPOCOR admits that the expropriation of the land in question is no longer necessary for public use. Had that admission been made in the trial court the case should have been dismissed there. It now appearing positively, by resolution of [NAPOCOR], that the expropriation is not necessary for public use, the action should be dismissed even without a motion... The moment it appears in whatever stage of the proceedings that the expropriation is not for a public use the complaint should be dismissed and all the parties thereto should be relieved from further annoyance or litigation *(Republic vs. Heirs of Saturnino Borbon, GR No. 165354, 01/12/2015).*

(6) **2006 Bar**: May Congress enact a law providing that a 5,000 square meter lot, a part of the UST compound in Sampaloc Manila, be expropriated for the construction of a park in honor of former City Mayor Arsenio Lacson? As compensation to UST, the City of Manila shall deliver its 5-hectare lot in Sta. Rosa, Laguna originally intended as a residential subdivision for the Manila City Hall employees. Explain. (5%)

Answer: Yes, Congress may enact a law expropriating property provided that it is for public use and with just compensation. In this case, the construction of a park is for public use. The planned compensation, however, is not legally tenable as the determination of just compensation is a judicial function. No statute, decree or executive order can mandate that the determination of just compensation by the executive or legislative departments can prevail over the court's findings *(Rule 67, Section 5 to 8).* In addition, compensation must be paid in money *(Reyes v. NHA, GR No. 147511, 03/24/2003).*

Matters to allege in complaint for expropriation

(1) An expropriation proceeding is commenced by the filing of a verified complaint which shall:
   (a) State with certainty the right of the plaintiff to expropriation and the purpose thereof;
   (b) Describe the real or personal property sought to be expropriated; and
   (c) Join as defendants all persons owning or claiming to own, or occupying, any part of the property or interest therein showing as far as practicable the interest of each defendant. If the plaintiff cannot with accuracy identify the real owners, averment to that effect must be made in the complaint *(Sec. 1).*

Two stages in every action for expropriation

(1) The two stages in an action for expropriation are:
   (a) Determination of the authority of the plaintiff to expropriate – this includes an inquiry into the propriety of the expropriation, its necessity and the public purpose. This stage

will end in the issuance of an order of expropriation if the court finds for the plaintiff or in the dismissal of the complaint if it finds otherwise.

(b) Determination of just compensation through the court-appointed commissioners *(National Power Corporation vs. Joson, 206 SCRA 520).*

(2) Under Rule 67 of the Rules of Court, expropriation proceedings are comprised of two stages: (1) the determination of the authority of the plaintiff to exercise the power of eminent domain and the propriety of its exercise in the context of the surrounding facts, and (2) the determination of the just compensation for the property sought to be taken. The first stage ends, if not in a dismissal of the action, with an order of condemnation declaring that the plaintiff has a lawful right to take the property sought to be condemned, for public use or purpose.

Pathfinder and Topanga contend that the trial court issued an Order of Condemnation of the properties without previously conducting a proper hearing for the reception of evidence of the parties. However, no hearing is actually required for the issuance of a writ of possession, which demands only two requirements: (a) the sufficiency in form and substance of the complaint, and (b) the required provisional deposit. The sufficiency in form and substance of the complaint for expropriation can be determined by the mere examination of the allegations of the complaint. Here, there is indeed a necessity for the taking of the subject properties as these would provide access towards the RORO port being constructed in the municipality. The construction of the new road will highly benefit the public as it will enable shippers and passengers to gain access to the port from the main public road or highway.

The requisites for authorizing immediate entry are the filing of a complaint for expropriation sufficient in form and substance, and the deposit of the amount equivalent to fifteen percent (15%) of the fair market value of the property to be expropriated based on its current tax declaration. Upon compliance with these requirements, the petitioner in an expropriation case is entitled to a writ of possession as a matter of right and the issuance of the writ becomes ministerial *(Municipality of Cordova, Cebu vs. Pathfinder Development Corporation, GR No. 205544, 06/29/2016).*

When plaintiff can immediately enter into possession of the real property, in relation to RA 8974

(1) Except for the acquisition of right-of-way, site or location for any national government infrastructure project through expropriation, the expropriator shall have the right to take or enter upon the possession of the real property involved if he deposits with the authorized government depositary an amount equivalent to the assessed value of the property for purposes of taxation to be held by such bank subject to the orders of the court. Such deposit shall be in money, unless in lieu thereof the court authorizes the deposit of a certificate of deposit of a government bank of the Philippines payable on demand to the authorized government depositary *(Sec. 2, Rule 67).*

New system of immediate payment of initial just compensation

(1) For the acquisition of right-of-way, site or location for any national government infrastructure project through expropriation, upon the filing of the complaint, and after due notice to the defendant, the implementing agency shall immediately pay the owner of the property the amount equivalent to the sum of (1) 100 percent of the value of the property based on the current relevant zonal valuation of the BIR; and (2) the value of the

improvements and/or structures as determined under Sec. 7 of RA 8974 *(Sec. 4, RA 8974)*. Deposit is fifteen percent (15%) of the fair market value *(Sec. 19, LGC)*.

Defenses and objections

(1) Omnibus Motion Rule – Subject to the provisions of Sec. 1, Rule 9, a motion attacking a pleading, order, judgment or proceeding shall include all objections then available, and all objections not so included shall be deemed waived *(Sec. 8, Rule 15)*.

(2) If a defendant has no objection or defense to the action or the taking of his property, he may file and serve a notice of appearance and a manifestation to that effect, specifically designating or identifying the property in which he claims to be interested, within the time stated in the summons. Thereafter, he shall be entitled to notice of all proceedings affecting the same.

If a defendant has any objection to the filing of or the allegations in the complaint, or any objection or defense to the taking of his property, he shall serve his answer within the time stated in the summons. The answer shall specifically designate or identify the property in which he claims to have an interest, state the nature and extent of the interest claimed, and adduce all his objections and defenses to the taking of his property. No counterclaim, cross-claim or third-party complaint shall be alleged or allowed in the answer or any subsequent pleading.

A defendant waives all defenses and objections not so alleged but the court, in the interest of justice, may permit amendments to the answer to be made not later than ten (10) days from the filing thereof. However, at the trial of the issue of just compensation, whether or not a defendant has previously appeared or answered, he may present evidence as to the amount of the compensation to be paid for his property, and he may share in the distribution of the award *(Sec. 3)*.

Order of Expropriation

(1) If the objections to and the defenses against the right of the plaintiff to expropriate the property are overruled, or when no party appears to defend as required by this Rule, the court may issue an order of expropriation declaring that the plaintiff has a lawful right to take the property sought to be expropriated, for the public use or purpose described in the complaint, upon the payment of just compensation to be determined as of the date of the taking of the property or the filing of the complaint, whichever came first.

A final order sustaining the right to expropriate the property may be appealed by any party aggrieved thereby. Such appeal, however, shall not prevent the court from determining the just compensation to be paid.

After the rendition of such an order, the plaintiff shall not be permitted to dismiss or discontinue the proceeding except on such terms as the court deems just and equitable *(Sec. 4)*.

Ascertainment of just compensation

(1) The order of expropriation merely declares that the plaintiff has the lawful right to expropriate the property but contains no ascertainment of the compensation to be paid to

the owner of the property. So upon the rendition of the order of expropriation, the court shall appoint not more than three (3) commissioners to ascertain the just compensation for the property. Objections to the appointment may be made within 10 days from service of the order of appointment *(Sec. 5)*. The commissioners are entitled to fees and their fees shall be taxed as part of the costs of the proceedings, and all costs shall be paid by the plaintiff except those costs of rival claimants litigating their claims *(Sec. 12)*.

(2) Where the principal issue is the determination of just compensation, a hearing before the commissioners is indispensable to allow the parties to present evidence on the issue of just compensation. Although the findings of the commissioners may be disregarded and the trial court may substitute its own estimate of the value, the latter may do so only for valid reasons, that is where the commissioners have applied illegal principles to the evidence submitted to them, where they have disregarded a clear preponderance of evidence, or where the amount allowed is either grossly inadequate or excessive.

(3) In a number of cases, such as *Land Bank of the Philippines vs. Hon. Natividad (497 Phil. 738 [2005]), Lubrica vs. Land Bank of the Philippines (537 Phil. 571 [2006]), Land Bank of the Philippines vs. Gallego, Jr. (596 Phil. 742 [2009]), Land Bank of the Philippines vs. Heirs of Maximo and Gloria Puyat (689 Phil. 505 [2012]), and.Land Bank of he Philippines vs. Santiago, Jr. (696 Phil. 142 [2012])*, we defitively ruled that when the agrarian reform process is still incomplete as the just compensation due the landowner ha.;; yet to be settled, just compensation should be determined, and the process concluded, under Section 17 of RA 6657, which contains the specific factors to be considered in ascertaining just compensation, *viz.:*

SECTION 17. *Determination of Just Compensation.* - In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, the assessment made by government assessors shall be considered. The social and economic benefits contributed by the fanners and the fannworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation *(Landbank vs. Spouses Steban and Chu, GR No. 192345, 03/29/2017)*.

(4) The undue delay of the petitioners to pay the just compensation brought about the basis for the grant of interest.

Apart from the requirement that compensation for expropriated land must be fair and reasonable, compensation, to be "just", must also be made without delay. Without prompt payment, compensation cannot be considered "just" if the property is immediately taken as the property owner suffers the immediate deprivation of both his land and its fruits or income.

Obviously, the delay in payment of just compensation occurred and cannot at all be disputed. The undisputed fact is that the respondents were deprived of their lands since 1989 and have not received a single centavo to date. The petitioners should not be allowed to exculpate itself from this delay and should suffer all the consequences the delay has caused.

The Court has already dealt with cases involving similar background and issues, that is, the government took control and possession of the subject properties for public use without initiating expropriation proceedings and without payment of just compensation, and the landowners failed for a long period of time to question such government act and later instituted actions to recover just compensation with damages.

Here, the records showed that the respondents fully cooperated with, the petitioners' road widening program, and allowed their landholdings to be taken by the petitioners without any questions. The present case therefore is not one where substantial conflict arose on the issue of whether, expropriation is proper; the respondents voluntarily submitted to

expropriation and surrendered their landholdings, and never contested the valuation that was made. Apparently, had the petitioners paid the just compensation on the subject land, there would have been no need for this case. But, as borne by the records, the petitioners refused to pay, telling instead that the subject land is beyond the commerce of man. Hence, the respondents have no choice but to file actions to claim what is justly due to them. Consequently, interest must be granted to the respondents.

The rationale for imposing the interest is to compensate the petitioners for the income they would have made had thel been properly compensated for their properties at the time of the taking. There is a need for prompt payment and the necessity of the payment of interest to compensate for any delay in the payment of compensation for property already taken *(Mayor Vergara vs. Grecia, GR No. 185638, 08/10/2016).*

Appointment of Commissioners; Commissioner's report; Court action upon commissioner's report

(1) **Appointment**. Upon the rendition of the order of expropriation, the court shall appoint not more than three (3) competent and disinterested persons as commissioners to ascertain and report to the court the just compensation for the property sought to be taken. The order of appointment shall designate the time and place of the first session of the hearing to be held by the commissioners and specify the time within which their report shall be submitted to the court.

Copies of the order shall be served on the parties. Objections to the appointment of any of the commissioners shall be filed with the court within ten (10) days from service, and shall be resolved within thirty (30) days after all the commissioners shall have received copies of the objections *(Sec. 5).*

(2) **Proceedings**. Before entering upon the performance of their duties, the commissioners shall take and subscribe an oath that they will faithfully perform their duties as commissioners, which oath shall be filed in court with the other proceedings in the case. Evidence may be introduced by either party before the commissioners who are authorized to administer oaths on hearings before them, and the commissioners shall, unless the parties consent to the contrary, after due notice to the parties to attend, view and examine the property sought to be expropriated and its surroundings, and may measure the same, after which either party may, by himself or counsel, argue the case. The commissioners shall assess the consequential damages to the property not taken and deduct from such consequential damages the consequential benefits to be derived by the owner from the public use or purpose of the property taken, the operation of its franchise by the corporation or the carrying on of the business of the corporation or person taking the property. But in no case shall the consequential benefits assessed exceed the consequential damages assessed, or the owner be deprived of the actual value of his property so taken *(Sec. 6).*

(3) **Report**. The court may order the commissioners to report when any particular portion of the real estate shall have been passed upon by them, and may render judgment upon such partial report, and direct the commissioners to proceed with their work as to subsequent portions of the property sought to be expropriated, and may from time to time so deal with such property. The commissioners shall make a full and accurate report to the court of all their proceedings, and such proceedings shall not be effectual until the court shall have accepted their report and rendered judgment in accordance with their recommendations. Except as otherwise expressly ordered by the court, such report shall be filed within sixty (60) days from the date the commissioners were notified of their appointment, which time may be extended in the discretion of the court. Upon the filing of such report, the clerk of the court shall serve copies thereof on all interested parties, with

notice that they are allowed ten (10) days within which to file objections to the findings of the report, if they so desire *(Sec. 7)*.

(4) **Action upon the report**. Upon the expiration of the period of ten (10) days referred to in the preceding section, or even before the expiration of such period but after all the interested parties have filed their objections to the report or their statement of agreement therewith, the court may, after hearing, accept the report and render judgment in accordance therewith; or, for cause shown, it may recommit the same to the commissioners for further report of facts; or it may set aside the report and appoint new commissioners; or it may accept the report in part and reject it in part; and it may make such order or render such judgment as shall secure to the plaintiff the property essential to the exercise of his right of expropriation, and to the defendant just compensation for the property so taken *(Sec. 8)*.

(5) The Regional Trial Court has the full discretion to make a binding decision on the value of the properties.

Under Rule 67, Section 8 of the Rules of Court, the Regional Trial Court may accept the Consolidated Commissioners' Report, recommit it to the same commissioners for further report, set it aside and appoint new commissioners, or accept only a part of it and reject the other parts.

Xxx The final decision on the value of just compensation lies solely on the Special Agrarian Court. Any attempt to convert its original jurisdiction into an appellate jurisdiction is contrary to the explicit provisions of the law.

Article III, Section 9 of the 1987 Constitution provides that "private property shall not be taken for public use without just compensation." This rings true for agrarian reform cases where private lands are taken by the State to be distributed to farmers who serve as beneficiaries of these lands.

The amount of just compensation must be determined based on the fair market value of the property at the time of the taking.

Xxx This Court's ruling in *Landbank vs. Lim, 555 Phil. 831 [2007]* is crucial: the Special Agrarian Court is "required to consider" the factors in Republic Act No. 6657 and the formula in the administrative issuances. This must be construed to mean that the Special Agrarian Court is legally mandated to take due consideration of these legislative and administrative guidelines to arrive at the amount of just compensation. Consideration of these guidelines, however, does *not* mean that these are the sole bases for arriving at the just compensation.

Xxx Thus, while Section 1 7 requires due consideration of the formula prescribed by DAR, the determination of just compensation is still subject to the final decision of the proper court *(Landbank of the Philippines vs. Manzano, GR No. 188243, 01/24/2018)*.

Rights of plaintiff upon judgment and payment

(1) After payment of the just compensation as determined in the judgment, the plaintiff shall have the right to enter upon the property expropriated and to appropriate the same for the public use or purpose defined in the judgment or to retain possession already previously made in accordance with Sec. 2, Rule 67.

(2) Title to the property expropriated passes from the owner to the expropriator upon full payment of just compensation *(Federated Realty Corp. vs. CA, 477 SCRA 707)*.

Effect of recording of judgment

(1) The judgment entered in expropriation proceedings shall state definitely, by an adequate description, the particular property or interest therein expropriated, and the nature of the public use or purpose for which it is expropriated. When real estate is expropriated, a certified copy of such judgment shall be recorded in the registry of deeds of the place in which the property is situated, and its effect shall be to vest in the plaintiff the title to the real estate so described for such public use or purpose *(Sec. 13).*

Foreclosure of Real Estate Mortgage *(Rule 68)*

(1) A real estate mortgage is an accessory contract executed by a debtor in favor of a creditor as security for the principal obligation. This principal obligation is a simple loan or *mutuum* described in Art. 1953, Civil Code. To be a real estate mortgage, the contract must be constituted on either immovables (real property) or inalienable real rights. If constituted on movables, the contract is a chattel mortgage *(Art. 2124, Civil Code).*

(2) A mortgage contract may have a provision in which the mortgage is a security for past, present and future indebtedness. This clause known as a ***Dragnet Clause*** or ***Blanket Mortgage Clause*** has its origins in American jurisprudence. The Supreme Court ruled that mortgages given to secure future advancements are valid and legal contracts *(Prudential Bank vs. Alviar, 464 SCRA 353).*

(3) The spouses mortgaged their property to PNB as security for their loan. Since they were unable to pay, it was foreclosed and PNB was the highest bidder. PNB filed for writ of possession which was held in abeyance by Judge Venadas, Sr. The Court ruled that the judge committed grave abuse of discretion. Once the one-year redemption period has lapsed from the foreclosure sale and once title is consolidated under the name of the purchaser, the issuance of the writ of possession becomes ministerial on the part of the court. The alleged invalidity of the sale of PNB to Atty. Garay is not a ground to defer the issuance of the Writ of Possession *(Sps. Sombilon vs. Atty. Garay, AM No. RTJ-06-200, 01/16/2014).*

(4) Under Section 33, Rule 39 of the Rules of Court, which is made applicable to extrajudicial foreclosures of real estate mortgages, the possession of the property shall be given to the purchaser or last redemptioner unless a third party is actually holding the property in a capacity adverse to the judgment obligor. It contemplates a situation in which a third party holds the property by adverse title or right, such as that of a co-owner, tenant or usufructuary, who possesses the property in his own right, and is not merely the successor or transferee of the right of possession of another co-owner or the owner of the property *(Cabling vs. Lumapas, GR No. 196950, 06/18/2014).*

(5) It is a well-established rule that the issuance of a writ of possession to a purchaser in a public auction is a ministerial function of the court, which cannot be enjoined or restrained, even by the filing of a civil case for the declaration of nullity of the foreclosure and consequent auction sale. Once title to the property has been consolidated in the buyer's name upon failure of the mortgagor to redeem the property within the one-year redemption period, the writ of possession becomes a matter of right belonging to the buyer. Its right to possession has then ripened into the right of a confirmed absolute owner and the issuance of the writ becomes a ministerial function that does not admit of the exercise of the court's discretion. Moreover, a petition for a writ of possession is ex parte and summary in nature. As one brought for the benefit of one party only and without notice by the court to any person adverse of interest, it is a judicial proceeding wherein relief is granted without giving the person against whom the relief is sought an opportunity to be

heard. Since the judge to whom the application for writ of possession is filed need not look into the validity of the mortgage or the manner of its foreclosure, it has been ruled that the ministerial duty of the trial court does not become discretionary upon the filing of a complaint questioning the mortgage *(Gopia vs. Metropolitan Bank and Trust Co., GR No. 188931, 07/28/2014).*

(6) Petitioner filed the instant petition questioning the decision of the CA holding that an ex-parte petition for the issuance of a writ of possession was not the proper remedy for the petitioner. The SC, though agreed with the CA, held that petitioner is not without recourse. The remedy of a writ of possession is a remedy that is available to a mortgagee-purchaser for him to acquire possession of the foreclosed property from the mortgagor. It is made available to a subsequent purchaser only after hearing and after determining that the subject property is still in the possession of the mortgagor. Unlike if the purchaser is the mortgagee or a third party during the redemption period, a writ of possession may issue ex-parte or without hearing. Thus, petitioner being a third party who acquired the property after the redemption period, a hearing must be conducted to determine whether possession over the subject property is still with the mortgagor. If the property is in the possession of the mortgagor, a writ of possession could thus be issued. Otherwise, the remedy of a writ of possession is no longer available to petitioner, but he can wrest possession over the property through an ordinary action of ejectment *(Okabe vs. Saturnino, GR No. 196040, 08/26/2014).*

(7) In *Maybank Philippines, Inc. v. Spouses Tarrosa (771 Phil. 423 [2015]),* the Court explained that the right to foreclose prescribes after ten (10) years from the time a demand for payment is made, or when then loan becomes due and demandable in cases where demand is unnecessary, *viz:*

> An action to enforce a right arising from a mortgage should be enforced within ten (10) years from the time the right of action accrues, *i.e.,* when the mortgagor defaults in the payment of his obligation to the mortgagee; otherwise, it will be barred by prescription and the mortgagee will lose his rights under the mortgage. However, mere delinquency in payment does not necessarily mean delay in the legal concept. To be in default is different from mere delay in the grammatical sense, because it involves the beginning of a special condition or status which has its own peculiar effects or results.
>
> In order that the debtor may be in default, it is necessary that: *(a)* the obligation be demandable and already liquidated; *(b)* the debtor delays performance; and *(c)* the creditor requires the performance judicially or extrajudicially, unless demand is not necessary - i.e., when there is an express stipulation to that effect; where the law so provides; when the period is the controlling motive or the principal inducement for the creation of the obligation; and where demand would be useless. Moreover, it is not sufficient that the law or obligation fixes a date for performance; it must further state expressly that after the period lapses, default will commence. Thus, it is only when demand to pay is unnecessary in case of the aforementioned circumstances, or when required, such demand is made and subsequently refused that the mortgagor can be considered in default and the mortgagee obtains the right to file an action to collect the debtor or foreclose the mortgage.

Thus, applying the pronouncements of the Court regarding prescription on the right to foreclose mortgages, the Court finds that the CA did not err in concluding that Mercene's complaint failed to state a cause of action. It is undisputed that his complaint merely stated the dates when the loan was contracted and when the mortgages were annotated on the title of the lot used as a security. Conspicuously lacking were allegations concerning: the maturity date of the loan contracted and whether demand was necessary under the terms and conditions of the loan *(Mercene vs. Government Service Insurance System, GR No. 192971, 01/10/2018).*

(1) **2000 Bar**: AB mortgage his property to CD. AB failed to pay his obligation and CD filed an action for foreclosure of mortgage. After trial, the court issued an Order granting CD's prayer for foreclosure of mortgage and ordering AB to pay CD the full amount of the mortgage debt including interest and other charges not later than 120 days from date of receipt of the order. AB received the order on August 10, 1999. No other proceeding took place thereafter. On December 20, 1999, AB tendered the full amount adjudged by the court to CD but the latter refused to accept it on the ground that the amount was tendered beyond the 120-day period granted by the court. AB filed a motion in the same court praying that CD be directed to receive the amount tendered by him on the ground that the order does not comply with the provisions of Section 2, Rule 68 of 6he Rules of Court which gives AB 120 days from entry of judgment, and not from date of receipt of the Order. The court had already become final and can n longer be amended to conform with Section 2, Rule 68. Aggrieved, AB files a petition for certiorari against the Court and CD. Will the petition for certiorari prosper? Explain. (5%)

Answer: Yes. The court erred in issuing an order granting CD's prayer for foreclosure and ordering AB to pay the CD the full amount of mortgage debt including interest and other charges not later than 120 days from receipt of the order. The court should have rendered a judgment which is appealable. Since no appeal was taken, the judgment became final on August 25, 1999, which is the date of entry of judgment *(Rule 36, Section 2)*. Hence, AB had up to December 24, 1999, within which to pay the amount due *(Rule 68, Section 2)*. The Court gravely abused its discretion amounting to lack or excess of jurisdiction in denying AB's motion to direct CS to receive the amount tendered.

(2) **2003 Bar**: A borrowed from the Development Bank of the Philippines (DBP) the amount of P1 million secured by the titled land of his friend B, who, however, dd not assume personal liability for the loan. A defaulted and DBP filed an action for judicial foreclosure of the real estate mortgage impleading A and B as defendants. In due course, the court rendered judgment directing A to pay the outstanding account of P1.5 million (principal plus interest) to the bank. No appeal was taken by A on the decision within the reglementary period. A failed to pay the judgment debt within the period specified in the decision. Consequently, the court ordered the foreclosure sale of the mortgaged land. In that foreclosure sale, the land was sold to the DBP for P1.2 million. The sale was subsequently confirmed by the court, and the confirmation of the sale was registered with the Registry of Deeds on 05 January 2002.

On January 10, 2002, the bank filed an ex parte motion with the court for the issuance of a writ of possession to oust B from the land. It also filed a deficiency claim for P800,000 against A and B. the deficiency claim was opposed by A and B.

Resolve the motion for the issuance of a writ of possession.

Answer: In judicial foreclosure by banks such as DBP, the Mortgagor or Debtor whose real property has been sold on foreclosure has the right to redeem the property sold within one year after the sale (or registration of the sale). However, the purchaser at the auction sale has the right to obtain a writ of possession after the finality of the order confirming the sale *(Rule 68, Section3; Section 47, RA 8791, The General Banking Law)*. The motion for writ of possession, however, cannot be filed ex parte. There must be a notice of hearing.

Judgment on foreclosure for payment or sale (stage 1)

(1) If after the trial, the court finds that the matters set forth in the complaint are true, it shall render a judgment containing the following matters:
   (a) An ascertainment of the amount due to the plaintiff upon the mortgage debt or obligation, including interest and other charges as approved by the court, as well as costs;

(b) A judgment of the sum found due;
(c) An order that the amount found due be paid to the court or to the judgment obligee within the period of not less than 90 days nor more than 120 days from the entry of judgment; and
(d) An admonition that in default of such payment the property shall be sold at public auction to satisfy the judgment *(Sec. 2)*.

(2) The judgment of the court on the above matters is considered a final adjudication of the case and hence, is subject to challenge by the aggrieved party by appeal or by other post-judgment remedies.

(3) The period granted to the mortgagor for the payment of the amount found due by the court is not just a procedural requirement but a substantive right given by law to the mortgagee as his first chance to save his property from final disposition at the foreclosure sale *(De Leon vs. Ibañez, 95 Phil. 119)*.

Sale of mortgaged property; effect (stage 2)

(1) The confirmation of the sale shall divest the rights in the property of all parties to the action and shall vest their rights in the purchaser, subject to such rights of redemption as may be allowed by law *(Sec. 3)*. The title vests in the purchaser upon a valid confirmation of the sale and retroacts to the date of sale *(Grimalt vs. Vasquez, 36 Phil. 396)*.

(2) The import of Sec. 3 includes one vital effect: The equity of redemption of the mortgagor or redemptioner is cut-off and there will be no further redemption, unless allowed by law (as in the case of banks as mortgagees). The equity of redemption starts from the ninety-day period set in the judgment of the court up to the time before the sale is confirmed by an order of the court. Once confirmed, no equity of redemption may further be exercised.

(3) The order of confirmation is appealable and if not appealed within the period for appeal becomes final. Upon the finality of the order of confirmation or upon the expiration of the period of redemption when allowed by law, the purchaser at the auction sale or last redemptioner, if any, shall be entitled to the possession of the property and he may secure a writ of possession, upon, motion, from the court which ordered the foreclosure unless a third party is actually holding the same adversely to the judgment obligor *(Sec. 3)*.

Disposition of proceeds of sale

(1) The proceeds of the sale of the mortgaged property shall, after deducting the costs of the sale, be paid to the person foreclosing the mortgage, and when there shall be any balance or residue after paying off the mortgage debt due, the same shall be paid to junior encumbrancers in the order of their priority. If there be any further balance after paying them or if there be no junior encumbrancers, the same shall be paid to the mortgagor or any person entitled thereto *(Sec. 4)*.

Instances when court cannot render deficiency judgment

(1) Where the debtor-mortgagor is a non-resident and who at the time of the filing of the action for foreclosure and during the pendency of the proceedings was outside the Philippines, it is believed that a deficiency judgment under Sec. 6 would not be procedurally feasible. A deficiency judgment is by nature *in personam* and jurisdiction

over the person is mandatory. Having been outside the country, jurisdiction over his person could not have been acquired.

Equity of redemption versus right of redemption

Equity of Redemption *(Rule 68)*	Right of Redemption *(Rule 39, Sec. 29-31)*
The right of defendant mortgagor to extinguish the mortgage and retain ownership of the property by paying the debt within 90 to 120 days after the entry of judgment or even after the foreclosure sale but prior to confirmation.	A right granted to a debtor mortgagor, his successor in interest or any judicial creditor or judgment creditor or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold to repurchase the property within one year even after the confirmation of the sale and even after the registration of the certificate of foreclosure sale.
May be exercised even after the foreclosure sale provided it is made before the sale is confirmed by order of the court.	There is no right of redemption in a judicial foreclosure of mortgage under Rule 68. This right of redemption exists only in extrajudicial foreclosures where there is always a right of redemption within one year from the date of sale *(Sec. 3, Act 3135)*, but interpreted by the Court to mean one year from the registration of the sale.
May also exist in favor of other encumbrances. If subsequent lien holders are not impleaded as parties in the foreclosure suit, the judgment in favor of the foreclosing mortgagee does not bind the other lien holders. In this case, their equity of redemption remains unforeclosed. A separate foreclosure proceeding has to be brought against them to require them to redeem from the first mortgagee or from the party acquiring the title to the mortgaged property.	General rule: In judicial foreclosures there is only an equity of redemption which can be exercised prior to the confirmation of the foreclosure sale. This means that after the foreclosure sale but before its confirmation, the mortgagor may exercise his right to pay the proceeds of the sale and prevent the confirmation of the sale.
If not by banks, the mortgagors merely have an equity of redemption, which is simply their right, as mortgagor, to extinguish the mortgage and retain ownership of the property by paying the secured debt prior to the confirmation of the foreclosure sale.	Exception: there is a right of redemption if the foreclosure is in favor of banks as mortgagees, whether the foreclosure be judicial or extrajudicial. This right of redemption is explicitly provided in Sec. 47 of the General Banking Law of 2000. While the law mentions the redemption period to be one year counted from the date of registration of the certificate in the Registry of Property

Deficiency judgment

(1) If there be a balance due to the plaintiff after applying the proceeds of the sale, the court, upon motion, shall render judgment against the defendant for any such balance. Execution may issue immediately if the balance is all due the plaintiff shall be entitled to

execution at such time as the remaining balance shall become due and such due date shall be stated in the judgment *(Sec. 6).* Note that the deficiency judgment is in itself a judgment hence, also appealable.

(2) No independent action need be filed to recover the deficiency from the mortgagor. The deficiency judgment shall be rendered upon motion of the mortgagee. The motion must be made only after the sale and after it is known that a deficiency exists. Before that, any court order to recover the deficiency is void *(Govt. of PI vs. Torralba, 61 Phil. 689).*

(3) It has been held that the mortgagor who is not the debtor and who merely executed the mortgage to secure the principal debtor's obligation, is not liable for the deficiency unless he assumed liability for the same in the contract *(Philippine Trust Co. vs. Echaus Tan Siua, 52 Phil. 852).* Since a deficiency judgment cannot be obtained against the mortgagor who is not the debtor in the principal obligation, mortgagee may have to file a separate suit against the principal debtor

Judicial foreclosure versus extrajudicial foreclosure

Extra-judicial Foreclosure *(Act 3135)*	Judicial foreclosure *(Rule 68)*
No complaint is filed;	Complaint is filed with the courts;
There is a right of redemption. Mortgagor has a right of redemption for 1 year from registration of the sale;	No right of redemption except when mortgagee is a banking institution; equity of redemption only (90 to 120 days, and any time before confirmation of foreclosure sale);
Mortgagee has to file a separate action to recover any deficiency;	Mortagee can move for deficiency judgment in the same action
Buyer at public auction becomes absolute owner only after finality of an action for consolidation of ownership;	Buyer at public auction becomes absolute owner only after confirmation of the sale;
Mortgagee is given a special power of attorney in the mortgage contract to foreclose the mortgaged property in case of default.	Mortgagee need not be given a special power of attorney.

Partition *(Rule 69)*

(1) Partition is the separation, division and assignment of a thing held in common among those to whom it may belong *(Cruz vs. CA, 456 SCRA 165).* It presupposes the existence of a co-ownership over a property between two or more persons. The rule allowing partition originates from a well-known principle embodied in the Civil Code that no co-owner shall be obliged to remain in the co-ownership. Because of this rule, he may demand at any time the partition of the property owned in common *(Art. 494).*

(2) Instances when a co-owner may not demand partition at any time:

(a) There is an agreement among the co-owners to keep the property undivided for a certain period of time but not exceeding ten years *(Art. 494)*;
(b) When partition is prohibited by the donor or testator for a period not exceeding 20 years *(Art. 494)*;
(c) When partition is prohibited by law *(Art. 494)*;

(d) When the property is not subject to a physical division and to do so would render it unserviceable for the use for which it is intended *(Art. 495)*;
(e) When the condition imposed upon voluntary heirs before they can demand partition has not yet been fulfilled *(Art. 1084)*.

(3) **2000 Bar**: Linda and spouses Arnulfo Regina Ceres were co-owners of a parcel of land. Linda died without any issue. Ten (10) persons headed by Jocelyn, claiming to be the collateral relatives of the deceased Linda, filed an action for partition with the RTC, praying for the segregation of Linda's one half share, submitting in support of their petition the baptismal certificates of seven of the petitioners, a family bible belonging to Linda in which the names of the petitioners have been entered, a photocopy of the birth certificate of Jocelyn and a certification of the local civil registrar that its office had been completely razed by fire. The spouses Ceres refuse to partition on the following grounds: (4) in the partition cases where filiation to the deceased is in dispute, prior and separate judicial declaration of heirship in a settlement of estate proceedings is necessary.

Answer: Declaration of heirship in a settlement proceeding is not necessary. It can be made in the ordinary action for partition wherein the heirs are exercising the right pertaining to the decedent, their predecessors-in-interest, to ask for partition as co-owners.

Who may file complaint; Who should be made defendants

(1) The action shall be brought by the person who has a right to compel the partition of real estate *(Sec. 1)* or of an estate composed of personal property, or both real and personal property *(Sec. 13)*. The plaintiff is a person who is supposed to be a co-owner of the property or estate sought to be partitioned. The defendants are all the co-owners. All the co-owners must be joined. Accordingly, an action will not lie without the joinder of all co-owners and other persons having interest in the property *(Reyes vs. Cordero, 46 Phil. 658)*. All the co-owners, therefore, are indispensable parties.

Matters to allege in the complaint for partition

(1) The plaintiff shall state in his complaint, the nature and extent of his title, an adequate description of the real estate of which partition is demanded, and shall join as defendants all other persons interested in the property *(Sec. 1)*. He must also include a demand for the accounting of the rents, profits and other income from the property which he may be entitled to *(Sec. 8)*. These cannot be demanded in another action because they are parts of the cause of action for partition. They will be barred if not set up in the same action pursuant to the rule against splitting a single cause of action.

Two (2) stages in every action for partition

(1) A reading of the Rules will reveal that there are actually three (3) stages in the action, each of which could be the subject of appeal: (a) the order of partition where the property of the partition is determined; (b) the judgment as to the accounting of the fruits and income of the property; and (c) the judgment of partition *(Riano, Civil Procedure (A Restatement for the Bar), 2007)*.

Order of partition and partition by agreement

(1) During the trial, the court shall determine whether or not the plaintiff is truly a co-owner of the property, that there is indeed a co-ownership among the parties, and that a partition is not legally proscribed thus may be allowed. If the court so finds that the facts are such that a partition would be in order, and that the plaintiff has a right to demand partition, the court will issue an order of partition.

(2) The court shall order the partition of the property among all the parties in interest, if after trial it finds that the plaintiff has the right to partition *(Sec. 2)*. It was held that this order of partition including an order directing an accounting is final and not interlocutory and hence, appealable; thus, revoking previous contrary rulings on the matter. A final order decreeing partition and accounting may be appealed by any party aggrieved thereby.

(3) Partition by agreement. The order of partition is one that directs the parties or co-owners to partition the property and the parties may make the partition among themselves by proper instruments of conveyance, if they agree among themselves. If they do agree, the court shall then confirm the partition so agreed upon by all of the parties, and such partition, together with the order of the court confirming the same, shall be recorded in the registry of deeds of the place in which the property is situated *(Sec. 2)*. There always exists the possibility that the co-owners are unable to agree on the partition. If they cannot partition the property among themselves, the next stage in the action will follow, the appointment of commissioners.

Partition by commissioners; Appointment of commissioners, Commissioner's report; Court action upon commissioner's report

(1) *Commissioners to make partition when parties fail to agree.* – If the parties are unable to agree upon the partition, the court shall appoint not more than three (3) competent and disinterested persons as commissioners to make the partition, commanding them to set off to the plaintiff and to each party in interest such part and proportion of the property as the court shall direct *(Sec. 3)*.

(2) *Oath and duties of commissioners.* – Before making such partition, the commissioners shall take and subscribe an oath that they will faithfully perform their duties as commissioners, which oath shall be filed in court with the other proceedings in the case. In making the partition, the commissioners shall view and examine the real estate, after due notice to the parties to attend at such view and examination, and shall hear the parties as to their preference in the portion of the property to be set apart to them and the comparative value thereof, and shall set apart the same to the parties in lots or parcels as will be most advantageous and equitable, having due regard to the improvements, situation and quality of the different parts thereof *(Sec.4)*.

(3) *Assignment or sale of real estate by commissioners.* – When it is made to appear to the commissioners that the real estate, or a portion thereof, cannot be divided without prejudice to the interests of the parties, the court may order it assigned to one of the parties willing to take the same, provided he pays to the other parties such amounts as the commissioners deem equitable, unless one of the interested parties asks that the property be sold instead of being so assigned, in which case the court shall order the commissioners to sell the real estate at public sale under such conditions and within such time as the court may determine *(Sec. 5)*.

(4) *Report of commissioners; proceedings not binding until confirmed.* – The commissioners shall make a full and accurate report to the court of all their proceedings as to the partition,

or the assignment of real estate to one of the parties, or the sale of the same. Upon the filing of such report, the clerk of court shall serve copies thereof on all the interested parties with notice that they are allowed ten (10) days within which to file objections to the findings of the report, if they so desire. No proceeding had before or conducted by the commissioners shall pass the title to the property or bind the parties until the court shall have accepted the report of the commissioners and rendered judgment thereon *(Sec. 6)*.

(5) *Action of the court upon commissioners' report.* – Upon the expiration of the period of ten (10) days referred to in the preceding section, or even before the expiration of such period but after the interested parties have filed their objections to the report or their statement of agreement therewith, the court may, upon hearing, accept the report and render judgment in accordance therewith; or, for cause shown, recommit the same to the commissioners for further report of facts; or set aside the report and appoint new commissioners; or accept the report in part and reject it in part; and may make such order and render such judgment as shall effectuate a fair and just partition of the real estate, or of its value, if assigned or sold as above provided, between the several owners thereof *(Sec. 7)*.

Judgment and its effects

(1) The judgment shall state definitely, by metes and bounds and adequate description, the particular portion of the real estate assigned to each party, the effect of the judgment shall be to vest in each party to the action in severalty the portion of the real estate assigned to him.

(2) If the whole property is assigned to one of the parties upon his paying to the others the sum or sums ordered by the court, the judgment shall state the fact of such payment and of the assignment of the real estate to the party making the payment, and the effect of the judgment shall be to vest in the party making the payment the whole of the real estate free from any interest on the part of the other parties to the action.

(3) If the property is sold and the sale confirmed by the court, the judgment shall state the name of the purchaser or purchasers and a definite description of the parcels of real estate sold to each purchaser, and the effect of the judgment shall be to vest the real estate in the purchaser or purchasers making the payment or payments, free from the claims of any of the parties to the action.

(4) A certified copy of the judgment shall in either case be recorded in the registry of deeds of the place in which the real estate is situated, and the expenses of such recording shall be taxed as part of the costs of the action *(Sec. 11)*.

Partition of personal property

(1) The provisions of this Rule shall apply to partitions of estates composed of personal property, or of both real and personal property, insofar as the same may be applicable *(Sec. 13)*.

Prescription of action

(1) Prescription of action does not run in favor of a co-owner or co-heir against his co-owner or co-heirs as long as there is a recognition of the co-ownership expressly or impliedly *(Art. 494)*.

(2) The action for partition cannot be barred by prescription as long as the co-ownership exists *(Aguirre vs. CA, 421 SCRA 310)*.

(3) But while the action to demand partition of a co-owned property does not prescribe, a co-owner may acquire ownership thereof by prescription where there exists a clear repudiation of the co-ownership and the co-owners are apprised of the claim of adverse and exclusive ownership.

Forcible Entry and Unlawful Detainer *(Rule 70)*

Definitions and Distinction

Forcible Entry	Unlawful Detainer
The possession of the defendant is unlawful from the beginning; issue is which party has prior *de facto* possession;	The possession of the defendant, lawful from the beginning, becomes illegal by reason of the expiration or termination of his right to the possession of the property;
The law does not require previous demand for the defendant to vacate;	Plaintiff must first make such demand which is jurisdictional in nature;
The plaintiff must prove that he was in prior physical possession of the premises until he was deprived by the defendant; and	The plaintiff need not have been in prior physical possession;
The one year period is generally counted from the date of actual entry on the property.	The one-year period is counted from the date of last demand.

(1) The actions for forcible entry and unlawful detainer belong to the class of actions known by the generic name *accion interdictal* (ejectment) where the issue is the right of physical or material possession of the subject real property independent of any claim of ownership by the parties involved *(Mendoza vs. CA, 452 SCRA 117 [2005])*.

(2) *Accion Interdictal* comprises two distinct causes of action:

(a) Forcible entry *(detentacion)*, where one is deprived of physical possession of real property by means of force, intimidation, strategy, threats or stealth;

(b) Unlawful Detainer *(desahuico)*, where one illegally withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied.

(3) To justify an action for unlawful detainer, it is essential that the plaintiff's supposed acts of tolerance must have been present right from the start of the possession which is later sought to be recovered. Otherwise, if the possession was unlawful from the start, an action for unlawful detainer would be an improper remedy. In the instant case, the allegations in the complaint do not contain any averment of fact that would substantiate petitioners' claim that they permitted or tolerated the occupation of the property by respondents. The complaint contains only bare allegations that "respondents without any color of title whatsoever occupies the land in question by building their house in the said land thereby depriving petitioners the possession thereof." Nothing has been said on how respondents' entry was effected or how and when dispossession started *(Zacaria vs. Anacay, GR No. 202354, 09/24/2014)*.

(4) Section 1, Rule 70 of the Rules of Court, requires that in actions for forcible entry, it must be alleged that the complainant was deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, and that the action was filed anytime within one year from the time the unlawful deprivation of possession took place. As such, the complainant must allege and prove prior physical possession (in the concept of possession de facto, or actual or material possession and not one flowing out of ownership) of the property in litigation until he or she was deprived thereof by the defendant. In this regard, it has been settled that tax declarations and realty tax payments are not conclusive proofs of possession. They are merely good indicia of possession in the concept of owner based on the presumption that no one in one's right mind would be paying taxes for a property that is not in one's actual or constructive possession *(Dela Cruz vs. Sps. Antonio and Remedios Hermano, GR No. 160914, 03/25/2015).*

(5) Section 1, Rule 70 of the Revised Rules of Court, states that a person deprived of possession of land "by force, intimidation, threat, strategy, or stealth," or a person against whom the possession of any land "is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied," may at any time "within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession."

The Rule defines two entirely distinct causes of action, to wit: (a) action to recover possession founded on illegal occupation from the beginning - forcible entry; and (b) action founded on unlawful detention by a person who originally acquired possession lawfully – unlawful detainer.

The law and jurisprudence leave no doubt that what determines the cause of action is the nature of the defendants' entry into the land. If the entry is illegal, then the cause of action against the intruder is forcible entry. If, on the other hand, the entry is legal but thereafter possession becomes illegal, the cause of action is unlawful detainer. The latter must be filed within one year from the date of the last demand.

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In these lights, the Sps. Golez's possession should be deemed **illegal from the beginning** and the proper action which the respondents should have filed was one for forcible entry. An action for forcible entry, however, prescribes one year reckoned from the date of the defendant's actual entry into the land.

In the present case, the Sps. Golez entered the property immediately after the sale in 1976. Thus, their action for forcible entry had already prescribed.

Since the action for forcible entry has already prescribed, one of the remedies for the respondent heirs to recover the possession of Lot 1025 is *accion publiciana. Accion publiciana* is the plenary action to recover the right of possession which should be brought to the proper Regional Trial Court when dispossession has lasted for more than one year. It is an ordinary civil proceeding to determine the better right of possession of realty independently of title.

In other words, if at the time of the filing of the complaint more than one year had elapsed since the defendant had turned the plaintiff out of possession or the defendant's possession had become illegal, the action will be not one of forcible entry or unlawful detainer, but an *accion publiciana* *(Sps. Golez vs. Heirs of Domingo Bertulido, GR No. 201289, 05/30/2016).*

(6) **2008 Bar**: Ben sold a parcel of land to Del with right to repurchase within one (1) year. Ben remained in possession of the property. When Ben failed to repurchase the same, title was consolidated in favor of Del. Despite demand, Ben refused to vacate the land, constraining Del to file a complaint for unlawful detainer. In his defense, Ben averred that the case should be dismissed because Bel had never been in possession of the property. Is Ben correct (4%)

Answer: No. For unlawful detainer, the defendant need not have been in prior possession of the property. This is upon the theory that the vendee steps into the shoes of the vendor and succeeds to his rights and interest. In contemplation of law, the vendee's possession is that of vendor's *(Maninang v. Court of Appeals, GR No. 121719, 09/16/1999)*.

Distinguished from *accion publiciana* and *accion reinvindicatoria*

Accion Publiciana	*Accion Reivindicatoria*
A plenary ordinary civil action for the recovery of the better right of possession (juridical possession), must be filed after the expiration of one year from the accrual of the cause of action or from the unlawful withholding of possession of the realty. In other words, if at the time of the filing of the complaint more than one year had elapsed since defendant had turned plaintiff out of possession or defendant's possession had become illegal, the action will be not one of forcible entry or unlawful detainer but an *accion publiciana* *(Valdez vs, CA, GR 132424, 05/02/2006)*.	An action for the recovery of the exercise of ownership, particularly recovery of possession as an attribute or incident of ownership;
The basis of the recovery of possession is the plaintiff's real right of possession or *jus possessionis*, which is the right to the possession of the real property independent of ownership.	The basis for the recovery of possession is ownership itself.

(1) A boundary dispute must be resolved in the context of *accion reivindicatoria*, not an ejectment case. The boundary dispute is not about possession, but encroachment, that is, whether the property claimed by the defendant formed part of the plaintiff's property. A boundary dispute cannot be settled summarily under Rule 70 of the Rules of Court, the proceedings under which are limited to unlawful detainer and forcible entry. In unlawful detainer, the defendant unlawfully withholds the possession of the premises upon the expiration or termination of his right to hold such possession under any contract, express or implied. The defendant's possession was lawful at the beginning, becoming unlawful only because of the expiration or termination of his right of possession. In forcible entry, the possession of the defendant is illegal from the very beginning, and the issue centers on which between the plaintiff and the defendant had the prior possession *de facto* *(Manalang vs. Sps. Bacani, GR No. 156995, 01/12/2015)*.

How to determine jurisdiction in *accion publiciana* and *accion reinvindicatoria* and *accion interdictal*

(1) The actions of forcible entry and unlawful detainer are within the exclusive and original jurisdiction of the MTC, MeTC and MCTC *(Sec. 33[2], BP 129; RA 7691)* and shall be governed by the rules on summary procedure irrespective of the amount of damages or rental sought to be recovered *(Sec. 3, Rule 70)*.

(2) In actions for forcible entry, two allegations are mandatory for the MTC to acquire jurisdiction: (a) plaintiff must allege his prior physical possession of the property; and (b) he must also allege that he was deprived of his possession by force, intimidation, strategy,

threat or stealth. If the alleged dispossession did not occur by any of these means, the proper recourse is to file not an action for forcible entry but a plenary action to recover possession *(Benguet Corp. vs. Cordillera Caraballo Mission, GR 155343, 09/02/2005)*.

(3) Both actions must be brought within one year from the date of actual entry on the land, in case of forcible entry, and from the date of last demand, in case of unlawful detainer *(Valdez vs. CA, GR 132424, 05/02/2006)*.

(4) Jurisdiction is determined by the allegations of the complaint. The mere raising of the issue of tenancy does not automatically divest the court of jurisdiction because the jurisdiction of the court is determined by the allegations of the complaint and is not dependent upon the defenses set up by the defendant *(Marino, Jr. vs. Alamis, 450 SCRA 198 [2005])*.

(5) An allegation of tenancy before the MTC does not automatically deprive the court of its jurisdiction. The material averments in the complaint determine the jurisdiction of a court. A court does not lose jurisdiction over an ejectment suit by the simple expedient of a party raising as a defense therein the alleged existence of a tenancy relationship between the parties. The court continues to have the authority to hear and evaluate the evidence, precisely to determine whether or not it has jurisdiction, and, if, after hearing, tenancy is shown to exist, it shall dismiss the case for lack of jurisdiction *(Ofilada vs. Sps. Ruben and Miraflor Andal, GR No. 192270, 01/26/2015)*.

(6) The subject of the action is for unlawful detainer, thus cognizable by a first level court or the Municipal Trial Court (MTC). Since the case was filed with the RTC, a second level court, the RTC's decision is void for lack of jurisdiction over the case. The proceedings before a court without jurisdiction, including its decision, are null and void. It then follows that the appeal brought before the appellate court, as well as the decisions or resolutions promulgated in accordance with said appeal, is without force and effect *(Tagalog vs. Vda. De Gonzales, GR No. 201286, 07/18/2014)*.

(7) In our jurisdiction, there are three kinds of action for recovery of possession of real property: 1) ejectment (either for un]awful detainer or forcible entry) in case the dispossession has lasted for not more than a year; 2) *accion publiciana* or a plenary action for recovery of real right of possession when dispossession has lasted for more than one year; and, 3) *accion reinvindicatoria* or an action for recovery of ownership.

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Jurisdiction is thus determined not only by the type of action filed but also by the assessed value of the property. It follows that in *accion publiciana* and *reinvindicatoria,* the assessed value of the real property is a jurisdictional element to determine the court that can take cognizance of the action.

In the instant case, respondents only averred in the Complaint that they are registered owners of the subject properties, and petitioner unlawfully deprived them of its possession. They did not assert therein that they were dispossessed of the the subject properties under the circumstances necessary to make a case of either forcible entry or unlawful detainer. Hence, in the absence of the required of jurisdictional facts, the instant action if not one for ejectment.

Nonetheless, the Court agrees with petitioner that while this case is an *accion publiciana*, there was no clear showing that the RTC has jurisdiction over it *(Regalado vs. Vda. De La Pena, GR No. 202448, 12/13/2017)*.

(8) At the outset, the Court finds it proper to look into the nature of the actions filed by petitioners against respondents. A perusal of the complaints filed by petitioners shows that the actions were captioned as *"Accion Publiciana* and/or Recovery of Possession." However, the Court agrees with the ruling of the lower courts that the complaints filed were actually *accion reivindicatoria.*

In a number of cases, this Court had occasion to discuss the three (3) kinds of actions available to recover possession of real property, to wit:

xx x (a) *accion interdictal;* (b) *accion publiciana;* and (a) *accion reivindicatoria*

Accion interdictal comprises two distinct causes of action, namely, forcible entry *(detentacion)* and unlawful detainer *(desahuico)* [sic]. In forcible entry, one is deprived of physical possession of real property by means of force, intimidation, strategy, threats, or stealth whereas in unlawful detainer, one illegally withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. The two are distinguished from each other in that in forcible entry, the possession of the defendant is illegal from the beginning, and that the issue is which party has prior *de facto* possession while in unlawful detainer, possession of the defendant is originally legal but became illegal due to the expiration or termination of the right to possess.

The jurisdiction of these two actions, which are summary in nature, lies in the proper municipal trial court or metropolitan trial court. Both actions must be brought within one year from the date of actual entry on the land, in case of forcible entry, and from the date of last demand, in case of unlawful detainer. The issue in said cases is the right to physical possession.

Accion publiciana is the plenary action to recover the right of possession which should be brought in the proper regional trial court when dispossession has lasted for more than one year. It is an ordinary civil proceeding to determine the better right of possession of realty independently of title. In other words, if at the time of the filing of the complaint more than one year had elapsed since defendant had turned plaintiff out of possession or defendant's possession had become illegal, the action will be, not one of the forcible entry or illegal detainer, but an *accion publiciana.* On the other hand, *accion reivindicatoria* is an action to recover ownership also brought in the proper regional trial court in an ordinary civil proceeding.

Accion reivindicatoria or *accion de reivindicacion* is, thus, an action whereby the plaintiff alleges ownership over a parcel of land and seeks recovery of its full possession. It is a suit to recover possession of a parcel of land as an element of ownership. The judgment in such a case determines the ownership of the property and awards the possession of the property to the lawful owner. It is different from *accion interdictal* or *accion publiciana* where plaintiff merely alleges proof of a better right to possess without claim of title *(Heirs of Alfonso Yusingco vs. Busilak, GR No. 210504, 01/24/2018).*

Who may institute the action and when; against whom the action may be maintained

(1) Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, or a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person, may, at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs *(Sec. 1).*

(2) Unless otherwise stipulated, such action by the lessor shall be commenced only after demand to pay or comply with the conditions of the lease and to vacate is made upon the lessee, or by serving written notice of such demand upon the person found on the premises, or by posting such notice on the premises if no person be found thereon, and the lessee fails to comply therewith after fifteen (15) days in the case of land or five (5) days in the case of buildings *(Sec. 2).*

Pleadings allowed

(1) The only pleadings allowed to be filed are the complaint, compulsory counterclaim and cross-claim pleaded in the answer, and the answers thereto. All pleadings shall be verified *(Sec. 4)*.

Action on the complaint

(1) The court may, from an examination of the allegations in the complaint and such evidence as may be attached thereto, dismiss the case outright on any of the grounds for the dismissal of a civil action which are apparent therein. If no ground for dismissal is found, it shall forthwith issue summons *(Sec. 5)*.

When demand is necessary

(1) Unless there exists a stipulation to the contrary, an unlawful detainer case shall be commenced only after the demand to pay or comply with the conditions of the lease and to vacate is made upon the lessee *(Sec. 2)*. The requirement for a demand implies that the mere failure of the occupant to pay rentals or his failure to comply with the conditions of the lease does not *ipso facto* render his possession of the premises unlawful. It is the failure to comply with the demand that vests upon the lessor a cause of action.

(2) The demand may be in the form of a written notice served upon the person found in the premises. The demand may also be made by posting a written notice on the premises if no person can be found thereon *(Sec. 2)*. It has been ruled, however, that the demand upon a tenant may be oral *(Jakihaca vs. Aquino, 181 SCRA 67)*. Sufficient evidence must be adduced to show that there was indeed a demand like testimonies from disinterested and unbiased witnesses.

(3) The date of unlawful deprivation or withholding of possession is to be counted from the date of the demand to vacate *(Pro-Guard Security Services Corp. vs. Tormil Relaty and Development Corp., GR No. 176341, 07/07/2014)*.

(4) Failure to pay the rent must precede termination of the contract due to nonpayment of rent. It therefore follows that the cause of action for unlawful detainer must necessarily arise before the termination of the contract and not the other way around *(Sps. Alejandro and Remedios Manzanilla vs. Waterfields Industries Corp., GR No. 177484, 07/18/2014)*.

Preliminary injunction and preliminary mandatory injunction

(1) The court may grant preliminary injunction, in accordance with the provisions of Rule 58, to prevent the defendant from committing further acts of dispossession against the plaintiff. A possessor deprived of his possession through forcible entry or unlawful detainer may, within five (5) days from the filing of the complaint, present a motion in the action for forcible entry or unlawful detainer for the issuance of a writ of preliminary mandatory injunction to restore him in his possession. The court shall decide the motion within thirty (30) days from the filing thereof *(Sec. 15)*.

Resolving defense of ownership

(1) The assertion by the defendant of ownership over the disputed property does not serve to divest the inferior court of its jurisdiction. The defendant cannot deprive the court of jurisdiction by merely claiming ownership of the property involved *(Rural Bank of Sta. Ignacia vs. Dimatulac, 401 SCRA 742; Perez vs. Cruz, 404 SCRA 487).* If the defendant raises the question of ownership and the issue of possession cannot be resolved without deciding the question of ownership, the issue of ownership shall be resolved only to determine the issue of possession *(Sec. 3, RA 7691).*

(2) When the defendant raises the issue of ownership, the court may resolve the issue of ownership only under the following conditions:
   (a) When the issue of possession cannot be resolved without resolving the issue of ownership; and
   (b) The issue of ownership shall be resolved only to determine the issue of possession *(Sec. 16).*

(3) Such judgment would not bar an action between the same parties respecting title to the land or building. The resolution of the MeTC on the ownership of the property is merely provisional or interlocutory. Any question involving the issue of ownership should be raised and resolved in a separate action brought specifically to settle the question with finality *(Roberts vs. Papio, GR 166714, 02/09/2007).*

How to stay the immediate execution of judgment

(1) Defendant must take the following steps to stay the execution of the judgment:
   (a) Perfect an appeal;
   (b) File a supersedeas bond to pay for the rents, damages and costs accruing down to the time of the judgment appealed from; and
   (c) Deposit periodically with the RTC, during the pendency of the appeal, the adjudged amount of rent due under the contract or if there be no contract, the reasonable value of the use and occupation of the premises *(Sec. 19).*

(2) Exceptions to the rule:
   (a) Where delay in the deposit is due to fraud, accident, mistake, or excusable negligence;
   (b) Where supervening events occur subsequent to the judgment bringing about a material change in the situation of the parties which makes execution inequitable; and
   (c) Where there is no compelling urgency for the execution because it is not justified by the circumstances.

Summary procedure, prohibited pleadings

(1) Forcible entry and unlawful detainer actions are summary in nature designed to provide for an expeditious means of protecting actual possession or the right to possession of the property involved *(Tubiano vs. Riazo, 335 SCRA 531).* These action shall both fall under the coverage of the Rules of Summary Procedure irrespective of the amount of damages or unpaid rental sought to be recovered *(Sec. 3).*

(2) Prohibited pleadings and motions:
   (a) Motion to dismiss the complaint except on the ground of lack of jurisdiction over the subject matter, or failure to comply with section 12;

(b) Motion for a bill of particulars;
(c) Motion for new trial, or for reconsideration of a judgment, or for reopening of trial;
(d) Petition for relief from judgment;
(e) Motion for extension of time to file pleadings, affidavits or any other paper;
(f) Memoranda;
(g) Petition for certiorari, mandamus, or prohibition against any interlocutory order issued by the court;
(h) Motion to declare the defendant in default;
(i) Dilatory motions for postponement;
(j) Reply;
(k) Third-party complaints;
(l) Interventions

Contempt *(Rule 71)*

(1) Contempt is a disregard of, or disobedience to the rules or orders of a judicial body, or an interruption of its proceedings by disorderly behavior or insolent language, in its presence or so near thereto as to disturb the proceedings or to impair the respect due to such body *(17 C.J.S. 4)*.

(2) Contempt of court is disobedience to the court by acting in opposition to its authority, justice and dignity. It signifies not only a willful disregard or disobedience of the court's orders but also conduct tending to bring the authority of the court and the administration of law into disrepute or, in some manner to impede the due administration of justice *(Siy vs. NLRC, GR 158971, 08/25/2005)*.

(3) The reason for the power to punish for contempt is that respect of the courts guarantees the stability of their institution. Without such guarantee, said institution would be resting on shaky foundation *(Cornejo vs. Tan, 85 Phil. 772)*.

(4) It is inherent in all courts; its existence is essential to the preservation of order in judicial proceedings and to the enforcement of judgments, orders and mandates of the courts, and consequently, to the due administration of justice *(Perkins vs. Director of Prisons, 58 Phil. 271)*.

(5) Contempt proceedings has dual function:

(a) Vindication of public interest by punishment of contemptuous conduct; and

(b) Coercion to compel the contemnor to do what the law requires him to uphold the power of the Court, and also to secure the rights of the parties to a suit awarded by the Court *(Regalado vs. Go, GR 167988, 02/06/2007)*.

(6) In *Panaligan* v. *Ibay (525 Phil. 22 [2006])*, the Court declared:

> [I]t is settled that an act to be considered contemptuous must be clearly contrary or prohibited by the order of the court. "A person cannot, for disobedience, be punished for contempt unless the act which is forbidden or required to be done is clearly and exactly defined, so that there can be no reasonable doubt or uncertainty as to what specific act or thing is forbidden or required." The acts of complainant in the case at bar is not contrary or clearly prohibited by the order of the court.

Judge Penuela, for his part, acted in his official capacity and within the jurisdiction of his court when he issued the Orders dated July 18, 2007 and November 20, 2007. Although Judge Penuela erred in his finding that HGL committed forum shopping and in dismissing with prejudice Civil Case No. C-146 on the basis thereof, he merely made an error of

judgment that was subject to appeal, and he did not in any way disobey or disrespect the Court for which he may be cited for indirect contempt.

(1) **1998 Bar**: A filed a complaint for the recovery of ownership of land against B who was represented by her counsel X. In the course of the trial, B died. However, X failed to notify the court of B's death. The court proceeded to hear the case and rendered judgment against B, after the judgment became final, a writ of execution was issued against C, who being B's sole heir, acquire the property.
Did the failure of counsel X to inform the court of B's death constitute direct contempt? (2%)

Answer: No, it is not direct contempt under Section 11 of Rule 71, but it is indirect contempt within the purview of Section 3 of Rule 71. The lawyer can also be the subject of disciplinary action *(Rule 3, Section 3)*.

Kinds of contempt; Purpose and nature of each

(1) Civil or Criminal, depending on the nature and effect of the contemptuous act.
(2) Direct or indirect, according to the manner of commission.

Civil Contempt	Criminal Contempt
It is the failure to do something ordered to be done by a court or a judge for the benefit of the opposing party therein and is therefore an offense against the party in whose behalf the violated order was made;	It is a conduct directed against the authority and dignity of the court or a judge acting judicially; it is an obstructing the administration of justice which tends to bring the court into disrepute or disrespect;
The purpose is to compensate for the benefit of a party;	The purpose is to punish, to vindicate the authority of the court and protect its outraged dignity;
The rules of procedure governing contempt proceedings or criminal prosecutions ordinarily are inapplicable to civil contempt proceedings.	Should be conducted in accordance with the principles and rules applicable to criminal cases, insofar as such procedure is consistent with the summary nature of contempt proceedings.

Direct Contempt	Indirect Contempt
In general is committed in the presence of or so near the court or judge as to obstruct or interrupt the proceedings before it;	It is not committed in the presence of the court, but done at a distance which tends to belittle, degrade, obstruct or embarrass the court and justice;
Summary; motu propio	Adversarial; with a written charge
Acts constituting direct contempt are: b) Misbehavior in the presence of or so near the court as to obstruct or interrupt the proceedings before it; c) Disrespect toward the court;	Acts constituting indirect contempt are: (a) Misbehavior of an officer of a court in the performance of his official duties or in his official transactions; (b) Disobedience of or resistance to a lawful writ, process, order, or judgment of a court, including the act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction,

d) Offensive personalities towards others; e) Refusal to be sworn as a witness or to answer as a witness; f) Refusal to subscribe an affidavit or deposition when lawfully required to do so *(Sec. 1)*; g) Acts of a party or a counsel which constitute willful and deliberate forum shopping *(Sec. 1, Rule 7)*; h) Unfounded accusations or allegations or words in a pleading tending to embarrass the court or to bring it into disrepute *(Re: Letter dated 21 Feb. 2005 of Atty. Noel Sorreda, 464 SCRA 32)*;	enters or attempts or induces another to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto; (c) Any abuse of or any unlawful interference with the processes or proceedings of a court not constituting direct contempt under section 1 of this Rule; (d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice; (e) Assuming to be an attorney or an officer of a court, and acting as such without authority; (f) Failure to obey a subpoena duly served; (g) The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of a court held by him *(Sec. 3)*;

(3) A criminal contempt involves a conduct that is directed against the dignity and authority of the court or a judge acting judicially; it is an act obstructing the administration of justice which tends to bring the court into disrepute or disrespect. Civil contempt on the other hand, consists in failing to do something ordered to be done by a court in a civil action for the benefit of the opposing party therein and is, therefore, an offense against the party in whose behalf the violated order is made *(Castillejos Consumers Association, Inc. v. Dominguez, GR No. 189949, 03/25/2015)*.

Remedy against direct contempt; penalty

(1) The penalty for direct contempt depends upon the court which the act was committed;
   (a) If the act constituting direct contempt was committed against an RTC or a court of equivalent or higher rank, the penalty is a fine not exceeding 2,000 pesos or imprisonment not exceeding 10 days, or both;
   (b) If the act constituting direct contempt was committed against a lower court, the penalty is a fine not exceeding 200 pesos or imprisonment not exceeding one (1) day, or both *(Sec. 1)*;
   (c) If the contempt consists in the refusal or omission to do an act which is yet within the power of the respondent to perform, he may be imprisoned by order of the court concerned until he performs it *(Sec. 8)*.

(2) A person adjudged in direct contempt may not appeal therefrom. His remedy is a petition for *certiorari* or prohibition directed against the court which adjudged him in direct contempt *(Sec. 2)*. Pending the resolution of the petition for *certiorari* or prohibition, the execution of the judgment for direct contempt shall be suspended. The suspension however shall take place only if the person adjudged in contempt files a bond fixed by the court which rendered the judgment. This bond is conditioned upon his performance of the judgment should the petition be decided against him.

Remedy against indirect contempt; penalty

(1) The punishment for indirect contempt depends upon the level of the court against which the act was committed;

(a) Where the act was committed against an RTC or a court of equivalent or higher rank, he may be punished by a fine not exceeding 30,000 pesos or imprisonment not exceeding 6 months, or both;

(b) Where the act was committed against a lower court, he may be punished by a fine not exceeding 5,000 pesos or imprisonment not exceeding one month, or both. Aside from the applicable penalties, if the contempt consists in the violation of a writ of injunction, TRO or *status quo* order, he may also be ordered to make complete restitution to the party injured by such violation of the property involved or such amount as may be alleged and proved *(Sec. 7)*;

(c) Where the act was committed against a person or entity exercising quasi-judicial functions, the penalty imposed shall depend upon the provisions of the law which authorizes a penalty for contempt against such persons or entities.

(2) The person adjudged in indirect contempt may appeal from the judgment or final order of the court in the same manner as in criminal cases. The appeal will not however have the effect of suspending the judgment if the person adjudged in contempt does not file a bond in an amount fixed by the court from which the appeal is taken. This bond is conditioned upon his performance of the judgment or final order if the appeal is decided against *(Sec. 11)*.

How contempt proceedings are commenced

(1) Proceedings for indirect contempt may be initiated motu proprio by the court against which the contempt was committed by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt.

In all other cases, charges for indirect contempt shall be commenced by a verified petition with supporting particulars and certified true copies of documents or papers involved therein, and upon full compliance with the requirements for filing initiatory pleadings for civil actions in the court concerned. If the contempt charges arose out of or are related to a principal action pending in the court, the petition for contempt shall allege that fact but said petition shall be docketed, heard and decided separately, unless the court in its discretion orders the consolidation of the contempt charge and the principal action for joint hearing and decision *(Sec. 4)*.

Acts deemed punishable as indirect contempt

(1) After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt:

(l) Misbehavior of an officer of a court in the performance of his official duties or in his official transactions;

(b) Disobedience of or resistance to a lawful writ, process, order, or judgment of a court, including the act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or

attempts or induces another to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto;

(c) Any abuse of or any unlawful interference with the processes or proceedings of a court not constituting direct contempt under section 1 of this Rule;

(d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;

(e) Assuming to be an attorney or an officer of a court, and acting as such without authority;

(f) Failure to obey a subpoena duly served;

(g) The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of a court held by him *(Sec. 3)*.

(2) Failure by counsel to inform the court of the death of his client constitutes indirect contempt within the purview of Sec. 3, Rule 71, since it constitutes an improper conduct tending to impede the administration of justice.

When imprisonment shall be imposed

(1) When the contempt consists in the refusal or omission to do an act which is yet in the power of the respondent to perform, he may be imprisoned by order of the court concerned until he performs it *(Sec. 8)*. Indefinite incarceration may be resorted to where the attendant circumstances are such that the non-compliance with the court order is an utter disregard of the authority of the court which has then no other recourse but to use its coercive power. When a person or party is legally and validly required by a court to appear before it for a certain purpose, and when that requirement is disobeyed, the only remedy left for the court is to use force to bring the person or party before it.

(2) The punishment is imposed for the benefit of a complainant or a party to a suit who has been injured aside from the need to compel performance of the orders or decrees of the court, which the contemnor refuses to obey although able to do so. In effect, it is within the power of the person adjudged guilty of contempt to set himself free.

Contempt against quasi-judicial bodies

(1) The rules on contempt apply to contempt committed against persons or entities exercising quasi-judicial functions or in case there are rules for contempt adopted for such bodies or entities pursuant to law, Rule 71 shall apply suppletorily *(Sec. 12)*.

(2) Quasi-judicial bodies that have the power to cite persons for indirect contempt can only do so by initiating them in the proper RTC. It is not within their jurisdiction and competence to decide the indirect contempt cases. The RTC of the place where contempt has been committed shall have jurisdiction over the charges for indirect contempt that may be filed *(Sec. 12)*.

PART II
SPECIAL PROCEEDINGS
Rules 72 - 109

(1) Subject Matters of Special Proceedings: *(Rules 72 - 109)*

(a) Change of Name
(b) Adoption and Custody of Persons
(c) Trustees
(d) Constitution of Family Home
(e) Medical Commitment of Insane Persons
(f) Absence and Death, Declaration of
(g) Guardianship and Custody of Children
(h) Escheat
(i) (Voluntary) Dissolution of Corporation
(j) Settlement of Estate
(k) Habeas Corpus
(l) (Judicial) Approval of Voluntary Recognition of Minor Natural Children
(m) Rescission and Revocation of Adoption
(n) Cancellation or Correction of Entries in the Civil Registry

(2) Special Proceedings is an application or proceeding to establish the status or right of a party, or a particular fact, generally commenced by application, petition or special form of pleading as may be provided for by the particular rule or law.

(3) Special Proceedings is a remedy by which a party seeks to establish a status, a right, or a particular fact *(Sec. 3, Rule 1).*

(4) Petition for liquidation of an insolvent corporation is a special proceeding *(Ong vs. PDIC, 08/18/2010).*

(5) **2015 Bar**: Ernie filed a petition for guardianship over the person and properties of his father, Ernesto. Upon receipt of the notice of hearing, Ernesto filed an opposition to the petition. Ernie, before the hearing of the petition, filed a motion to order Ernesto to submit himself for mental and physical examination which the court granted.

After Ernie's lawyer completed the presentation of evidence in support of the petition and the court's ruling on the formal offer of evidence, Ernesto's lawyer filed a demurrer to evidence.

Ernesto's lawyer objected on the ground that a demurrer to evidence is not proper in a special proceeding.

(A) Was Ernie's counsel's objection proper? (2%)

(B) If Ernesto defies the court's order directing him to submit to physical and mental examinations, can the court order his arrest? (2%)

Answer:

(A) No. The Rule on demurrer to evidence is applicable to Special preceedings *(Matute vs. CA, GR No. L-26751, 01/31/1969).* Moreov er, under Section 2, Rule 72 of the Rules of Court, in the absence of special rules, the rules provided for in ordinary actions shall be applicable, as far as practicable, to special proceedings.

(B) If the order for the conduct of physical and mental examination is issued as a mode of discovery and Ernesto defies the said order, the court cannot validly order his arrest *(Sec. 3[d], Rule 29).*

A. SETTLEMENT OF ESTATE OF DECEASED PERSONS

(Rules 73 - 91)

Settlement of Estate of Deceased Persons, Venue and Process *(Rule 73)*

(1) The trial court cannot make a declaration of heirship in the civil action for the reason that such a declaration can only be made in a special proceeding. The case at bar is an action for annulment of title, reconveyance with damages, a civil action, whereas matters which involve the settlement and distribution of the estate of a deceased person as well as filiation and heirship partake of the nature of a special proceeding, which requires the application of specific rules as provided for in the Rules of Court. With both parties claiming to be the heirs of Severo Basbas, it is but proper to thresh out this issue in a special proceeding, since Crispiniano and respondent Ricardo seeks to establish his status as one of the heirs entitled to the property in dispute *(Heirs of Valentin Basbas, GR No. 188773, 09/10/2014).*

Which court has jurisdiction

(1) If the decedent is an inhabitant of the Philippines at the time of his death, whether a citizen or an alien, his will shall be proved, or letters of administration granted, and his estate settled, in the RTC in the province in which he resides at the time of his death, and if he is an inhabitant of a foreign country, the RTC of any province in which he had his estate. The court first taking cognizance of the settlement of the estate of a decedent, shall exercise jurisdiction to the exclusion of all other courts *(Sec. 1).*

(2) Under RA 7691, the law expanding the jurisdiction of the inferior courts, MTC, MeTC and MCTC shall exercise exclusive original jurisdiction over probate proceedings, testate and intestate, where the value of the estate does not exceed P300,000 (outside Metro Manila) or where such estate does not exceed P400,000 (in Metro Manila).

(3) The jurisdiction of the RTC is limited to the settlement and adjudication of properties of the deceased and cannot extend to collateral matters.

(4) **2003 Bar**: A, a resident of Malolos, Bulacan, died leaving an estate located in Manila, worth P200,000. In what court, taking into consideration the nature of jurisdiction and of venue, should the probate proceeding on the estate of A be instituted?

Answer: The probate proceeding on the estate of A should be instituted in the Municipal Trial Court of Malolos, Bulacan, which has jurisdiction, because the estate is valued at P200,000, and is the court of proper venue because A was a resident of Malolos at the time of his death *(Sec. 33, BP 129 as amended by RA 7691; Rule 73, Sec. 1).*

Venue in judicial settlement of estate

(1) The residence of the decedent at the time of his death is determinative of the venue of the proceeding. If he was a resident (inhabitant) of the Philippines, venue is laid exclusively in the province of his residence, the jurisdiction being vested in the Regional Trial Court thereof. Residence means his personal, actual, or physical habitation, his actual residence or place of abode.

(2) It is only where the decedent was a nonresident of the Philippines at the time of his death that venue lies in any province in which he had estate, and then CFI thereof first taking cognizance of the proceeding for settlement acquires jurisdiction to the exclusion of other courts. The question of residence is determinative only of the venue and does not affect the jurisdiction of the court. Hence, the institution of the proceeding in the province wherein the decedent neither had residence nor estate does not vitiate the action of the probate court.

(3) Where the proceedings were instituted in two courts and the question of venue is seasonably raised, the court in which the proceeding was first filed has exclusive jurisdiction to resolve the issue *(De Borja vs. Tan, 97 Phil. 872)*.

Extent of jurisdiction of Probate Court

(1) The main function of a probate court is to settle and liquidate the estates of deceased person either summarily or through the process of administration. The RTC acting a s a probate court exercises but limited jurisdiction, thus it has no power to take cognizance of and determine the issue of title to property claimed by a third person adversely to the decedent unless the claimant and all other parties have legal interest in the property consent, expressly or impliedly, to the submission of the question to the probate court. In that case, if the probate court allows the introduction of evidence on ownership it is for the sole purpose of determining whether the subject properties should be included in the inventory, which is within the probate court's competence. The determination is only provisional subject to a proper action at the RTC in a separate action to resolve the title.

(2) The jurisdiction of the probate court merely relates to matters having to do with the settlement of the estate and the probate of wills, the appointment and removal of administrators, executors, guardians and trustees. The question of ownership is, as a rule, an extraneous matter which the probate court cannot resolve with finality *(Intestate Estate of Ismael Reyes, Heirs of Reyes vs. Reyes, GR 139587, 11/02/2000)*.

(3) As a general rule, the probate court cannot pass upon the issue of ownership arising during the probate proceeding, except in the following cases:
   (a) When the heirs agree to submit the question of determination of ownership of properties to the probate court without prejudice to third persons *(Trinidad vs. CA, 1987)*;
   (b) For purposes of determining whether the property should be included in the inventory, the probate court may decide prima facie the ownership of said property, but the determination is not final and without prejudice to the right of interested parties to ventilate the question of ownership in a proper action *(Paz vs. Madrigal [1956]; Pobre vs. Gonong, 148 SCRA)*.

(4) Generally, a probate court may not decide a question of title of ownership, but it may do so if the interested parties are all heirs, or the question is one of collation or advancement, or the parties' consent to its assumption of jurisdiction and the rights of theird parties are not impaired *(Munsayac–de Villa vs. CA [2003])*.

Powers and Duties of Probate Court

(1) In probate proceedings, the court:
   (a) Orders the probate of the will of the decedent *(Sec. 3, Rule 77)*;
   (b) Grants letters of administration of the party best entitled thereto or to any qualified applicant *(Sec. 5, Rule 79)*;
   (c) Supervises and controls all acts of administration;
   (d) Hears and approves claims against the estate of the deceased *(Sec. 11, Rule 86)*;

(e) Orders payment of lawful debts *(Sec. 11, Rule 88)*;
(f) Authorizes sale, mortgage or any encumbrance of real estate *(Sec. 2, Rule 89)*;
(g) Directs the delivery of the estate to those entitled thereto *(Sec. 1, Rule 90)*;
(h) Issue warrants and processes necessary to compel the attendance of witnesses or to carry into effect their orders and judgments, and all other powers granted them by law *(Sec. 3, Rule 73)*;
(i) If a person defies a probate order, it may issue a warrant for the apprehension and imprisonment of such person until he performs such order or judgment, or is released *(Sec. 3, Rule 73)*.

(2) The court acts as trustee, and as such, should jealously guard the estate and see to it that it is wisely and economically administered, not dissipated *(Timbol vs. Cano, 111 Phil. 923)*.

Summary Settlement of Estates *(Rule 74)*

(1) Summary settlement of estate is a judicial proceeding wherein, without the appointment of executor or administrator, and without delay, the competent court summarily proceeds to value the estate of the decedent; ascertain his debts and order payment thereof; allow his will if any; declare his heirs, devisee and legatees; and distribute his net estate among his known heirs, devisees, and legatees, who shall thereupon be entitled to receive and enter into the possession of the parts of the estate so awarded to them, respectively *(Sec. 2)*.

(2) **2001 Bar**: The rules on special proceedings ordinarily require that the estate of the deceased should be judicially administered through an administrator or executor. What are the two exceptions to said requirements. (5%)

Answer: The two exceptions to said requirements are:

(a) Where the decedent left no will and no debts and the heirs are all of age, or the minors are represented by their judicial or legal representatives duly authorized for the purpose, the parties may without securing letters of administration, divide the estate among themselves by means of public instrument filed in the office of the register of deeds, or should they disagree, they may do so in an ordinary action of partition. If there is only one heir, he may adjudicate to himself the entire estate by means of an affidavit filed in the office of the register of deeds. The parties or the sole heir shall file in an amount equivalent to the value of the personal property as certified to under oath by the parties and conditioned upon the payment of any just claim that may be filed later. The fact of the extrajudicial settlement or administration shall be published in a newspaper of general circulation in the province once a week for three consecutive weeks *(Rule 74, Section 1)*.

(b) Whenever the gross value of the estate of a deceased person whether he died testate or intestate, does not exceed ten thousand pesos, and that fact is made to appear to the Regional Trial Court having jurisdiction of the estate by the petition of an interested person and upon hearing, which shall be held not less than one (1) month nor more than three (3) months from the date of the last publication of a notice which shall be published once a week for three consecutive weeks in a newspaper of general circulation in the province, and after such other notice to interested persons as the court may direct, the court may proceed summarily, without the appointment of an executor or administrator, to settle the estate *(Rule 74, Sec. 2)*.

(3) **2005 Bar**: Nestor died intestate in 2003, leaving no debts. How may his estate be settled by his heirs who are of legal age and have legal capacity?

Answer: If the decedent left no will and no debts, and the heirs are all of age, the parties may, without securing letters of administration, divide the estate among themselves by

means of public instrument or by stipulation in a pending action for partition and shall file a bond with the register of deeds in an amount equivalent to the value of the personal property involved as certified to under oath by the parties concerned. The fact of extrajudicial settlement shall be published in a newspaper of general circulation once a week for three consecutive weeks in the province *(Rule 74, Sec. 1).*

Extrajudicial settlement by agreement between heirs, when allowed

(1) If the decedent left no will and no debts and the heirs are all of age, or the minors are represented by their judicial or legal representatives duly authorized for the purpose, the parties may, without securing letters of administration, divide the estate among themselves as they see fit by means of a public instrument filed in the office of the register of deeds, and should they disagree, they may do so in an ordinary action of partition. If there is only one heir, he may adjudicate to himself the entire estate by means of an affidavit filed in the office of the register of deeds. The parties to an extrajudicial settlement, whether by public instrument or by stipulation in a pending action for partition, or the sole heir who adjudicates the entire estate to himself by means of an affidavit shall file, simultaneously with and as a condition precedent to the filing of the public instrument, or stipulation in the action for partition, or of the affidavit in the office of the register of deeds, a bond with the said register of deeds, in an amount equivalent to the value of the personal property involved as certified to under oath by the parties concerned and conditioned upon the payment of any just claim that may be filed under section 4 of this rule. It shall be presumed that the decedent left no debts if no creditor files a petition for letters of administration within two (2) years after the death of the decedent.

The fact of the extrajudicial settlement or administration shall be published in a newspaper of general circulation in the manner provided in the next succeeding section; but no extrajudicial settlement shall be binding upon any person who has not participated therein or had no notice thereof *(Sec. 1).*

(2) Extrajudicial partition of the estate shall be valid when the following conditions concur:
   (a) The decedent left no will;
   (b) The decedent left no debts, or if there were debts left, all had been paid;
   (c) The heirs are all of age or if they are minors, the latter are represented by their judicial guardian or legal representative;
   (d) The partition was made by means of a public instrument or affidavit duly filed and/or registered with the Register of Deeds; and
   (e) The fact of the extrajudicial settlement or administration shall be published in a newspaper of general circulation once a week for three consecutive weeks.

Judicial proceedings for settlement of estate

(1) The following is the summary of judicial proceedings for settlement of estate:

   (a) Filing of initiatory pleading
   (b) Notice of hearing – publication once a week for three consecutive weeks, with notice to heirs, legatees, devisees, interested parties
   (c) Allowance of will (probate)
   (d) Issuance of letters testamentary or of administration
   (e) Filing and approval of claims against the estate
   (f) Payments of debts, etc.
   (g) Determination of heirs and distribution
   (h) Closure – delivery of remaining estate to heirs.

Two-year prescriptive period

(1) It shall be presumed that the decedent left no debts if no creditor files a petition for letters of administration within two (2) years after the death of the decedent *(Sec. 1)*.

(2) If it shall appear at any time within two (2) years after the settlement and distribution of an estate in accordance with the provisions of either of the first two sections of this rule, that an heir or other person has been unduly deprived of his lawful participation in the estate, such heir or such other person may compel the settlement of the estate in the courts in the manner hereinafter provided for the purpose of satisfying such lawful participation. And if within the same time of two (2) years, it shall appear that there are debts outstanding against the estate which have not been paid, or that an heir or other person has been unduly deprived of his lawful participation payable in money, the court having jurisdiction of the estate may, by order for that purpose, after hearing, settle the amount of such debts or lawful participation and order how much and in what manner each distributee shall contribute in the payment thereof, and may issue execution, if circumstances require, against the bond provided in the preceding section or against the real estate belonging to the deceased, or both. Such bond and such real estate shall remain charged with a liability to creditors, heirs, or other persons for the full period of two (2) years after such distribution, notwithstanding any transfers of real estate that may have been made *(Sec. 4)*.

(3) This rule applies only to persons who participated.

Affidavit of Self-adjudication by sole heir

(1) If there is only one heir, he may adjudicate to himself the entire estate by means of an affidavit filed in the office of the register of deeds *(Sec. 1)*.

(2) **1998 Bar**: A, claiming to be an illegitimate child of the deceased D, instituted an intestate proceeding to settle the estate of the latter. He also prayed that he be appointed administrator of the said estate. S, surviving spouse, opposed the petition and A's application to be appointed the administrator on the ground that he was not the child of her deceased husband D. The court however appointed A as the administrator of said estate. Subsequently, S, claiming to be the sole heir of D, executed an Affidavit of Adjudication, adjudicating unto herself the entire estate of her deceased husband D. S then sold the entire estate to X.

Was the action of S in adjudicating the entire estate of her late husband to herself legal? (3%)

Answer: No. An affidavit of self-adjudication is allowed only if the affiant is the sole heir of the deceased *(Rule 74, Sec. 1)*. In this case, A also claims to be an heir. Moreover, it is not legal because there is already a pending judicial proceeding for the settlement of the estate.

Summary settlement of estates of small value, when allowed

(1) Whenever the gross value of the estate of a deceased person, whether he died testate or intestate, does not exceed ten thousand pesos, and that fact is made to appear to the Court of First Instance having jurisdiction of the estate by the petition of an interested person and upon hearing, which shall be held not less than (1) month nor more than three (3) months from the date of the last publication of a notice which shall be published once

a week for three (3) consecutive weeks in a newspaper of general circulation in the province, and after such other notice to interested persons as the court may direct, the court may proceed summarily, without the appointment of an executor or administrator, and without delay, to grant, if proper, allowance of the will, if any there be, to determine who are the persons legally entitled to participate in the estate, and to apportion and divide it among them after the payment of such debts of the estate as the court shall then find to be due; and such persons, in their own right, if they are of lawful age and legal capacity, or by their guardians or trustees legally appointed and qualified, if otherwise, shall thereupon be entitled to receive and enter into the possession of the portions of the estate so awarded to them respectively. The court shall make such order as may be just respecting the costs of the proceedings, and all orders and judgments made or rendered in the course thereof shall be recorded in the office of the clerk, and the order of partition or award, if it involves real estate, shall be recorded in the proper register's office *(Sec. 2)*.

(2) The court, before allowing a partition, may require the distributees, if property other than real is to be distributed, to file a bond in an amount to be fixed by court, conditioned for the payment of any just claim *(Sec. 3)*.

Remedies of aggrieved parties after extra-judicial settlement of estate

(1) The creditor may ask for administration of enough property of the estate sufficient to pay the debt, but the heirs cannot prevent such administration by paying the obligation *(McMicking vs. Sy Conbieng, 21 Phil. 211)*;

(2) Where the estate has been summarily settled, the unpaid creditor may, within the two-year period, file a motion in the court wherein such summary settlement was had for the payment of his credit. After the lapse of the two-year period, an ordinary action (ten year prescriptive period) may be instituted against the distributees within the statute of limitations, but not against the bond.

(3) The action to annul a deed of extrajudicial settlement on the ground of fraud should be filed within four years from the discovery of the fraud *(Gerona vs. De Guzman, L-19060, 05/29/1964)*.

Production and Probate of Will *(Rule 75)*

Nature of probate proceeding

(1) Probate of a will is a proceeding *in rem*. It cannot be dispensed with and substituted by another proceeding, judicial or extrajudicial, without offending public policy. It is mandatory as no will shall pass either real or personal property unless proved and allowed in accordance with the Rules. It is imprescriptible, because it is required by public policy and the state could not have intended to defeat the same by applying thereto the statute of limitation of actions *(Guevara vs. Guevara, 74 Phil. 479)*.

Who may petition for probate; persons entitled to notice

(1) Any executor, devisee, or legatee named in a will, or any other person interested in the estate, may, at any time after the death of the testator, petition the court having jurisdiction to have the will allowed, whether the same be in his possession or not, or is lost or

destroyed. The testator himself may, during his lifetime, petition the court for the allowance of his will *(Sec. 1, Rule 76)*.

(2) **2006 Bar**: Sergio Punzalan, 50 years old, married and residing at Ayala alabang Village, Muntinlupa City, of sound and disposing mind, executed a last will and testament in English, a language spoken and written by him prfociently. He disposed of his estate consisting of a parcel of land in Makati City and cash deposit at the City Bank in the sum of P 300 Million. He bequethed P 50 Million each to his 3 sons and P 150 Million to his wife. He devised a piece of land worth P 100 Million to Susan, his favorite daughter-in-law. He named his best friend, Cancio Vidal, as executor of the will without bond.

1. Is Cancio Vidal, after learning of Sergio's death, obliged to file with the proper court a petition of probate of the latter's will and testament? (2%)
2. Supposing the original copy of the last will and testament was lost, can Cancio compel Susan to produce a copy in her possession to be submitted to the probate court? (2%)
3. Can the probate court appoint the widow as executor of the will? (2%)
4. Can the widow and her children settle extrajudicially among themselves the estate of the deceased? (2%)
5. Can the widow and children initiate a separate petition for partition of the estate pending the probate of the last will and testatment? (2%)

Answer:

1. Cancio Vidal is obliged to file a petition for probate and for accepting or refusing the trust within the statutory period of 20 days under Sec. 3, Rule 75.
2. Yes, Cancio can compel Susan to produce the copy in her possession. A person having custody of the will is bound to deliver the same to the court of competent jurisdiction or to the executor, as provided in Sec. 2, Rule 75.
3. Yes, the probate court can appoint the widow as executor of the will if the executor does not qualify, as when he is incompetent, refuses the trust, or fails to give bond *(Sec. 6, Rule 75)*.
4. No, the widow and her children cannot settle the estate extrajudicially because of the existence of the will. No will shall pass either real or personal estate unless it is proved and allowed in the proper court *(Sec. 1, Rule 75)*.
5. No, the widow and her children cannot file a separate petition for partition pending the probate of the will. Partition is a mode of settlement of the estate *(Sec. 1, Rule 75)*.

Allowance or Disallowance of Will *(Rule 76)*

Contents of petition for allowance of will

(1) A petition for the allowance of a will must show, so far as known to the petitioner:
(a) The jurisdictional facts;
(b) The names, ages, and residences of the heirs, legatees, and devisees of the testator or decedent;
(c) The probable value and character of the property of the estate;
(d) The name of the person for whom letters are prayed;
(e) If the will has not been delivered to the court, the name of the person having custody of it.

But no defect in the petition shall render void the allowance of the will, or the issuance of letters testamentary or of administration with the will annexed *(Sec. 2, Rule 76)*.

(2) The court shall also cause copies of the notice of the time and place fixed for proving the will to be addressed to the designated or other known heirs, legatees, and devisees of the testator resident in the Philippines at their places of residence, and deposited in the post office with the postage thereon prepaid at least twenty (20) days before the hearing, if such places of residence be known. A copy of the notice must in like manner be mailed to the person named as executor, if he be not the petitioner; also, to any person named as co-executor not petitioning, if their places of residence be known. Personal service of copies of the notice at least ten (10) days before the day of hearing shall be equivalent to mailing. If the testator asks for the allowance of his own will, notice shall be sent only to his compulsory heirs *(Sec. 4, Rule 76)*.

Grounds for disallowing a will

(1) The will shall be disallowed in any of the following cases;
   (a) If not executed and attested as required by law;
   (b) If the testator was insane, or otherwise mentally incapable to make a will, at the time of its execution;
   (c) If it was executed under duress, or the influence of fear, or threats;
   (d) If it was procured by undue and improper pressure and influence, on the part of the beneficiary, or of some other person for his benefit;
   (e) If the signature of the testator was procured by fraud or trick, and he did not intend that the instrument should be his will at the time of fixing his signature thereto *(Sec. 9, Rule 76)*.

(2) Grounds under Art. 839, Civil Code:
   (a) If the formalities required by law have not been complied with;
   (b) If the testator was insane, or otherwise mentally incapable of making a will, at the time of its execution;
   (c) If it was executed through force or duress, or the influence of fear, or threats;
   (d) If it was procured by undue and improper pressure and influence, on the part of the beneficiary or of some other person;
   (e) If the signature of the testator was procured by fraud;
   (f) If the testator acted by mistake or did not intend that the instrument he signed should be his will at the time of affixing his signature thereto.

Reprobate; Requisites before will proved outside allowed in the Philippines; effects of probate

(1) *Will proved outside Philippines may be allowed here.* Wills proved and allowed in a foreign country, according to the laws of such country, may be allowed, filed, and recorded by the proper Court of First Instance in the Philippines *(Sec. 1, Rule 77)*.

(2) *When will allowed, and effect thereof.* If it appears at the hearing that the will should be allowed in the Philippines, the court shall so allow it, and a certificate of its allowance, signed by the judge, and attested by the seal of the court, to which shall be attached a copy of the will, shall be filed and recorded by the clerk, and the will shall have the same effect as if originally proved and allowed in such court *(Sec. 3, Rule 77)*.

(3) When a will is thus allowed, the court shall grant letters testamentary, or letters of administration with the will annexed, and such letters testamentary or of administration,

shall extend to all the estate of the testator in the Philippines. Such estate, after the payment of just debts and expenses of administration, shall be disposed of according to such will, so far as such will may operate upon it; and the residue, if any, shall be disposed of as is provided by law in cases of estates in the Philippines belonging to persons who are inhabitants of another state or country *(Sec. 4, Rule 77)*.

(4) *Certificate of allowance attached to proved will. To be recorded in the Office of Register of Deeds.* If the court is satisfied, upon proof taken and filed, that the will was duly executed, and that the testator at the time of its execution was of sound and disposing mind, and not acting under duress, menace, and undue influence, or fraud, a certificate of its allowance, signed by the judge, and attested by the seal of the court shall be attached to the will and the will and certificate filed and recorded by the clerk. Attested copies of the will devising real estate and of certificate of allowance thereof, shall be recorded in the register of deeds of the province in which the lands lie *(Sec. 13, Rule 76)*.

(5) The general rule universally recognized is that administration extends only to the assets of the decedent found within the state or country where it was granted, so that an administrator appointed in one state or country has no power over the property in another state or country *(Leon & Ghezzi vs. Manufacturer's Life Ins., 80 Phil. 495)*. When a person dies intestate owning property in the country of his domicile as well as in foreign country, administration shall be had in both countries. That which is granted in the jurisdiction of the decedent's domicile is termed the principal administration, while any other administration is termed ancillary administration. The ancillary administration is proper whenever a person dies leaving in a country other than that of his domicile, property to be administered in the nature of assets of the decedent, liable for his individual debts or to be distributed among his heirs *(Johannes vs. Harvey, 43 Phil. 175)*.

Letters Testamentary and of Administration *(Rule 78)*

(1) Letters testamentary is the appointment issued by a probate court, after the will has been admitted to probate, to the executor named in the will to administer the estate of the deceased testator, provided the executor named in the will is competent, accepts the trust and gives a bond *(Sec. 4)*.

(2) **2008 Bar**: Domenico and Gen lived without benefit of marriage for twenty years, during which time they purchased properties together. After Domenico died without a will, Gen filed a petition for letters of administration. Domenico's siblings opposed the same on the ground that Gen has no legal personality. Decide (4%)

Answer: A petition for letters of administration may be filed by any "interested person" *(Rule 79, Sec. 1)*. Gen would be considered an interested person even if she was not married to Domenico, because she can claim co-ownership of the properties left be him under the property regime of union without marriage under conditions provided in the Family Code *(San Luis vs. San Luis, GR No. 133743, 02/06/2007)*.

When and to whom letters of administration granted

(1) No person is competent to serve as executor or administrator who:
(a) Is a minor;
(b) Is not a resident of the Philippines; and

(c) Is in the opinion of the court unfit to execute the duties of the trust by reason of drunkenness, improvidence, or want of understanding or integrity, or by reason of conviction of an offense involving moral turpitude *(Sec. 1).*

(2) *Executor of executor not to administer estate.* The executor of an executor shall not, as such, administer the estate of the first testator *(Sec. 2).*

(3) *Married women may serve.* A married woman may serve as executrix or administratrix, and the marriage of a single woman shall not affect her authority so to serve under a previous appointment *(Sec. 3).*

(4) *Letters testamentary issued when will allowed.* When a will has been proved and allowed, the court shall issue letters testamentary thereon to the person named as executor therein, if he is competent, accepts the trust, and gives bond as required by these rules *(Sec. 4).*

(5) *Where some coexecutors disqualified others may act.* When all of the executors named in a will cannot act because of incompetency, refusal to accept the trust, or failure to give bond, on the part of one or more of them, letters testamentary may issue to such of them as are competent, accept and give bond, and they may perform the duties and discharge the trust required by the will *(Sec. 5).*

(6) If no executor is named in the will, or the executor or executors are incompetent, refuse the trust, or fail to give bond, or a person dies intestate, administration shall be granted:

(a) To the surviving husband or wife, as the case may be, or next of kin, or both, in the discretion of the court, or to such person as such surviving husband or wife, or next of kin, requests to have appointed, if competent and willing to serve;

(b) If such surviving husband or wife, as the case may be, or next of kin, or the person selected by them, be incompetent or unwilling, or if the husband or widow, or next of kin, neglects for thirty (30) days after the death of the person to apply for administration or to request that administration be granted to some other person, it may be granted to one or more of the principal creditors, if competent and willing to serve;

(c) If there is no such creditor competent and willing to serve, it may be granted to such other person as the court may select *(Sec. 6).*

Order of preference

(1) Priority in selecting an administrator

(a) Surviving spouse, or next of kin, or both, or person as such surviving spouse, or next of kin, requests;

(b) One or more of the principal creditors – if such surviving spouse, or next of kin, or the person selected, be incompetent or unwilling, or if they neglect for 30 days after the death of the decedent to apply for administration or to request that administration be granted to some other person, it may be granted to, if competent and willing to serve;

(c) Such other person as the court may select.

Opposition to issuance of letters testamentary; simultaneous filing of petition for administration

(a) Any person interested in a will may state in writing the grounds why letters testamentary should not issue to the persons named therein executors, or any of them, and the court,

after hearing upon notice, shall pass upon the sufficiency of such grounds. A petition may, at the same time, be filed for letters of administration with the will annexed *(Sec. 1, Rule 79)*.

Powers and duties of Executors and Administrators; Restrictions on the powers *(Rule 84)*

(1) An executor is the person nominated by a testator to carry out the directions and requests in his will and to dispose of his property according to his testamentary provisions after his death *(21 Am. Jur. 369)*.

(2) An administrator is a person appointed by the court, in accordance with the governing statute, to administer and settle intestate estate and such testate estate as no competent executor was designated by the testator.

(3) *Executor or administrator to have access to partnership books and property. How right enforced.* The executor or administrator of the estate of a deceased partner shall at all times have access to, and may examine and take copies of, books and papers relating to the partnership business, and may examine and make invoices of the property belonging to such partnership; and the surviving partner or partners, on request, shall exhibit to him all such books, papers, and property in their hands or control. On the written application of such executor or administrator, the court having jurisdiction of the estate may order any such surviving partner or partners to freely permit the exercise of the rights, and to exhibit the books, papers, and property, as in this section provided, and may punish any partner failing to do so for contempt *(Sec. 1, Rule 84)*.

(4) *Executor or administrator to keep buildings in repair.* An executor or administrator shall maintain in tenantable repair the houses and other structures and fences belonging to the estate, and deliver the same in such repair to the heirs or devisees when directed so to do by the court *(Sec. 2, Rule 84)*.

(5) *Executor or administrator to retain whole estate to pay debts, and to administer estate not willed.* An executor or administrator shall have the right to the possession and management of the real as well as the personal estate of the deceased so long as it is necessary for the payment of the debts and the expenses of administration *(Sec. 3, Rule 84)*.

(6) An administrator of an intestate cannot exercise the right of legal redemption over a portion of the property owned in common sold by one of the other co-owners since this is not within the powers of administration *(Caro vs. CA, 113 SCRA 10)*. Where the estate of a deceased person is already the subject of a testate or intestate proceeding, the administrator cannot enter into any transaction involving it without any prior approval of the Court *(Estate of Olave vs. Reyes, 123 SCRA 767)*. The right of an executor or administrator to the possession and management of the real and personal properties of the deceased is not absolute and can only be exercised so long as it is necessary for the payment of the debts and expenses of administration *(Manaquil vs. Villegas, 189 SCRA 335)*.

Appointment of Special Administrator

(1) When there is delay in granting letters testamentary or of administration by any cause including an appeal from the allowance or disallowance of a will, the court may appoint a special administrator to take possession and charge of the estate of the deceased until the questions causing the delay are decided and executors or administrators appointed *(Sec. 1, Rule 80)*.

(2) Respondent Parreño is not precluded from being appointed as a special administrator in view of petitioner Diosdado's claim of being the illegitimate son of the deceased. It is well

settled that the statutory provisions as to the prior or preferred right of certain persons to the appointment of administrator under Section 1, Rule 81, as well as the statutory provisions as to causes for removal of an executor or administrator under Section 2, Rule 83, do not apply to the selection or removal of special administrator. As the law does not say who shall be appointed as special administrator and the qualifications the appointee must have, the judge or court has discretion in the selection of the person to be appointed, discretion which must be sound, that is, not whimsical or contrary to reason, justice or equity *(Manungas vs. Parreño, GR No. 193161, 08/22/2011)*.

Grounds for removal of administrator

(1) *Administration revoked if will discovered. Proceedings thereupon.* If after letters of administration have been granted on the estate of a decedent as if he had died intestate, his will is proved and allowed by the court, the letters of administration shall be revoked and all powers thereunder cease, and the administrator shall forthwith surrender the letters to the court, and render his account within such time as the court directs. Proceedings for the issuance of letters testamentary or of administration under the will shall be as hereinbefore provided *(Sec. 1, Rule 82)*.

(2) *Court may remove or accept resignation of executor or administrator. Proceedings upon death, resignation, or removal.* If an executor or administrator neglects to render his account and settle the estate according to law, or to perform an order or judgment of the court, or a duty expressly provided by these rules, or absconds, or becomes insane, or otherwise incapable or unsuitable to discharge the trust, the court may remove him, or, in its discretion, may permit him to resign. When an executor or administrator dies, resigns, or is removed the remaining executor or administrator may administer the trust alone, unless the court grants letters to someone to act with him. If there is no remaining executor or administrator, administration may be granted to any suitable person *(Sec. 2, Rule 82)*.

Claims Against the Estate *(Rule 86)*

(1) Administration is for the purpose of liquidation of the estate and distribution of the residue among the heirs and legatees. Liquidation means the determination of all the assets of the estate and payment of all debts and expenses.

(2) The purpose of presentation of claims against decedents of the estate in the probate court is to protect the estate of deceased persons. That way, the executor or administrator will be able to examine each claim and determine whether it is a proper one which should be allowed. Further, the primary object of the provisions requiring presentation is to apprise the administrator and the probate court of the existence of the claim so that a proper and timely arrangement may be made for its payment in full or by *pro rata* portion in the due course of the administration, inasmuch as upon the death of a person, his entire estate is burdened with the payment of all his debts and no creditor shall enjoy any preference or priority; all of them shall share *pro rata* in the liquidation of the estate of the deceased.

(3) **2002 Bar**: X filed a claim in the intestate proceedings of D. D's administrator denied liability and filed a counterclaim against X. X's claim was disallowed.

(a) Does the probate court still has jurisdiction to allow the claim of D's administrator by way of offset? Why? (2%)

(b) Suppose the administrator did not allege any claim against X by way of offset, can D's administrator prosecute the claim in an independent proceeding? Why?

B. A, B and C, the on;y heirs in D's intestate proceedings, submitted a project of partition to probate court (RTC-Manila). Upon the court's approval of the partition, two lots were assigned to c, who immediately entered into possession of the lots. Thereafter, C died and proceedings for the settlement of his estate were filed in the RTC-Quezon City. D's administrator then filed a motion in the probate court (RTC-Manila), praying that one of the lots be turned over to him to satisfy debts corresponding to C's portion. The motion was opposed by the administrator of C's estate.

(a) How should the RTC-Manila resolve the motion of D's administrator? (3%)
(b) Suppose the property of D was declared escheated on July 1, 1990, in escheat proceedings brought to the Solicitor General. Now, X, who claims to be an heir of D, field an action to recover the escheated property. Is the action viable? Why? (2%)

Answer:

(a) No, because since the claim of X was disallowed, there is no amount against which to offset the claim of D's administrator.
(b) Yes, D's admninstrator can prosecute the claim in an independent proceeding since the claim of X was disallowed. If X had a valid claim and D's administrator did not allege any claim against X by way of offset, his failure to do so would bar his claim forever *(Sec. 10, Rule 86)*.

B. (a) The motion of D's administrator should be granted. The assignment of the two lots of C was premature because the debts of the state had not been fully paid *(Sec. 1, Rule 90)*.

(b) No, the action is not viable. The action to recover excheated property must be filed within five (5) years or forever barred *(Sec. 4, Rule 90)*.

Time within which claims shall be filed; exceptions

(1) In the notice provided in the preceding section, the court shall state the time for the filing of claims against the estate, which shall not be more than twelve (12) nor less than six (6) months after the date of the first publication of the notice. However, at any time before an order of distribution is entered, on application of a creditor who has failed to file his claim within the time previously limited, the court may, for cause shown and on such terms as are equitable, allow such claim to be filed within a time not exceeding one (1) month *(Sec. 2)*.

Statute of Non-claims

(1) The rule requires certain creditors of a deceased person to present their claims for examination and allowance within a specified period, the purpose thereof being to settle the estate with dispatch, so that the residue may be delivered to the persons entitled thereto without their being afterwards called upon to respond in actions for claims, which, under the ordinary statute of limitations, have not yet prescribed *(Santos vs. Manarang, 27 Phil. 213)*.

Claim of Executor or administrator against the Estate

(1) If the executor or administrator has a claim against the estate he represents, he shall give notice thereof, in writing, to the court, and the court shall appoint a special administrator, who shall, in the adjustment of such claim, have the same power and be subject to the same liability as the general administrator or executor in the settlement of other claims. The court may order the executor or administrator to pay to the special administrator necessary funds to defend such claim *(Sec. 8)*.

Payment of Debts *(Rule 88)*

(1) If there are sufficient properties, the debts shall be paid, thus:
   (a) All debts shall be paid in full within the time limited for the purpose *(Sec. 1)*;
   (b) If the testator makes provision by his will, or designates the estate to be appropriated for the payment of debts they shall be paid according to the provisions of the will, which must be respected *(Sec. 2)*;
   (c) If the estate designated in the will is not sufficient, such part of the estate as is not disposed of by will shall be appropriated for the purpose *(Sec. 2)*;
   (d) The personal estate not disposed of by will shall be first chargeable with payment of debts and expenses *(Sec. 3)*;
   (e) If the personal estate is not sufficient, or its sale would be detrimental to the participants of the estate, the real estate not disposed of by will shall be sold or encumbered for that purpose *(Sec. 3)*;
   (f) Any deficiency shall be met by contributions from devisees, legatees and heirs who have entered into possession of portions of the estate before debts and expenses have been paid *(Sec. 6)*;
   (g) The executor or administrator shall retain sufficient estate to pay contingent claims when the same becomes absolute *(Sec. 4)*.

(2) If the estate is insolvent, the debts shall be paid in the following manner:
   (a) The executor or administrator shall pay the debts in accordance with the preference of credits established by the Civil Code *(Sec. 7)*;
   (b) No creditor of any one class shall receive any payment until those of the preceding class are paid *(Sec. 8)*;
   (c) If there are no assets sufficient to pay the credits of any one class of creditors, each creditor within such class shall be paid a dividend in proportion to his claim *(Sec. 8)*;
   (d) Where the deceased was a nonresident, his estate in the Philippines shall be disposed of in such a way that creditors in the Philippines and elsewhere may receive an equal share in proportion to their respective credits *(Sec. 9)*;
   (e) Claims duly proved against the estate of an insolvent resident of the Philippines, the executor or administrator, having had the opportunity to contest such claims, shall e included in the certified list of claims proved against the deceased. The owner of such claims shall be entitled to a just distribution of the estate in accordance with the preceding rules if the property of such deceased person in another country is likewise equally apportioned to the creditors residing in the Philippines and other creditors, according to their respective claims *(Sec. 10)*;
   (f) It must be noted that the payment of debts of the decedent shall be made pursuant to the order of the probate court *(Sec. 11)*.

(3) *Time for paying debts and legacies fixed, or extended after notice, within what periods.* On granting letters testamentary or administration the court shall allow to the executor or administrator a time for disposing of the estate and paying the debts and legacies of the deceased, which shall not, in the first instance, exceed one (1) year; but the court may, on application of the executor or administrator and after hearing on such notice of the time and place therefor given to all persons interested as it shall direct, extend the time as the circumstances of the estate require not exceeding six (6) months for a single extension nor so that the whole period allowed to the original executor or administrator shall exceed two (2) years *(Sec. 15)*.

(4) Applicable provisions under the Civil Code:

Art. 2241. With reference to specific movable property of the debtor, the following claims or liens shall be preferred:

(1) Duties, taxes and fees due thereon to the State or any subdivision thereof;

(2) Claims arising from misappropriation, breach of trust, or malfeasance by public officials committed in the performance of their duties, on the movables, money or securities obtained by them;

(3) Claims for the unpaid price of movables sold, on said movables, so long as they are in the possession of the debtor, up to the value of the same; and if the movable has been resold by the debtor and the price is still unpaid, the lien may be enforced on the price; this right is not lost by the immobilization of the thing by destination, provided it has not lost its form, substance and identity; neither is the right lost by the sale of the thing together with other property for a lump sum, when the price thereof can be determined proportionally;

(4) Credits guaranteed with a pledge so long as the things pledged are in the hands of the creditor, or those guaranteed by a chattel mortgage, upon the things pledged or mortgaged, up to the value thereof;

(5) Credits for the making, repair, safekeeping or preservation of personal property, on the movable thus made, repaired, kept or possessed;

(6) Claims for laborers' wages, on the goods manufactured or the work done;

(7) For expenses of salvage, upon the goods salvaged;

(8) Credits between the landlord and the tenant, arising from the contract of tenancy on shares, on the share of each in the fruits or harvest;

(9) Credits for transportation, upon the goods carried, for the price of the contract and incidental expenses, until their delivery and for thirty days thereafter;

(10) Credits for lodging and supplies usually furnished to travellers by hotel keepers, on the movables belonging to the guest as long as such movables are in the hotel, but not for money loaned to the guests;

(11) Credits for seeds and expenses for cultivation and harvest advanced to the debtor, upon the fruits harvested;

(12) Credits for rent for one year, upon the personal property of the lessee existing on the immovable leased and on the fruits of the same, but not on money or instruments of credit;

(13) Claims in favor of the depositor if the depositary has wrongfully sold the thing deposited, upon the price of the sale.

In the foregoing cases, if the movables to which the lien or preference attaches have been wrongfully taken, the creditor may demand them from any possessor, within thirty days from the unlawful seizure.

Art. 2242. With reference to specific immovable property and real rights of the debtor, the following claims, mortgages and liens shall be preferred, and shall constitute an encumbrance on the immovable or real right:

(1) Taxes due upon the land or building;

(2) For the unpaid price of real property sold, upon the immovable sold;

(3) Claims of laborers, masons, mechanics and other workmen, as well as of architects, engineers and contractors, engaged in the construction, reconstruction or repair of buildings, canals or other works, upon said buildings, canals or other works;

(4) Claims of furnishers of materials used in the construction, reconstruction, or repair of buildings, canals or other works, upon said buildings, canals or other works;

(5) Mortgage credits recorded in the Registry of Property, upon the real estate mortgaged;

(6) Expenses for the preservation or improvement of real property when the law authorizes reimbursement, upon the immovable preserved or improved;

(7) Credits annotated in the Registry of Property, in virtue of a judicial order, by attachments or executions, upon the property affected, and only as to later credits;

(8) Claims of co-heirs for warranty in the partition of an immovable among them, upon the real property thus divided;

(9) Claims of donors or real property for pecuniary charges or other conditions imposed upon the donee, upon the immovable donated;

(10) Credits of insurers, upon the property insured, for the insurance premium for two years.

Art. 2243. The claims or credits enumerated in the two preceding articles shall be considered as mortgages or pledges of real or personal property, or liens within the purview of legal provisions governing insolvency. Taxes mentioned in No. 1, article 2241, and No. 1, article 2242, shall first be satisfied.

Art. 2244. With reference to other property, real and personal, of the debtor, the following claims or credits shall be preferred in the order named:

(1) Proper funeral expenses for the debtor, or children under his or her parental authority who have no property of their own, when approved by the court;

(2) Credits for services rendered the insolvent by employees, laborers, or household helpers for one year preceding the commencement of the proceedings in insolvency;

(3) Expenses during the last illness of the debtor or of his or her spouse and children under his or her parental authority, if they have no property of their own;

(4) Compensation due the laborers or their dependents under laws providing for indemnity for damages in cases of labor accident, or illness resulting from the nature of the employment;

(5) Credits and advancements made to the debtor for support of himself or herself, and family, during the last year preceding the insolvency;

(6) Support during the insolvency proceedings, and for three months thereafter;

(7) Fines and civil indemnification arising from a criminal offense;

(8) Legal expenses, and expenses incurred in the administration of the insolvent's estate for the common interest of the creditors, when properly authorized and approved by the court;

(9) Taxes and assessments due the national government, other than those mentioned in articles 2241, No. 1, and 2242, No. 1;

(10) Taxes and assessments due any province, other than those referred to in articles 2241, No. 1, and 2242, No. 1;

(11) Taxes and assessments due any city or municipality, other than those indicated in articles 2241, No. 1, and 2242, No. 1;

(12) Damages for death or personal injuries caused by a quasi-delict;

(13) Gifts due to public and private institutions of charity or beneficence;

(14) Credits which, without special privilege, appear in (a) a public instrument; or (b) in a final judgment, if they have been the subject of litigation. These credits shall have preference among themselves in the order of priority of the dates of the instruments and of the judgments, respectively.

Art. 2245. Credits of any other kind or class, or by any other right or title not comprised in the four preceding articles, shall enjoy no preference.

CHAPTER 3

ORDER OF PREFERENCE OF CREDITS

Art. 2246. Those credits which enjoy preference with respect to specific movables, exclude all others to the extent of the value of the personal property to which the preference refers.

Art. 2247. If there are two or more credits with respect to the same specific movable property, they shall be satisfied pro rata, after the payment of duties, taxes and fees due the State or any subdivision thereof.

Art. 2248. Those credits which enjoy preference in relation to specific real property or real rights, exclude all others to the extent of the value of the immovable or real right to which the preference refers.

Art. 2249. If there are two or more credits with respect to the same specific real property or real rights, they shall be satisfied pro rata, after the payment of the taxes and assessments upon the immovable property or real right.

Art. 2250. The excess, if any, after the payment of the credits which enjoy preference with respect to specific property, real or personal, shall be added to the free property which the debtor may have, for the payment of the other credits.

Art. 2251. Those credits which do not enjoy any preference with respect to specific property, and those which enjoy preference, as to the amount not paid, shall be satisfied according to the following rules:

(1) In the order established in article 2244;

(2) Common credits referred to in article 2245 shall be paid pro rata regardless of dates.

Actions by and against Executors and Administrators *(Rule 87)*

(1) No action upon a claim for the recovery of money or debts or interest thereon shall be commenced against the executor or administrator *(Sec. 1)*.

Actions that may be brought against executors and administrators

(1) An action to recover real or personal property, or an interest therein, from the estate, or to enforce a lien thereon, and actions to recover damages for an injury to person or property, real or personal, may be commenced against the executor or administrator *(Sec. 1)*.

(2) Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with this duty shall be a ground for disciplinary action. The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian ad litem for the minor heirs.

The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice. If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time, to procure the appointment of an executor or administrator for the estate of the deceased and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs *(Sec. 16, Rule 3)*.

(3) When the action is for recovery of money arising from contract, express or implied, and the defendant dies before entry of final judgment in the court in which the action was pending at the time of such death, it shall not be dismissed but shall instead be allowed to continue until entry of final judgment. A favorable judgment obtained by the plaintiff therein shall be enforced in the manner especially provided in these Rules for prosecuting claims against the estate of a deceased person *(Sec. 20, Rule 3)*.

Requisites before creditor may bring an action for recovery of property fraudulently conveyed by the deceased

(1) For the creditor to file an action to recover property fraudulently conveyed by the deceased, the following requisites must be present:
   (a) There is a deficiency of assets in the hands of an executor or administrator for the payment of debts and expenses of administration;
   (b) The deceased in his lifetime had made or attempted to make a fraudulent conveyance of his real or personal property, or a right or interest therein, or a debt or credit, with intent to defraud his creditors or to avoid any right, debt or duty; or had so conveyed such property, right, debt, or credit that by law the conveyance would be void as against his creditors;
   (c) The subject of the attempted conveyance would be liable to attachment by any of them in his lifetime;

(d) The executor or administrator has shown to have no desire to file the action or failed to institute the same within a reasonable time;
(e) Leave is granted by the court to the creditor to file the action;
(f) A bond is filed by the creditor as prescribed in the Rules;
(g) The action by the creditor is in the name of the executor or administrator *(Sec. 10).*

Distribution and Partition *(Rule 90)*

(1) Before there could be a distribution of the estate, the following two stages must be followed:
   (a) Payment of obligations (liquidation of estate) – under the Rules, the distribution of a decedent's assets may only be ordered under any of the following three circumstances: (1) when the inheritance tax, among other is paid; (2) when a sufficient bond is given to meet the payment of the inheritance tax and all other obligations; and (3) when the payment of the said tax and all other obligations has been provided for; and
   (b) Declaration of heirs – there must first be declaration of heirs to determine to whom the residue of the estate should be distributed. A separate action for the declaration of heirs is not proper. And likewise after, not before the declaration of heirs is made, may the residue be distributed and delivered to the heirs.

(2) The settlement of a decedent's estate is a proceeding *in rem* which is binding against the whole world. All persons having interest in the subject matter involved, whether they were notified or not, are equally bound.

Liquidation

Sec. 1. *When order for distribution of residue made.* When the debts, funeral charges, and expenses of administration, the allowance to the widow, and inheritance tax, if any, chargeable to the estate in accordance with law, have been paid, the court, on the application of the executor or administrator, or of a person interested in the estate, and after hearing upon notice, shall assign the residue of the estate to the persons entitled to the same, naming them and the proportions, or parts, to which each is entitled, and such person may demand and recover their respective shares from the executor or administrator, or any other person having the same in his possession. If there is a controversy before the court as to who are the lawful heirs of the deceased person or as to the distributive shares to which each person is entitled under the law, the controversy shall be heard and decided as in ordinary cases.

No distribution shall be allowed until the payment of the obligations above mentioned has been made or provided for, unless the distributees, or any of them, give a bond, in a sum to be fixed by the court, conditioned for the payment of said obligations within such time as the court directs.

Sec. 2. *Questions as to advancement to be determined.* Questions as to advancement made, or alleged to have been made, by the deceased to any heir may be heard and determined by the court having jurisdiction of the estate proceedings; and the final order of the court thereon shall be binding on the person raising the questions and on the heir.

Sec. 3. *By whom expenses of partition paid.* If at the time of the distribution the executor or administrator has retained sufficient effects in his hands which may lawfully be applied for the expenses of partition of the properties distributed, such expenses of partition may

be paid by such executor or administrator when it appears equitable to the court and not inconsistent with the intention of the testator; otherwise, they shall be paid by the parties in proportion to their respective shares or interest in the premises, and the apportionment shall be settled and allowed by the court, and, if any person interested in the partition does not pay his proportion or share, the court may issue an execution in the name of the executor or administrator against the party not paying for the sum assessed.

Project of Partition

(1) Project of partition is a document prepared by the executor or administrator setting forth the manner in which the estate of the deceased is to be distributed among the heirs. If the estate is a testate estate, the project of partition must conform to the terms of the will; if intestate, the project of partition must be in accordance with the provisions of the Civil Code *(Camia de Reyes vs. Reyes de Ilano, 63 Phil. 629)*.

Remedy of an heir entitled to residue but not given his share

(1) If there is a controversy before the court as to who are the lawful heirs of the deceased person or as to the distributive shares to which each person is entitled under the law, the controversy shall be heard and decided as in ordinary cases *(Sec. 1)*.

(2) The better practice for the heir who has not received his share is to demand his share through a proper motion in the same probate or administration proceedings, or for reopening of the probate or administrative proceedings if it had already been closed, and not through an independent action, which would be tried by another court or judge *(Ramos vs. Octuzar, 89 Phil. 730)*.

(3) It has been held that an order which determines the distributive share of the heirs of a deceased person is appealable. If not appealed within the reglementary period, it becomes final *(Imperial vs. Muñoz, 58 SCRA)*.

(4) The Court allowed the continuation of a separate action to annul the project of partition by a preterited heir, since the estate proceedings have been closed and terminated for over three years *(Guilas vs. Judge of the CFI of Pampanga, 43 SCRA 117)*, and on the ground of lesion, preterition and fraud *(Solivio vs. CA, 99 Phil. 1069)*.

Instances when probate court may issue writ of execution

(1) The only instances when the probate court may issue a writ of execution are as follows:
   (a) To satisfy the contributive shares of devisees, legatees and heirs in possession of the decedent's assets *(Sec. 6, Rule 88)*;
   (b) To enforce payment of expenses of partition *(Sec. 3, Rule 90)*; and
   (c) To satisfy the costs when a person is cited for examination in probate proceedings *(Sec. 13, Rule 142)*.

B. GENERAL GUARDIANS AND GUARDIANSHIP

Trustees *(Rule 98)*

(1) Requisites for existence of a valid trust:
  (a) Existence of a person competent to create;
  (b) Sufficient words to create it;
  (c) A person capable of holding as trustee a specified or ascertainable object;
  (d) A definite trust *res*; and
  (e) A declaration of the terms of the trust

Distinguished from executor/administrator

Trustee	Executor / Administrator
An instrument or agent of the *cestui que trust*, who acquires no beneficial interest in the estate; he merely took the legal estate as the proper execution of the trust required; and, his estate ceases upon the fulfillment of the testator's wishes, in which case, the same vests absolutely in the beneficiary.	An executor is the person named in the will to administer the decedent's estate and carry out the provisions thereof. An administrator is the person appointed by the court to administer the estate where the decedent died intestate, or where the will was void and not allowed to probate, or where no executor was named in the will, or the executor named therein is incompetent or refuses to serve as such.
An association or corporation authorized to conduct the business of a trust company in the Philippines may be appointed as trustee of an estate in the same manner as an individual *(Art. 1060, Civil Code)*.	An association or corporation authorized to conduct the business of a trust company in the Philippines may be appointed as executor or administrator of an estate in the same manner as an individual *(Art. 1060, CC)*.
Duties are usually governed by the intention of the trustor or the parties if established by a contract. Duties may cover a wider range.	Duties are fixed and/or limited by law *(Rule 84)*.
<u>Grounds for removal of trustee</u>: (a) Insanity; (b) Incapability of discharging trust or evidently unsuitable therefor *(Sec. 8, Rule 98)*; (c) Neglect in the performance of his duties; (d) Breach of trust displaying a want of fidelity, not mere error in the administration of the trust; (e) Abuse and abandonment of the trust; (f) Refusal to recognize or administer the trust;	<u>Grounds for removal</u>: (a) Neglect to render an account and settle the estate according to law; (b) Neglect to perform an order or judgment of the court; (c) Neglect to perform a duty expressly provided by these rules; (d) Absconds, or becomes insane, or otherwise incapable or unsuitable to discharge trust; (e) Fraud or misrepresentation *(Cobarrubias vs. Dizon, 76 Phil. 209)*

(g) Failure or neglect or impropriety in investment of the trust estate as to give rise to waste of trust property; (h) Failure to file accounts, and failure of one co-trustee to keep himself informed of the conduct of the other in the administration of the trust.	

Conditions of the Bond

(1) A trustee appointed by the court is required to furnish a bond and the terms of the trust or a statute may provide that a trustee appointed by a court shall be required to furnish a bond in order to qualify him to administer the trust *(54 Am. Jur. 425)*. However, the court may until further order exempt a trustee under a will from giving a bond when the testator has directed or requested such exemption or when all persons beneficially interested in the trust, being of full age, request the exemption. Such exemption may be cancelled by the court at any time, and the trustee required to forthwith file a bond *(Sec. 5)*. If the trustee fails to furnish a bond as required by the court, he fails to qualify as such. Nonetheless the trust is not defeated by such a failure to give bond.

(2) The following conditions shall be deemed to be a part of the bond whether written therein or not:
   (a) That the trustee will make and return to the court, at such time as it may order, a true inventory of all the real and personal estate belonging to him as trustee, which at the time of the making of such inventory shall have come to his possession or knowledge;
   (b) That he will manage and dispose of all such estate, and faithfully discharge his trust in relation thereto, according to law and the will of the testator or the provisions of the instrument or order under which he is appointed;
   (c) That he will render upon oath at least once a year until his trust is fulfilled, unless he is excused therefrom in any year by the court, a true account of the property in his hands and of the management and disposition thereof, and will render such other accounts as the court may order;
   (d) That at the expiration of his trust he will settle his accounts in court and pay over and deliver all the estate remaining in his hands, or due from him on such settlement, to the person or persons entitled thereto.
   But when the trustee is appointed as a successor to a prior trustee, the court may dispense with the making and return of an inventory, if one has already been filed, and in such case the condition of the bond shall be deemed to be altered accordingly *(Sec. 6)*.

Requisites for the removal and resignation of a trustee

(1) A trustee may be removed upon petition to the proper RTC of the parties beneficially interested, after due notice to the trustee and hearing, if it appears essential in the interests of the petitioners. The court may also, after due notice to all persons interested, remove a trustee who is insane or otherwise incapable of discharging his trust or evidently unsuitable therefor. A trustee, whether appointed by the court or under a written instrument, may resign his trust if it appears to the court proper to allow such resignation *(Sec. 8)*.

(2) A trustee whose acts or omissions are such as to show a want of reasonable fidelity will be removed by the court and where trust funds are to be invested by the trustee, neglect

to invest constitutes of itself a breach of trust, and is a ground for removal *(Gisborn vs. Cavende, 114 US 464)*.

Grounds for removal and resignation of a trustee

(1) The proper Regional Trial Court may, upon petition of the parties beneficially interested and after due notice to the trustee and hearing, remove a trustee if such removal appears essential in the interests of the petitioners. The court may also, after due notice to all persons interested, remove a trustee who is insane or otherwise incapable of discharging his trust or evidently unsuitable therefor. A trustee, whether appointed by the court or under a written instrument, may resign his trust if it appears to the court proper to allow such resignation *(Sec. 8)*.

(2) A trustee whose acts or omissions are such as to show a want of reasonable fidelity will be removed by the court and where trust funds are to be invested by the trustee, neglect to invest constitutes of itself a breach of trust, and is a ground for removal *(Gisborn vs. Cavende, 114 US 464)*.

Extent of authority of trustee

(1) A trustee appointed by the RTC shall have the same rights, powers, and duties as if he had been appointed by the testator. No person succeeding to a trust as executor or administrator of a former trustee shall be required to accept such trust *(Sec. 2)*.

(2) Such new trustee shall have and exercise the same powers, rights, and duties as if he had been originally appointed, and the trust estate shall vest in him in like manner as it had vested or would have vested, in the trustee in whose place he is substituted; and the court may order such conveyance to be made by the former trustee or his representatives, or by the other remaining trustees, as may be necessary or proper to vest the trust estate in the new trustee, either alone or jointly with the others *(Sec. 3)*.

Escheat *(Rule 91)*

(1) Escheat is a proceeding whereby the real and personal property of a deceased person in the Philippines, become the property of the state upon his death, without leaving any will or legal heirs *(21 CJS, Sec. 1, p. 848)*.

When to file

(1) When a person dies intestate, seized of real or personal property in the Philippines, leaving no heir or person by law entitled to the same, the Solicitor General or his representative in behalf of the Republic of the Philippines, may file a petition in the Court of First Instance of the province where the deceased last resided or in which he had estate, if he resided out of the Philippines, setting forth the facts, and praying that the estate of the deceased be declared escheated *(Sec. 1)*.

Requisites for filing of petition

(1) In order that a proceeding for escheat may prosper, the following requisites must be present:
   (a) That a person died intestate;
   (b) That he left no heirs or person by law entitled to the same; and
   (c) That the deceased left properties *(City of Manila vs. Archbishop of Manila, 36 Phil. 815).*

Remedy of respondent against petition; period for filing a claim

(1) When a petition for escheat does not state facts which entitle the petitioner to the remedy prayed for, and even admitting them hypothetically, it is clear that there is no ground for the court to proceed to the inquisition provided by law, an interested party should not be disallowed from filing a motion to dismiss the petition which is untenable from all standpoints. And when the motion to dismiss is entertained upon this ground, the petition may be dismissed unconditionally and the petitioner is not entitled to be afforded an opportunity to amend his petition *(Go Poco Grocery vs. Pacific Biscuit Co., 65 Phil. 443).*

(2) While the Rules do not in fact authorize the filing of a motion to dismiss the petition presented for that purpose, and the Rules permitting the interposition of a motion to dismiss to the complaint and answer, respectively, are not applicable to special proceedings, nevertheless, there is no reason of a procedural nature which prevents the filing of a motion to dismiss based upon any of the grounds provided for by law for a motion to dismiss the complaint. In such a case, the motion to dismiss plays the role of a demurrer and the court should resolve the legal questions raised therein *(Municipal Council of San Pedro, Laugna vs. Colegio de San Jose, 65 Phil. 318).*

Guardianship *(Rules 92 - 97)*

(1) Guardianship is the power of protective authority given by law and imposed on an individual who is free and in the enjoyment of his rights, over one whose weakness on account of his age or other infirmity renders him unable to protect himself *(Cyclopedic Law Dictionary, 908).* Guardianship may also describe the relation subsisting between the guardian and the ward. It involves the taking of possession of, or management of, the estate of another unable to act for himself.

(2) A guardian is a person lawfully invested with power and charged with the duty of taking care of a person who for some peculiarity or status or defect of age, understanding or self-control is considered incapable of administering his own affairs *(Black's Law Dictionary, Fifth Edition).*

(3) Kinds of guardians:
   (a) According to scope or extent
      a) Guardian of the person – one who has been lawfully invested with the care of the person of minor whose father is dead. His authority is derived out of that of the parent;
      b) Guardian of the property – that appointed by the court to have the management of the estate of a minor or incompetent person;
      c) General guardians – those appointed by the court to have the care and custody of the person and of all the property of the ward.

(b) According to constitution
    1) Legal – those deemed as guardians without need of a court appointment *(Art. 225, Family Court)*;
    2) Guardian *ad litem* – those appointed by courts of justice to prosecute or defend a minor, insane or person declared to be incompetent, in an action in court; and
    3) Judicial – those who are appointed by the court in pursuance to law, as guardian for insane persons, prodigals, minor heirs or deceased war veterans and other incompetent persons.

(4) Under the Family Courts Act of 1997 *(RA 8369),* the Family Courts are vested with exclusive original jurisdiction over the following cases:
(a) Criminal
(b) the constitution of family home;
(c) Cases against minors cognizable under the Dangerous Drugs Act, as amended;
(d) Violations case where one or more of the accused is below 18 years of age but less than 9 years of age, or where one or more of the victims is a minor at the time of the commission of the offense;
(e) Petitions for guardianship, custody of children, *habeas corpus* in relation to the latter;
(f) Petitions for adoption of children and the revocation thereof;
(g) Complaints for annulment of marriage, declaration of nullity of marriage and those relating to marital status and property relations of husband and wife or those living together under different status and agreements, and petitions for dissolution of conjugal partnership of gains;
(h) Actions for support and acknowledgment;
(i) Summary judicial proceedings brought under the provisions of EO 209, the Family Code;
(j) Petitions for declaration of status of children as abandoned, dependent or neglected children, petitions for voluntary or involuntary commitment of children; the suspension, termination, or restoration of parental authority and other cases cognizable under PD 603, EO 56 (s. 1986), and other related laws;
(k) Petitions forof RA 7610, the Anti-Child Abuse Law, as amended by RA 7658;
(l) Cases of domestic violence against women and children;

General powers and duties of guardians *(Rule 96)*

(1) The powers and duties of a guardian are:
(a) To have care and custody over the person of his ward, and/or the management of his estate *(Sec. 1)*;
(b) To pay the just debts of his ward out of the latter's estate *(Sec. 2)*;
(c) To bring or defend suits in behalf of the ward, and, with the approval of the court, compound for debts due the ward and give discharges to the debtor *(Sec. 3)*;
(d) To manage the estate frugally and without waste, and apply the income and profits to the comfortable and suitable maintenance of the ward and his family *(Sec. 4)*;
(e) To sell or encumber the real estate of the ward upon being authorized to do so *(Sec. 4)*;
(f) To join in an assent to a partition of real or personal estate held by the ward jointly or in common with others *(Sec. 5)*.

Conditions of the bond of the guardian

(1) Under Sec. 1, Rule 94, the conditions for the bond of a guardian are:

(a) To file with the court complete inventory of the estate of the ward within 3 months;
(b) To faithfully execute the duties of his trust to manage and dispose of the estate according to the Rules for the best interests of the ward, and to provide for the proper use, custody, and education of the ward;
(c) To render a true account of all the estate, and of the management and disposition of the same;
(d) To settle his accounts with the court and deliver over all the estate remaining in his hands to the person entitled thereto;
(e) To perform all orders of the court by him to be performed *(Sec. 1; Sec. 14, AM 03-02-05-SC)*.

Rule on Guardianship over Minors *(AM 03-02-05-SC)*

(1) The father and mother shall jointly exercise legal guardianship over the person and property of their unemancipated common child without the necessity of a court appointment. The Rule shall be suppletory to the provisions of the Family Code on guardianship *(Sec. 1)*.

(2) On grounds authorized by law, any relative or other person on behalf of a minor, or the minor himself if 14 years of age or over, may petition the Family Court for the appointment of a general guardian over the person or property, or both, of such minor. The petition may also be filed by the Secretary of DSWD and of the DOH in the case of an insane minor who needs to be hospitalized *(Sec. 1)*.

(3) Grounds of petition *(Sec. 4)*:
(a) Death, continued absence, or incapacity of his parents;
(b) Suspension, deprivation or termination of parental authority;
(c) Remarriage of his surviving parent, if the latter is found unsuitable to exercise parental authority; or
(d) When the best interest of the minor so requires.

(4) Qualifications of guardians *(Sec. 4)*;
(a) Moral character;
(b) Physical, mental and psychological condition;
(c) Financial status;
(d) Relationship of trust with the minor;
(e) Availability to exercise the powers and duties of a guardian for the full period of the guardianship;
(f) Lack of conflict of interest with the minor; and
(g) Ability to manage the property of the minor.

(5) Order of preference in the appointment of guardian or the person and/or property of minor *(Sec. 6)*:
(a) The surviving grandparent and in case several grandparents survive, the court shall select any of them taking into account all relevant considerations;
(b) The oldest brother or sister of the minor over 21 years of age, unless unfit or disqualified;
(c) The actual custodian of the minor over 21 years of age, unless unfit or disqualified; and
(d) Any other person, who in the sound discretion of the court, would serve the best interests of the minor.

(6) Factors to consider in determining custody:
(a) Any extrajudicial agreement which the parties may have bound themselves to comply with respecting the rights of the minor to maintain direct contact with the non-custodial parent on a regular basis, except when there is an existing threat or danger of

physical, mental, sexual or emotional violence which endangers the safety and best interests of the minor;

(b) The desire and ability of one parent to foster an open and loving relationship between the minor and the other parent;
(c) The health, safety and welfare of the minor;
(d) Any history of child or spousal abuse by the person seeking custody or who has had any filial relationship with the minor, including anyone courting the parent;
(e) The nature and frequency of contact with both parents;
(f) Habitual use of alcohol, dangerous drugs or regulated substances;
(g) Marital misconduct;
(h) The most suitable physical, emotional, spiritual, psychological and educational environment for the holistic development and growth of the minor; and
(i) The preference of the minor over 7 years of age and of sufficient discernment, unless the parent chosen is unfit *(Sec. 14, AM No. 03-04-04-SC)*.

(7) The court shall order a social worker to conduct a case study of the minor and all the prospective guardians and submit his report and recommendation to the court for its guidance before the scheduled hearing.

C. ADOPTION *(Rules 99-100, superseded by AM 02-6-02-SC)*

(1) Adoption is a juridical act which creates between two persons a relationship similar to that which results from legitimate paternity *(Prasnick vs. Republic, 98 Phil. 669)*.
(2) Adoption is a juridical act, a proceeding *in rem*, which creates between the two persons a relationship similar to that which results from legitimate paternity and filiation.
(3) Adoption is not an adversarial proceeding. An adversarial proceeding is one having opposing parties, contested, as distinguished from an *ex parte* application, one of which the party seeking relief has given legal warning to the other party and afforded the latter an opportunity to contest it excludes an adoption proceeding. In adoption, there is no particular defendant to speak of since the proceeding involves the status of a person it being an action *in rem*.

Domestic Adoption Act *(RA 8552; AM 02-06-02-SC)*

Distinguish domestic adoption from inter-country adoption

DOMESTIC ADIPTION	INTER-COUNTRY ADOPTION
Governed by RA 8552, the Domestic Adoption Act of 1998; procedure governed by AM No. 02-06-02-SC, Aug. 22, 2002.	Governed by RA 8043, the Inter-Country Adoption Act of 1995; procedure governed by the Amended Implementing Rules and Regulations on ICAA.
Applies to domestic adoption of Filipino children, where the entire adoption process beginning from the filing of the petition up to	Applies to adoption of a Filipino child in a foreign country, where the petition for adoption is filed, the supervised trial custody

the issuance of the adoption decree takes place in the Philippines.	is undertaken and the decree of adoption is issued outside of the Philippines.
Who may be adopted	**Who may be adopted**
A child legally available for adoption. Requisites: a) Below 18 years of age; and b) Judicially declared available for adoption. Exceptions: a) Legitimate son/daughter of one spouse by the other spouse; b) Illegitimate son/daughter by a qualified adopter; c) Person of legal age if, prior to the adoption said person has been consistently considered and treated by the adopter/s as his/her own child since minority.	Only a legally free child may be adopted. Requisites: a) Below 15 years of age; and b) Has been voluntarily or involuntarily committed to the DSWD in accordance with PD 603.
Who may adopt	**Who may adopt**
A. Filipino Citizens 1) Of legal age; 2) In possession of full civil capacity and legal rights; 3) Of good moral character; 4) Has not been convicted of any crime involving moral turpitude; 5) Emotionally and psychologically capable of caring for children; 6) In a position to support and care for his/her children in keeping with the means of the family; 7) At least 16 years older than the adoptee but this latter requirement may be waived if (a) the adopter is the biological parent of the adoptee; or (b) the adopter is the spouse of the adoptee's parent; and 8) Permanent resident of the Philippines. **B. Aliens** 1) Same qualifications as above, and in addition: 2) His/her country has diplomatic relations with the Republic of the Philippines; 3) His/her government allows the adoptee to enter his/her country as his/her adopted son/daughter; 4) Has been living in the Philippines for at least 3 continuous years prior to the filing of the application for adoption and maintains such residence until the adoption decree is entered; and 5) Has been certified by his/her diplomatic or consular office or any appropriate	**A. Filipino Citizens** 1) Permanent resident of a foreign country; 2) Has the capacity to act and assume all rights and responsibilities of parental authority under Philippine laws; 3) Has undergone the appropriate counseling from an accredited counselor in country of domicile; 4) Has not been convicted of a crime involving moral turpitude; 5) Eligible to adopt under Philippine laws; 6) In a position to provide the proper care and support and to give the necessary moral values and example to all his children, including the child to be adopted; 7) Agrees to uphold the basic rights of the child as embodied under Philippine laws, the UN Convention on Rights of the Child, and to abide by the rules and regulations issued to implement the provisions of the ICAA; 8) Residing in a country with whom the Philippines has diplomatic relations and whose government maintains a similarly authorized and accredited agency and that adoption is allowed in that country; 9) Possesses all the qualifications and none of the disqualifications provided in the ICAA and in other applicable Philippine laws; 10) At least 27 years of age at the time of the application; and 11) At least 16 years older than the child to be adopted at the time of application, unless (a) adopter is the parent by nature of the

government agency that he/she has the legal capacity to adopt in his/her country. This requirement may be waived if (a) a former Filipino citizens seeks to adopt a relative within the 4th degree of consanguinity or affinity; (b) one seeks to adopt the legitimate son/daughter of his/her Filipino spouse; (c) one who is married to a Filipino citizen and seeks to adopt a relative within the 4th degree of consanguinity or affinity of the Filipino spouse.	child to be adopted; or (b) adopter is the spouse of the parent by nature of the child to be adopted. **B. Aliens** 1) At least 27 years of age at the time of the application; 2) At least 16 years older than the child to be adopted at the time of application unless the adopter is the parent by nature of the child to be adopted or the spouse of such parent; 3) Has the capacity to act and assume all rights and responsibilities of parental authority under his national laws; 4) Has undergone the appropriate counseling from an accredited counselor in his/her country; 5) Has not been convicted of a crime involving moral turpitude; 6) Eligible to adopt under his/her national law; 7) In a position to provide the proper care and support and to give the necessary moral values and example to all his children, including the child to be adopted; 8) Agrees to uphold the basic rights of the child as embodied under Philippine laws, the UN Convention on the Rights of the Child, and to abide by the rules and regulations issued to implement the provisions of the ICAA; 9) Comes from a country with whom the Philippines has diplomatic relations and whose government maintains a similarly authorized and accredited agency and that adoption is allowed under his/her national laws; and 10) Possesses all the qualifications and none of the disqualifications provided in the ICAA and in other applicable Philippine laws.
Requirement of Joint Adoption by Spouses	**Requirement of Joint Adoption by Spouses**
General rule: husband and wife shall jointly adopt; otherwise, the adoption shall not be allowed. Exceptions: 1) If one spouse seeks to adopt the legitimate son/daughter of the other; 2) If one spouse seeks to adopt his/her own illegitimate son/daughter but the other spouse must give his/her consent;	Rule: if the adopter is married, his/her spouse must jointly file for the adoption.

3) If the spouses are legally separated from each other.	
Procedure	**Procedure**
Where to file application: In the Family Court of the province or city where the prospective parents reside.	Where to file application: Either in (a) Family Court having jurisdiction over the place where the child resides or may be found, or (b) Inter-Country Adoption Board (ICAB) through an intermediate agency, whether governmental or an authorized and accredited agency, in the country of the prospective adoptive parents.
After filing: The petition shall not be set for hearing without a case study report by a licensed social worker.	After filing: (a) if filed in the FC, court determines sufficiency of petition in respect to form and substance, after which, petition is transmitted to ICAB; (b) if petition is already with ICAB, it conducts matching of the applicant with an adoptive child; (c) after matchmaking, the child is personally fetched by the applicant for the trial custody which takes place outside of the Philippines.
Supervised Trial Custody: a) Temporary parental authority is vested in prospective adopter; b) Period is at least 6 months, but may be reduced by the court *motu propio* or upon motion; c) If adopter is alien, the law mandatorily requires completion of the 6-month trial custody and may not be reduced, except if: (1) a former Filipino citizen seeks to adopt a relative within 4th degree of consanguinity or affinity; (2) one seeks to adopt the legitimate son/daughter of his/her Filipino spouse; (3) one who is married to a Filipino citizen and seeks to adopt jointly with his/her spouse a relative within the 4th degree of consanguinity or affinity of the Filipino spouse.	Supervised Trial Custody: a) This process takes place outside of the country and under the supervision of the foreign adoption agency; b) For a period of 6 months; c) If unsuccessful, ICAB shall look for another prospective applicant. Repatriation of the child is to be resorted only as a last resort; d) If successful, ICAB transmits a written consent for the adoption to be executed by the DSWD, and the applicant then files a petition for adoption in his/her country.
Decree of Adoption: Issued by Philippine Family Court.	Decree of Adoption: Issued by a foreign court.
Consent Required: Written consent of the following to the adoption is required, in the form of affidavit: (1) adoptee, if 10 years of age or over; (2) biological parent/s of the child, if known, or the legal guardian, or the proper government instrumentality	Consent Required: (1) Written consent of biological or adopted children above 10 years of age, in the

which has legal custody of the child; (3) legitimate and adopted sons or daughters, 10 years of age or over, of the adopter/s and adoptee, if any; (4) illegitimate sons/daughters, 10 years of age of over, of the adopter if living with said adopter and the latter's spouse, if any; (5) spouse, if any, of the person adopting or to be adopted.	form of sworn statement is required to be attached to the application to be filed with the FC or ICAB; (2) If a satisfactory pre-adoptive relationship is formed between the applicant and the child, the written consent to the adoption executed by the DSWD is required.

Effects of adoption

(1) Transfer of parental authority – except in cases where the biological parent is the spouse of the adopter, the parental authority of the biological parents shall terminate and the same shall be vested in the adopters *(Sec. 16)*.
(2) Legitimacy – the adoptee shall be considered the legitimate son/daughter of the adopter(s) for all intents and purposes and as such is entitled to all the rights and obligations provided by law to legitimate sons/daughters born to them without discrimination of any kind *(Sec. 17)*.
(3) Successional rights
  (a) In legal and intestate succession, the adopter(s) and the adoptee shall have reciprocal rights of succession without distinction from legitimate filiation *(Sec. 18)*;
  (b) However, if the adoptee and his/her biological parent(s) had left a will, the law on testamentary succession shall govern *(Sec. 18)*;
  (c) Art. 18(3) of the Family Code and Sec. 18, Art V of RA 8552 provide that the adoptee remains an intestate heir of his/her biological parent *(Obiter Dictum in In re In the Matter of Adoption of Stephanie Naty Astorga Garcia, 454 SCRA 541)*.
(4) Issuance of new certificate and first name and surname of adoptee
  (a) The adoption decree shall state the name by which the child is to be known *(Sec. 13)*. An amended certificate of birth shall be issued by the Civil Registry attesting to the fact that the adoptee is the child of the adopter(s) by being registered with his/her surname *(Sec. 14)*;
  (b) The original certificate of birth shall be stamped *"cancelled"* with the annotation of the issuance of an amended birth certificate in its place and shall be sealed in the civil registry records. The new birth certificate to be issued to the adoptee shall not bear any notation that it is an amended issue *(Sec. 14)*;
  (c) All records, books, and papers relating to the adoption cases in the files of the court, the DSWD, or any other agency or institution participating in the adoption proceedings shall be kept strictly confidential and the court may order its release under the following conditions only: (1) the disclosure of the information to a third person is necessary for purposes connected with or arising out of the adoption; (2) the disclosure will be for the best interest of the adoptee; and (3) the court may restrict the purposes for which it may be used *(Sec. 15)*.

Instances when adoption may be rescinded

(1) Grounds for rescission:
  (a) Repeated physical and verbal maltreatment by the adopter(s) despite having undergone counseling;

(b) Attempt on the life of the adoptee;
(c) Sexual assault or violence; or
(d) Abandonment and failure to comply with parental obligations *(Sec. 19)*.

(2) Prescriptive period:
(a) If incapacitated – within five (5) years after he reaches the age of majority;
(b) If incompetent at the time of the adoption – within five (5) years after recovery from such incompetency *(Sec. 21, Rule on Adoption)*.

Effects of rescission of adoption

(1) Parental authority of the adoptee's biological parent(s), if known, or the legal custody of the DSWD shall be restored if the adoptee is still a minor or incapacitated;
(2) Reciprocal rights and obligations of the adopter(s) and the adoptee to each other shall be extinguished;
(3) Cancellation of the amended certificate of birth of the adoptee and restoration of his/her original birth certificate; and
(4) Succession rights shall revert to its status prior to adoption, but only as of the date of judgment of judicial rescission. Vested rights acquired prior to judicial rescission shall be respected *(Sec. 20)*.

Inter-Country Adoption *(RA 8043)*

(1) Inter-Country Adoption refers to the socio-legal process of adopting a Filipino child by a foreigner or a Filipino citizen permanently residing abroad where the petition is filed, the supervised trial custody is undertaken, and the decree of adoption is issued in the Philippines *(Sec. 3[a])*.

When allowed

(1) Inter-country adoptions are allowed when the same shall prove beneficial to the child's best interests, and shall serve and protect his/her fundamental rights *(Sec. 2)*.
(2) It is allowed when all the requirements and standards set forth under RA 8043 are complied with.

Functions of the RTC

(1) An application to adopt a Filipino child shall be filed either with the Regional Trial Court having jurisdiction over the child, or with the Board, through an intermediate agency, whether governmental or an authorized and accredited agency, in the country of the prospective adoptive parents, which application shall be in accordance with the requirements as set forth in the implementing rules and regulations *(Sec. 10)*.

"Best Interest of the Minor" Standard

(1) In case of custody cases of minor children, the court after hearing and bearing in mind the best interest of the minor, shall award the custody as will be for the minor's best interests.

(2) "Best interests of the child" means the totality of the circumstances and conditions as are most congenial to the survival, protection, and feelings of security of the child and most encouraging to his physical, psychological, and emotional development. It also means the least detrimental available alternative for safeguarding the growth and development of the child *(Sec. 4[g], AM 004-07-SC).*

C. HABEAS CORPUS *(Rule 102)*

(1) Writ of *habeas corpus* is a writ which has been esteemed to the best and only sufficient defense of personal freedom having for its object the speedy release by judicial decree of persons who are illegally restrained of their liberty, or illegally detained from the control of those who are entitled to their custody *(Ballantine's Law Dictionary, 2nd Edition; Nava vs. Gatmaitan, 90 Phil. 172).*

(2) The writ of *habeas corpus* shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto. The function of the special proceeding of *habeas corpus* is to inquire into the legality of one's detention. In all petitions for *habeas corpus*, the court must inquire into every phase and aspect of the petitioner's detention from the moment petitioner was taken into custody up to the moment the court passes upon the merits of the petition and only after such scrutiny can the court satisfy itself that the due process clause of the Constitution has been satisfied. However, once the person detained is duly charged in court, he may no longer question his detention by a petition for the issuance of a writ of *habeas corpus*. His remedy then is the quashal of the information and/or the warrant of arrest duly issued. The reason for the issuance of the writ even becomes more unavailing when the person detained files a bond for his temporary release *(Sec. 1; Bernarte vs. CA, 75 SCAD 400 [10/18/1996]).*

(3) *Habeas corpus* may not be used as a means of obtaining evidence on the whereabouts of a person, or as a means of finding out who has specifically abducted or caused the disappearance of a certain person *(Martinez vs. Dir. Gen. Mendoza, GR 153795, 08/17/2006).*

(4) The writs of *habeas corpus* and *certiorari* may be ancillary to each other where necessary to give effect to the supervisory powers of the higher courts. A writ of *habeas corpus* reaches the body and the jurisdictional matters, but not the record. A writ of *certiorari* reaches the record but not the body. Hence, a writ of *habeas corpus* may be used with the writ of *certiorari* for the purpose of review *(Galvez vs. CA, 237 SCRA 685).*

(5) The general rule is that the release, whether permanent or temporary, of a detained person renders the petition for *habeas corpus* moot and academic, unless there are restraints attached to his release which precludes freedom of action, in which case the Court can still inquire into the nature of his involuntary restraint. Petitioner's temporary release does not render the petition for writ moot and academic.

The purpose of the writ is to inquie into all manner of involuntary restraint, and to relieve a person therefrom if such restraint is illegal.

(a) to relieve persons from unlawful restraint
(b) to liberate those who may be imprisoned without sufficient cause
(c) to deliver them from unlawful custody

(Villavicencio vs. Lukban, 39 Phil. 778).

(6) Some instances when the writ may issue:
   (a) To inquire into the legality of an order of confinement by a court martial *(Ogvir vs. Dir. of Prisons, 80 Phil. 401)*;
   (b) To test the legality of an alien's confinement and proposed expulsion from the Philippines *(Lao Tang Bun vs. Fabre, 81 Phil. 682)*;
   (c) To enable parents to regain custody of a minor child, even if the latter be in the custody of a third person of her own free will *(Salvaña vs. Gaela, 55 Phil. 680)*;
   (d) To obtain freedom for an accused confined for failure to post bail where the prosecuting officer unreasonably delays trial by continued postponement *(Conde vs. Rivera, 45 Phil. 650)*;
   (e) To give retroactive effect to a penal provision favorable to the accused when the trial judge has lost jurisdiction by virtue of the finality of the judgment of conviction *(Rodriguez vs. Dir. of Prisons, 57 Phil. 133)*;
   (f) To determine the constitutionality of a statute *(People vs. Vera, 65 Phil. 66)*;
   (g) To permit an alien to land in the Philippines *(The Huan vs. Collector of Customs, 54 Phil. 129)*;
   (h) To put an end to an immoral situation, as when a minor girl, although preferring to stay with her employer, maintains illicit relationship with him *(Macazo vs. Nuñez, L-12772, 01/24/1956)*;
   (i) When a bond given by an accused entitled thereto is not admitted or excessive bail is required of him *(In re Dick, 38 Phil. 41)*;
   (j) To determine the legality of an extradition *(US vs. Rauscher, 119 US 407)*;
   (k) To determine the legality of the action of a legislative body in punishing a citizen for contempt *(Lopez vs. Delos Reyes, 55 Phil. 170)*;
   (l) To obtain freedom after serving minimum sentence when the penalty under an old law has been reduced by an amendatory law.

(7) Temporary release may constitute restraint (a) where a person continued to be unlawfully denied one or more of his constitutional rights; (b) where there is present denial of due process; (c) where the restraint is not merely involuntary but appear to be unnecessary; and (d) where a deprivation of freedom originally valid has in light of subsequent developments become arbitrary *(Moncupa vs. Enrile, GR No. L-63345 [1986\)*.

(8) As a general rule, the release of a detained person whether permanent or remporary makes the petition for habeas corpus moot. Exceptios:
   (a) Doctrine of Constructive Restraint – restraints attached to release which precludes freedom of action, in which case the Court can still inquire into the nature of the involuntary restraint;
   (b) Violation of freedom from threat by the apparent threat to life, liberty and security of their person from the following facts: (1) threat of killing their families if they tried to escapre; (2) failure of the military to protect them from abduction; and (3) failure of the military to conduct effective investigation *(Secretary of Justice vs. Manalo)*

(9) Considering that the writ is made enforceable within a judicial region, petitions for the issuance of the writ of habeas corpus, whether they be filed under Rule 102 of the Rules of Court or pursuant to Section 20 of A.M. No. 03-04-04-SC, may therefore be filed with any of the proper RTCs within the judicial region where enforcement thereof is sought. As regards petitioner's assertion that the summons was improperly served, suffice it to state that service of summons, to begin with, is not required in a habeas corpus petition, be it under Rule 102 of the Rules of Court or A.M. No. 03-04-04-SC. As held in *Saulo v. Cruz, 105 Phil. 315 (1959),* a writ of habeas corpus plays a role somewhat comparable to a summons, in ordinary civil actions, in that, by service of said writ, the court acquires

jurisdiction over the person of the respondent *(Tujan-Militante v. Cada-Deapara, GR No. 210636, 07/28/2014).*

(10) The object of the writ of *habeas corpus* is to inquire into the legality of the detention, and, if the detention is found to be illegal, to require the release of the detainee. Well-settled is the rule that the writ will not issue where the person in whose behalf the writ is sought is in the custody of an officer under process issued by a court or judge with jurisdiction or by virtue of a judgment or order of a court of record. The writ is denied if the petitioner fails to show facts that he is entitled thereto *ex merito jusiticias.*

In this case, petitioner is serving sentence by virtue of a final judgment convicting him of the offense of selling and delivering prohibited drugs defined and penalized under Section 15, Article III of RA 6425, as amended by RA 7659. 37 He failed to show, however, that his further incarceration is no longer lawful and that he is entitled to relief under a writ of *habeas corpus (Tiu vs. Dizon, GR No. 211269, 06/15/2016).*

(11) **2007 Bar**: Husband H files a petition declaration of nullity of marriage before the RTC of Pasig City. Wife W files a petition for habeas corpus before the RTC of Pasay City, praying for custody over their minor child. H files a motion to dismiss the wife's petition on the ground of the pendency of the other case. Rule. (10%)

Answer: The husband's motion to dismiss his wife's petition for habeas corpus should be granted because the case for nullity of marriage constitutes litis pendencia. The custody over the minor child and the action for nullity of the marriage are not separate causes of action. Judgment on the issue of custody in the nullity of marriage case before the RTC of Pasig City, regardless of which party would prevail, would constitute res judicata on the habeas corpus case before the RTC of Pasay City since the former has jurisdiction over the parties and the subject matter. The evidence to support the petition for nullity necessarily involves evidence of fitness to take custody of the child, as the court in the nullity of proceedings has a duty under the Family Code to protect the best interest of the child *(Yu vs. Yu, GR No. 164915, 03/102006; Sec. 1[e], Rule 16) and Sec. 2, Rule 102).*

(12) **2005 Bar**: Mariano was convicted by the RTC for raping Victoria and meted the penalty of reclusion perpetua. While serving sentence at the National Penitentiary, Mariano and Victoria were married. Mariano filed a motion in said court for his release from the penitentiary on his claim that under RA 8353, his marriage to Victoria extinguished the criminal action against him for rape, as well as the penalty imposed on him. However, the court denied the motion on the found that it had lost jurisdiction over the case after its decision had become final and executory.

Is the ruling of the court correct? Explain.

What remedy/remedies should the counsel of Mariano take to secure his proper and most expeditious release from the National Penitentiary? Explain. (7%)

Answer: No. The court can never lose jurisdiction so long as its decision has not yet been fully implemented and satisfied. Finality of a judgment cannot operate to divest a court of its jurisdiction to execute and enforce the judgment *(Echegaray vs. Secretary of Justice, 301 SCRA 96 [1999]).* Besides, there is a supervening event which renders execution unnecessary *(So vs. CA, 388 SCRA 107 [2002]).*

To secure the proper and most expeditious release of Mariano from the National Penitentiary, his counsel should file (a) a petition for habeas corpus regarding the illegal confinement of Mariano, or (b) a motion in the court which convicted him, to nullify the execution of his sentence or the order of his commitment on the ground that a supervening event had despite the finality of the judgment occurred *(Melo vs. People, 85 Phil. 766).*

(13) **2008 Bar**: After Alma had started serving her sentence for violation of Batas Pambansa Blg. 22, she filed a petition for writ of habeas corpus, citing Vaca vs. CA where the sentence of imprisonment of a party found guilty of violation of BP 22 was reduced to a

fine equal to double the amount of the check involved. She prayed that her sentence be similarly modified and that she be immediately released from detention. In the alternative, she prayed that pending determination on whether the Vaca ruling applies to her, she be allowed to post bail pursuant to Rule 102, Section 14, which provides that if a person is lawfully imprisoned or restrained on a charge of having committed an offense not punishable by death, he may be admitted to bail in the discretion of the court. Accordingly, the trial court allowed Alma to post bail and then ordered her release. In your opinion, is the order of thr trial court correct under Rule 102? (2%)

Answer: No, Alma who is already convicted by final judgment, cannot be entitled to bail under Sec. 14, Rule 102. The provision presupposes that she had not been convicted yet. It provides that if she is lawfully imprisoned or restrained for an offense not punishable by death, she may be recommitted to imprisonment or admitted to bail in the discretion of the court or judge *(Rule 102, Section 14; Celeste vs. People, 31 SCRA 391; Vicente v.s Judge Majaducon, AM No. RTJ-02-1698, 06/23/2005).*

(14) **2003 Bar**: Widow A and her two children, both girls, aged 8 and 12 years old, reside in Angeles City, Pampanga. A leaves her two daughters in their house at night because she works in a brothel as a prostitute. Realizing the danger to the morals of these two girls, B, the father of the deceased husband of A, files a petition for habeas corpus against A for the custody of the girls in the Family Court in Angeles City. In the said petition, B alleges that he is entitled to the custody of the two girls because their mother is living a disgraceful life. The court issues the writ of habeas corpus. When A learns of the petition and the writ, she brings her two children to Cebu City. At the expense of B, the sheriff of the said Family Court goes to Cebu City and serves the writ on A. A files her comment on the petition raising the following defense: B has no personality to institute the petition. Resolve the petition in the light of the above defense of A. (6%)

Answer: B, father of the deceased husband of A, has the personality to institute the petition for habeas corpus of the two minor girls, because the grandparent has the right of custody as against the mother A, who is a prostitute *(Sections 2 and 3).*

(12) Hercules was walking near a police station when a police officer signaled for him to approach. As soon as Hercules came near, the police officer frisked him but the latter found no contraband. The police officer told Hercules to get inside the police station. Inside the police station, Hercules asked the police officer, "Sir, may problema po ba?" Instead of replying, the police officer locked up Hercules inside the police station jail.

(A) What is the remedy available to Hercules to secure his immediate release from detention? (2%)

(B) If Hercules filed with the Ombudsman a complaint for warrantless search, as counsel for the police officer, what defense will you raise for the dismissal of the complaint? (3%)

(C) If Hercules opts to file a civil action against the police officer, will he have a cause of action? (3%)

Answer:

(A) The remedy available to Hercules is to file a petition for *habeas corpus* questioning the illegality of his warrantless arrest. The writ of *habeas corpus* shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty *(Section 1, Rule 102).*

(B) As counsel of the policemen, I will raise the defense of presumption of regularity in the performance of duty. I can also raise the defense that the police officer has the duty to search Hercules under the "stop and frisk" rule. A stop and frist situation must precede a warrantless arrest, be limited to the person's outer clothing, and should be grounded upon a genuine reason, in the light of the police officers experience and surrounding conditions, to warrant the belief that the person detained has weapons concealed about him *(Valdez vs. People, GR No. 170180, 11/23/2007).*

The stop and frisk search should be used "[when] dealing with a rapidly unfolding and potentially criminal situation in the city streets where unarguably there is no time to secure a search warrant." Stop and frisk searches (sometimes referred to as Terry searches) are necessary for law enuforcement, that is, law enforcers should be given the legal arsenal to prevent the commission of offenses. This should be balanced, however, with the need to protect the privacy of citizens in accordance with Article III, Section 2 of the Constitution *(People vs. Cagaed, GR No. 200334, 07/30/2014)*.

In addition, I may also assert the defense that the complaint for warrantless search charges no criminal offense. The conduct of a warrantless search is not a criminal act, for it is not penalized under the Revised Penal Code or any other special laws.

(C) Yes. Hercules has a cause of action to file a civil action against the police officer under Article 32 (4) in relation to Article 2219 (6) and (10) of the Civil Code, which provides that a public officer may be liable for damages when the right to be secure in one's person, house, papers and effects against unreasonable searches and seizures is impaired. The indemnity includes moral damages. Exemplary damages may also be adjudicated *(Galvante vs. Casimiro, GR No. 162808, 04/22/2008)*.

Contents of the petition

(1) Application for the writ shall be by petition signed and verified either by the party for whose relief it is intended, or by some person on his behalf, and shall set forth:

(a) That the person in whose behalf the application is made is imprisoned or restrained of his liberty;

(b) The officer or name of the person by whom he is so imprisoned or restrained; or, if both are unknown or uncertain, such officer or person may be described by an assumed appellation, and the person who is served with the writ shall be deemed the person intended;

(c) The place where he is so imprisoned or restrained, if known;

(d) A copy of the commitment or cause of detention of such person, if it can be procured without impairing the efficiency of the remedy; or, if the imprisonment or restraint is without any legal authority, such fact shall appear *(Sec. 3)*.

Contents of the Return

(1) When the person to be produced is imprisoned or restrained by an officer, the person who makes the return shall state therein, and in other cases the person in whose custody the prisoner is found shall state, in writing to the court or judge before whom the writ is returnable, plainly and unequivocably:

(a) Whether he has or has not the party in his custody or power, or under restraint;

(b) If he has the party in his custody or power, or under restraint, the authority and the true and whole cause thereof, set forth at large, with a copy of the writ, order, execution, or other process, if any, upon which the party is held;

(c) If the party is in his custody or power or is restrained by him, and is not produced, particularly the nature and gravity of the sickness or infirmity of such party by reason of which he cannot, without danger, be brought before the court or judge;

(d) If he has had the party in his custody or power, or under restraint, and has transferred such custody or restraint to another, particularly to whom, at what time, for what cause, and by what authority such transfer was made *(Sec. 10)*.

Distinguish peremptory writ from preliminary citation

Peremptory writ	Preliminary citation
Unconditionally commands the respondent to have the body of the detained person before the court at a time and place therein specified;	Requires the respondent to appear and show cause why the peremptory writ should not be granted
(Lee Yick Hon vs. Collector of Customs, 41 Phil. 563)	

When not proper/applicable

(1) Instances when the writ of *habeas corpus* is not proper are:
   (a) For asserting or vindicating denial of right to bail *(Galvez vs. CA, 237 SCRA 685)*;
   (b) For correcting errors in appreciation of facts or appreciation of law – where the trial court had no jurisdiction over the cause, over the person of the accused, and to impose the penalty provided for by law, the mistake committed by the trial court, in the appreciation of the facts and/or in the appreciation of the law cannot be corrected by *habeas corpus* *(Sotto vs. Director of Prisons, 05/30/1962)*;
   (c) Once a person detained is duly charged in court, he may no longer file a petition for *habeas corpus*. His remedy would be to quash the information or warrant *(Rodriguez vs. Judge Bonifacio, 11/26/2000)*.

When writ disallowed/discharged

(1) If it appears that the person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court or judge or by virtue of a judgment or order of a court of record, and that the court or judge had jurisdiction to issue the process, render the judgment, or make the order, the writ shall not be allowed; or if the jurisdiction appears after the writ is allowed, the person shall not be discharged by reason of any informality or defect in the process, judgment, or order. Nor shall anything in this rule be held to authorize the discharge of a person charged with or convicted of an offense in the Philippines, or of a person suffering imprisonment under lawful judgment *(Sec. 4)*.

Distinguish from writ of *Amparo* and *Habeas Data*

Writ of *Habeas Corpus*	Writ of *Amparo*	Writ of *Habeas* Data
A remedy available to any person, it covers cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto.	A remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity. The writ covers extrajudicial killings and enforced disappearances or threats thereof.	A remedy available to any person whose right to privacy in life, liberty or security is violated or threatened by an unlawful act or omission of a public official or employee, or of a private individual or entity engaged in the gathering, collecting or storing of data or information regarding the person, family, home and

		correspondence of the aggrieved party.
Who may file petition: By the party for whose relief it is intended, or by some person on his behalf.	Who may file (in order): a) Any member of the immediate family: spouse, children and parents of the aggrieved party; b) Any ascendant, descendant or collateral relative of aggrieved party within the 4th civil degree of consanguinity or affinity; c) Any concerned citizen, organization, association or institution, if no known member of immediate family.	Who may file (in order): a) Any member of the immediate family: spouse, children and parents of the aggrieved party; b) Any ascendant, descendant or collateral relative of aggrieved party within the 4th civil degree of consanguinity or affinity.
Where to file: RTC, enforceable within its area of jurisdiction. CA or SC, enforceable anywhere in the Philippines.	Where to file: RTC, Sandiganbayan, CA, SC; Writ is enforceable anywhere in the Philippines. (No hierarchy of courts)	Where to file: SC, CA, Sandiganbayan, RTC. Writ is also enforceable anywhere in the Philippines.
	Petitioner is exempted to pay docket and other lawful fees.	Indigent petitioner is exempted to pay docket and other lawful fees.
When issued: Forthwith when a petition therefor is presented and it appears that the writ ought to issue,	When issued: Immediately if on its face it ought to be issued; Served immediately; Summary hearing set not later than seven (7) days from date of issuance.	When issued: Immediately if on its face it ought to be issued; Served within 3 days from issuance; Summary hearing set not later than ten (10) work days from date of issuance.
Contents of verified petition: (a) That the person in whose behalf the application is made is imprisoned or restrained of his liberty; (b) The officer or name of the person by whom he is so imprisoned or restrained; or, if both are unknown or uncertain, such officer or person may be described by an assumed appellation, and the person who is served with the writ shall	Contents of verified petition: a) Personal circumstances of petitioner and of respondent responsible for the threat, act or omission; b) Violated or threatened right to life, liberty and security of aggrieved party, and how committed with attendance circumstances detailed in supporting affidavits; c) Investigation conducted, specifying names, personal circumstances and addresses of	Contents of verified petition: a) Personal circumstances of petitioner and respondent; b) The manner the right to privacy is violated or threatened and how it affects the right to life, liberty or security of aggrieved party; c) Actions and recourses taken by petitioner to secure the data or information; d) Location of files, registers or databases, government

be deemed the person intended; (c) The place where he is so imprisoned or restrained, if known; (d) A copy of the commitment or cause of detention of such person, if it can be procured without impairing the efficiency of the remedy; or, if the imprisonment or restraint is without any legal authority, such fact shall appear	investigating authority or individuals, as well as manner and conduct of investigation together with any report; d) Actions and recourses taken by petitioner to determine the fate or whereabouts of aggrieved party and identity of person responsible for the threat, act or omission; and e) The relief prayed for. f) May include general prayer for other just and equitable reliefs.	office, and the person in charge, in possession or in control of the data or information, if known; e) Reliefs prayed for, which may include the updating, rectification, suppression or destruction of the database or information or files kept by respondent; f) In case of threats, relief may include a prayer for an order enjoining the act complained of; and g) Such other reliefs as are just and equitable.
<u>Contents of return</u>: a) Whether he has or has not the party in his custody or power, or under restraint; b) If he has the party in his custody or power, or under restraint, the authority and the true and whole cause thereof, set forth at large, with a copy of the writ, order, execution, or other process, if any, upon which the party is held; c) If the party is in his custody or power or is restrained by him, and is not produced, particularly the nature and gravity of the sickness or infirmity of such party by reason of which he cannot, without danger, be brought before the court or judge; d) If he has had the party in his custody or power, or under restraint, and has transferred such custody or restraint to another, particularly to whom, at what time, for what cause, and by what	<u>Contents of return</u>: a) Lawful defenses; b) Steps or actions taken to determine whereabouts of aggrieved party; c) All relevant information pertaining to threat, act or omission against aggrieved party; d) If respondent is a public official or employee, further state: (1) verify the identity of aggrieved; (2) recover and preserve evidence related to death or disappearance of person identified in petition; (3) identify witnesses and their statements; (4) determine cause, manner, location and time of death or disappearance as well as pattern or practice; (5) identify and apprehend person/s involved in the death/disappearance; (6) bring suspected offenders before a competent court.	<u>Contents of return</u>: a) Lawful defenses such as national security, state secrets, privileged communications, confidentiality of source of information; b) Disclosure of data/info about petitioner, nature of data/info, purpose of collection; c) Steps or actions taken by respondent to ensure security and confidentiality of data or information; d) Currency and accuracy of data or information; e) Other allegations relevant to resolution of the proceedings. * A general denial of the allegations in the petition is not allowed.

authority such transfer was made.		
	Effects of failure to file return: The court, justice or judge shall proceed to hear the petition *ex parte*.	Effects of failure to file return: The court, justice or judge shall proceed to hear the petition *ex parte*, granting the petitioner such relief as the petition may warrant unless the court in its discretion requires petitioner to submit evidence.
	Procedure for hearing: The hearing on the petition shall be summary. However the court, justice or judge may call for a preliminary conference to simplify the issues and determine the possibility of obtaining stipulations and admissions from the parties. The hearing shall be from day to day until completed and given the same priority as petitions for *habeas corpus*.	Procedure for hearing: The hearing on the petition shall be summary. However the court, justice or judge may call for a preliminary conference to simplify the issues and determine the possibility of obtaining stipulations and admissions from the parties.
	Interim reliefs available before final judgment: a) Temporary Protection Order – protected in a government agency of by an accredited person or private institution capable of keeping and securing their safety; b) Inspection Order – with a lifetime of 5 days which may be extended, may be opposed on the ground of national security or privileged information, allows entry into and inspect, measure, survey or photograph the property; c) Production Order – to require respondents to produce and permit inspection, copying or photographing of documents, papers, books, accounts, letters, photographs, objects or	(Not applicable)

	tangible things that contain evidence. d) Witness protection order.	
	Effect of filing criminal action: A criminal action first filed excludes the filing of the writ; relief shall be by motion in the criminal case. A criminal case filed subsequently shall be consolidated with the petition for the writ of *amparo*.	Effect of filing criminal action: A criminal action first filed excludes the filing of the writ; relief shall be by motion in the criminal case; A criminal case filed subsequently shall be consolidated with the petition for the writ of *habeas data*.
Appeal: To the SC under Rule 45, within 48 hours from notice of judgment *(Tan Chin Hui vs. Rodriguez, GR 137571, Sept. 21, 2000).* A writ of *habeas corpus* does not lie where petitioner has the remedy of appeal or *certiorari* because it will not be permitted to perform the functions of a writ of error or appeal for the purpose of reviewing mere errors or irregularities in the proceedings of a court having jurisdiction over the person and the subject matter *(Galvez vs. CA, GR 114046, Oct. 24, 1994)*.	Appeal: To the SC under Rule 45, within 5 days from notice of adverse judgment, to be given the same priority as *habeas corpus* cases. Of both questions of law and of fact.	Appeal: To the SC under Rule 45, within 5 days from notice of judgment or final order, to be given the same priority as *habeas corpus* and *amparo* cases.
Quantum of prof Preponderance of evidence	Quantum of proof: By substantial evidence. Private respondent to prove ordinary diligence was observed in the performance of duty. Public official/employee respondent to prove extraordinary diligence was observed, and cannot invoke the presumption that official duty has been regularly performed to evade responsibility or liability.	Quantum of prof Substantial evidence

(1) The Family Court has exclusive original jurisdiction to hear petitions for custody of minors and the issuance of the writ of *habeas corpus* in relation to custody of minors. The Court is tasked with the duty of promulgating special rules or procedure for the disposition of family cases with the best interests of the minor as primary consideration, taking into account the United Nations Convention on the Rights of the Child. It should be clarified that the writ is issued by the Family Court only in relation to custody of minors. An ordinary petition for *habeas corpus* should be filed in the regular Court. The issue of child custody may be tackled by the Family Court without need of a separate petition for custody being filed.

(2) The Committee chose the phrase "any person claiming custody" as it is broad enough to cover the following: (a) the unlawful deprivation of the custody of a minor; or (b) which parent shall have the care and custody of a minor, when such parent is in the midst of nullity, annulment or legal separation proceedings *(Sec. 2).*

(3) The hearings on custody of minors may, at the discretion of the court, be closed to the public and the records of the case shall not be released to non-parties without its approval *(Sec. 21).*

(4) A motion to dismiss the petition is not allowed except on the ground of lack of jurisdiction over the subject matter or over the parties. Any other ground that might warrant the dismissal of the petition shall be raised as an affirmative defense in the answer *(Sec. 6).*

(5) Upon the filing of the verified answer of the expiration of the period to file it, the court may order a social worker to make a case study of the minor and the parties and to submit a report and recommendation to the court at least three days before the scheduled pre-trial *(Sec. 8).*

(6) Hold Departure Order – The minor child subject of the petition shall not be brought out of the country without prior order from the court while the petition is pending. The court *motu proprio* or upon application under oath may issue *ex parte* a hold departure order addressed to the BID of the DOJ a copy of the hold departure order within 24 hours from its issuance and through the fastest available means of transmittal *(Sec. 16).*

(7) The petition may be filed with the regular court in the absence of the presiding judge of the Family Court, provided, however, that the regular court shall refer the case to the Family court as soon as its presiding judge returns to duty. Section 20 of AM No. 03-04-04-SC states that the writ shall be enforceable within the judicial region to which the Family Court belongs. Considering that the writ is made enforceable within the judicial region, petitions for the issuance of the writ of *habeas corpus*, whether they be filed under Rule 102 of the Rules of Court or pursuant to Section 20 of AM No. 03-04-04-SC, may be filed with any of the proper RTC within the regional region where enforecement thereof is sought. Furthermore, service of summons is not required in a *habeas corpus* petition, be it under Rule 102 of the Rules of Court or AM No. 03-04-04-SC. A writ of *habeas corpus* plays a role somewhat comparable to a summons in ordinary civil actions, in that, by service of said writ, the court acquires jurisdiction over the person of the respondent *(Cada v. Cada-Deapera, GR No. 210636, 07/28/2014).*

E. WRIT OF AMPARO *(AM No. 07-9-12-SC)*

(1) Writ of Amparo emanated in Mexico, and evolved into many forms:
   (a) Amparo libertad – for the protection of personal freedom;
   (b) Amparo contra leyes – for judicial review of the constitutionality of statutes;
   (c) Amparo casacion – judicial review of constitutionality and legality of judicial decisions;
   (d) Amparo agrario – for the protection of peasant's rights

(2) The Amparo Rule was intended to address the intractable problem of "extralegal killings" and "enforced disappearances," its coverage, in its present form, is confined to these two instances or to threats thereof. "Extralegal killings" are "killings committed without due process of law, i.e., without legal safeguards or judicial proceedings." On the other hand, "enforced disappearances" are "attended by the following characteristics: an arrest, detention or abduction of a person by a government official or organized groups or private individuals acting with the direct or indirect acquiescence of the government; the refusal of the State to disclose the fate or whereabouts of the person concerned or a refusal to acknowledge the deprivation of liberty which places such persons outside the protection of law *(Yusa vs. Segui, GR No. 193652, 08/05/2014).*

(3) It would be inappropriate to apply to writ of *amparo* proceedings the Doctrine of Command Responsibility as a form of criminal complicity through omission, for individual respondents' criminal liability, if there be any, is beyond the reach of *amparo*. If command responsibility were to be invoked and applied to *amparo* proceedings, it should, at most, be only to determine the author who, at the first instance, is accountable for, and has the duty to address, the disappearance and harassments complained of, so as to enable the Court to devise remedial measures that may be appropriate under the premises to protect rights covered by the writ of *amparo (Rubrico, et al. vs. Arroyo, GR No. 183871, 02/18/2010).*

(4) The writ of *amparo* is a protective remedy aimed at providing judicial relief consisting of the appropriate remedial measures and directives that may be crafted by the court, in order to address specific violations or threats of violation of the constitutional rights to life, liberty or security. Section 1 of A.M. No. 07-9-12-SC specifically delimits the coverage of the writ of *amparo* to extralegal killings and enforced disappearances, *viz.* :

> *Sec. 1. Petition. - The petition for a writ of amparo is a remedy available to any person whose rights to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity.*
>
> *The writ shall cover extralegal killings and enforced disappearances or threats thereof.*

Extralegal killings are killings committed without due process of law, *i.e.,* without legal safeguards or judicial proceedings. On the other hand, enforced disappearance has been defined by the Court as the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the la w.

In an *amparo* action, the parties must establish their respective claims by substantial evidence. Substantial evidence is that amount of evidence which a reasonable mind might accept as adequate to support a conclusion. It is more than a mere imputation of wrongdoing or violation that would warrant a finding of liability against the person charged *(Mamba v. Bueno, EB, GR No. 191416, 02/07/2017).*

(5) In the seminal case of *Secretary of National Defense, et al. v. Manalo, et al. (598 Phil. 1, 37 [2008]),* the Court emphasized that the writ of *amparo* serves both preventive and curative roles in addressing the problem of extralegal killings and enforced disappearances. It is preventive in that it breaks the expectation of impunity in the commission of these offenses; it is curative in that it facilitates the subsequent punishment of perpetrators as it will inevitably yield leads to subsequent investigation and action.

Accordingly, a writ of *amparo* may still issue in the respondent's favor notwithstanding that he has already been released from detention. In such case, the writ of *amparo* is issued to facilitate the punishment of those behind the illegal detention through subsequent investigation and action.

More importantly, the writ of *amparo* likewise covers violations of the right to security. At the core of the guarantee of the right to security, as embodied in Section 2, Article III of the Constitution, is the immunity of one's person, including the extensions of his/her person, *i.e.,* houses, papers and effects, against unwarranted government intrusion. Section 2, Article III of the Constitution not only limits the State's power over a person's home and possession, but more importantly, protects the privacy and sanctity of the person himself *(Mamba v. Bueno, EB, ibid.).*

(6) The right to security is separate and distinct from the right to life. The right to life guarantees essentially the right to be alive - upon which the enjoyment of all other rights is preconditioned. On the other hand, the right to security is a guarantee of the secure quality of life, *i.e.,* the life, to which each person has a right, is not a life lived in fear that his person and property may be unreasonably violated by a powerful ruler *(Mamba vs. Bueno, EB, ibid.).*

(7) Substantial evidence is sufficient in proceedings involving petitions for the writ of *amparo.* The respondent must show in the return on the writ of *amparo* the observance of extraordinary diligence. Once an enforced disappearance is established by substantial evidence, the relevant State agencies should be tasked to assiduously investigate and determine the disappearance, and, if warranted, to bring to the bar of justice whoever may be responsible for the disappearance. . . . Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion *(Republic vs. Cayanan, EB, GR No. 181796, 11/07/2017).*

(8) **Bar:** The residents of Mt. Ahohoy, headed by Masigasig, formed a non-governmental organization–Alyansa Laban sa Minahan sa Ahohoy (ALMA) to protest the mining operations of Oro Negro Mining in the mountain. ALMA members picketed daily at the entrance of the mining site blocking the ingress and egress of trucks and equipment of Oro Negro, hampering its operations. Masigasig had an altercation with Mapusok arising from the complaint of the mining engineer of Oro Negro that one of their tracks was destroyed by ALMA members. Mapusok is the leader of the Association of Peace Keepers of Ahohoy (APKA), a civilian volunteer organization serving auxillary force of the local police to maintain peace and order in the area. Subsequently, Masigasig disappeared. Mayumi, the wife of Masigasig, and the members of ALMA searched for Masigasig, but all their efforts proved futile. Mapagmatyag, a member of ALMA, learned from Maingay, a member of APKA, during their bige drinking that Masigasig was abducted by other members of APKA, on order of Mapusok. Mayumi and ALMA sought the assistance of the local police to search for Masigasig, but they refused to extend their cooperation.

Immediately, Mayumi filed with the RTC, a petition for the issuance of the writ of amparo against Mapusok and APKA. ALMA also filed a petition for the issuance of the writ of amparo with the Court of Appeals against Mapusok and APKA. Respondents Mapusok and APKA, in their Return filed with the RTC, raised amont their defenses that they are not agents of the State; hence, cannot be impleaded as respondents in amparo petition.

(A) Is their defense tenable? (3%)

Respondents mapusok and APKA, in their Return filed with the Court of Appeals, raised as theif defense that the petition should be dismissed on the ground that ALMA cannot file the petition because of the earlier petition filed by Mayumi with the RTC.

(B) Are respondents correct in raising theif defense? (3%)

(C) Maymi later filed separate criminal and civil actions against Mapusok. How will the cases affect the amparo petition she earlier filed? (1%)

Answers:

(A) No. The defense is not tenable. The writ of amparo is a remedy available to any person whose right to life, liberty and security has been violated or is threatened with violation by an unlawful act or omission of a public officer or employee or of a private individual or entity. The writ covers extralegal killing and enforced disappearances or threats thereof *(Section)*.

Moreover, the rules do n not require that the respondents should be agents of the State in order to be impleaded as respondents in an amparo petition *(Secretary of National Defense vs. Manalo, GR No. 180906, 10/07/2008)*.

(B) Yes. The respondents are correct ub rausubg tge defense, Under Section 2 (c) of the Rules of the Writ of Amparo, the filing of a petition by Mayumi who is an immediate member of the family of the aggrieved party already suspends the right of all other authorized parties to file similar petitions. Hence, ALMA cannot file the petition because of the earlier petition filed by Mayumi with the RTC.

(C) When a criminal action and a separate civil action are subsequent to a petition for a writ of amparo, the latter shall be consolidated with the criminal action. After consolidation, the procedure under the Rules shall constinue to apply to the disposition of the reliefs in the petition *(Section 23)*.

Omnibus waiver rule

(1) *Defenses Not Pleaded Deemed Waived.* – All defenses shall be raised in the return, otherwise, they shall be deemed waived *(Sec. 10)*.

Differences between Writ of Amparo and Search Warrant

Writ of Amparo	Search Warrant
SEC. 6. *Issuance of the Writ.* - Upon the filing of the petition, the court, justice or judge shall immediately order the issuance of the writ if on its face it ought to issue. The clerk of court shall issue the writ under the seal of the court; or in case of urgent necessity, the justice or the judge may issue the writ in his or her own hand, and may deputize any officer or person to serve it. The writ shall also set the date and time for summary hearing of the petition which shall not be later than seven (7) days from the date of its issuance.	Sec. 4. *Requisites for issuing search warrant.* - A search warrant shall not issue except upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witness he may produce, and particularly describing the place to be searched and the things to be seized which may be anywhere in the Philippines.

F. WRIT OF HABEAS DATA *(AM No. 08-1-16-SC)*

Scope of writ; Availability of writ; Distinguish from *Habeas Corpus* and *Amparo*; Who may file; Contents of the petition; Consolidation; Effect of filing of a criminal action; Institution of separate action

(1) *(Please see table below.)*

(2) The writ of *habeas data* can be availed of as an independent remedy to enforce one's right to privacy, more specifically the right to informational privacy. The court still found that the remedy is wrong in this case. The Supreme Court found that there was no reasonable expectation of privacy in cases of Facebook photos being posted specially if there is no evidence to prove that there are only a handful of people who may view the same. Since there is no informational privacy that may be expected on social media, the Court found the petition to be without merit *(Vivares vs. St. Theresa's College, GR No. 202666, 09/29/2014).*

	HABEAS CORPUS	AMPARO	HABEAS DATA
Nature, Scope, and Function	(1) All cases of illegal confinement and detention which any person is deprived of his liberty (2) Deprivation of rightful custody of any person from the person entitled *[Sec. 1]* Actual violation before writ issues.	Involves right to life, liberty and security violated or threatened with violation by an unlawful act or omission of a public official or employee or a private individual or entity Covers extralegal killings and enforced dis-ppearances or threats thereof. *[Sec. 1]*	Involves the right to privacy in life, liberty or security violated or threatened by an un-lawful act or omission of a public official or employee, or of a private individual or entity engaged in the gathering, collecting or storing of data or information regarding the person, family, home and correspondence of the aggrieved party. *Sec. 1]*
Limitations	May not be suspended except in cases of invasion or rebellion when public safety requires it *[Sec. 15, Art. III, 1987 Const.]*	Shall not diminish, increase or modify substantive rights *[Sec. 23]*	Shall not diminish, increase or modify substantive rights *[Sec. 23]*
Who may file	By a petition signed and verified by the party for whose relief it is intended, or by some person on his behalf *[Sec. 3]*	Petition filed by the aggrieved party or by any qualified person or entity in the following order: (1) Any member of the immediate family (2) Any ascendant, descendant or collateral relative of the aggrieved within the 4th civil degree of affinity or consanguinity (3) Any concerned citizen, organization, association or institution. Filing by the aggrieved suspends the right of all others *[Sec. 2]*	Any aggrieved party may file a petition. However, in cases of extralegal killings and enforced disappearances, the petition may be filed by (also successive): (1) Any member of the immediate family of the aggrieved (2) Any ascendant, descendant or collateral relative of the aggrieved party within the fourth civil degree of consanguinity or affinity *[Sec. 2]*

Where filed	(1) SC or any member thereof, on any day and at any time (2) CA or any member thereof in nstances authorized by law (3) RTC or a judge thereof, on any day and at any time, enforceable only within his judicial district *[Sec. 2]* (4) MTC or first level courts in the absence of RTC judges in a judicial region *[Sec. 35, BP 129]*	(1) SB, CA, SC, or any justice of such courts (2) RTC of place where the threat, act, or omission was committed or any element occurred *[Sec. 3]*	(1) At the option of petitioner, RTC where: (a) Petitioner resides or (b) Respondent resides or (c) That which has jurisdiction over the place where the data or information is gathered, collected or stored (2) SC, CA, or SB - If public data files of government offices *[Sec. 3]*
Where enforceable	If SC/CA issued, anywhere in the Philippines. If granted by the RTC or judge thereof, it is enforceable in any part of the judicial region *(Sec. 21, BP 29)* where the judge sits	Anywhere in the Philippines *[Sec. 4]*	Anywhere in the Philippines *[Sec. 3]*
Where returnable	If issued by: (1) SC/CA, or a member thereof, returnable before such court or any member thereof or an RTC (2) RTC, or a judge thereof, returnable before himself *[Sec. 2]*	If issued by: (1) SC or any of its justices, returnable before such court or any justice thereof, or before the CA/SB or any of their justices, or to any RTC of the place where the threat, act or omission was committed or any of its elements occurred (2) CA/SB or any of their justices, returnable before such court or any justice thereof, or to any RTC of the place where the threat, act, or omission was committed or any of its elements occurred (3) RTC or any judge thereof, returnable before such court	If issued by: (1) SC or any of its justices, before such Court or any justice thereof, or CA/SB or any of its justices, or the RTC of the place where the petitioner or respondent resides/has jurisdiction over the place where the data or information is gathered, stored or collected (2) CA/SB or any of its justices, before such court or any justice thereof, or RTC (same with scenario: SC issued and then returned in RTC) (3) RTC, returnable before such court or judge *(Sec. 4)*
Docket fees	Upon the final disposition of such proceedings the court or judge shall make such order as to costs as the case requires *(Sec. 19)*	Petitioner shall be exempted from the payment of the docket and other lawful fees Court, justice or judge shall docket the petition and act upon it immediately *(Sec 4)*	None for indigent petitioner Petition shall be docketed and acted upon immediately, without prejudice to subsequent submission of proof of indigency not later than 15 days from filing *(Sec. 5)*

Essential allegations / Contents of petition	Signed and verified either by the party for whose relief it is intended or by some person on his behalf, setting forth: (1) The person in whose behalf the application is made is imprisoned or restrained of his liberty (2) Name of the person detaining another or assumed appellation (3) Place where he is imprisoned or restrained of his liberty (4) Cause of detention *(Sec. 3)*	Signed and verified and shall allege: (1) The personal circumstances of the petitioner (2) Name or appellation and circumstances of the respondent (3) The right to life, liberty, and security violated or threatened with violation, (4) The investigation conducted, if any, plus circumstances of each (5) The actions and recourses taken by the petitioner (6) Relief prayed for may include a general prayer for other just and equitable reliefs *(Sec. 5)*	Verified and written petition shall contain: (1) Personal circumstances of petitioner and respondent (2) Manner the right to privacy is violated or threatened and its effects (3) Actions and recourses taken by the petitioner to secure the data or information (4) The location of the files, registers, or databases, the government office, and the person in charge or control (5) The reliefs prayed for Such other relevant reliefs as are just and equitable *(Sec. 6)*
When proper	Court or judge must, when a petition is presented and it appears that it ought to issue, grant the same and then: - the clerk of court (CoC) shall issue the writ under the seal of the court or - in case of emergency, the judge may issue the writ under his own hand, and may depute any officer or person to serve it Also proper to be issued when the court or judge has examined into the cause of restraint of the prisoner, and is satisfied that he is unlawfully imprisoned *(Sec. 5)*	Upon the filing of the petition, the court, justice, or judge shall immediately order the issuance of the writ if on its face it ought to issue - CoC shall issue the writ under the seal of the court or - In case of urgent necessity, the justice or the judge may issue the writ under his or her own hand, and may deputize any officer or person to serve it. *(Sec. 6)*	Upon filing of the petition, the court, justice, or judge shall immediately order the issuance of the writ if on its face it ought to issue. - CoC shall issue the writ under the seal of the court and cause it to be served within 3 days from issuance or - In case of urgent necessity, the justice or judge may issue the writ under his or her own hand, and may deputize any officer or person to serve it *(Sec. 7)*
Service	Writ may be served in any province by the (a) sheriff, (b) other proper officer, or (c) person deputed by the court or judge. Service is made by leaving the original with the person to whom it is directed and preserving a copy on which to make return of service. If that person cannot be found, or has not the prisoner in his custody, service shall be made on any other person having or	The writ shall be served upon the respondent by a judicial officer or by a person deputized by the court, justice or judge who shall retain a copy on which to make a return of service. In case the writ cannot be served personally on the respondent, the rules on substituted service shall apply *(Sec. 8)*	The writ shall be served upon the respondent by a judicial officer or by a person deputized by the court, justice or judge who shall retain a copy on which to make a return of service. In case the writ cannot be served personally on the respondent, the rules on substituted service shall apply *(Sec. 9)*

	exercising such custody *(Sec. 7)*		
Respondent	May or may not be an officer *(Sec. 6)*	A public official or employee or private individual or entity *(Sec. 1)*	A public official or employee or a private individual or entity engaged in gathering, collecting, or storing data *(Sec. 1)*
How executed and returned	The officer to whom the writ is directed shall convey the person so imprisoned or restrained before: - the judge allowing the writ, or - in his absence or disability, before some other judge of the same court on the day specified in the writ, unless person directed to be produced is sick or infirm, and cannot, without danger, be brought therein. Officer shall then make due return of the writ, with the day and cause of the caption and restraint according to the command thereof *(Sec. 8)*	Respondent files the return *(Sec. 9)*	Respondent files the return *(Sec. 10)*
When to return	On the day specified on the writ *(Sec. 8)*	Within 5 working days after service of the writ *(Sec. 9)*	Within 5 working days after service of the writ *(Sec. 10)*
General denial		Not allowed *(Sec. 9)*	Not allowed *(Sec. 10)*
Effect of failure to file return		Court or justice shall proceed to hear the petition *ex parte* *(Sec. 12)*	Court, judge, or justice shall hear the motion *ex parte*, granting the petitioner such reliefs as the petition may warrant Unless the court in its discretion requires the petitioner to submit evidence *(Sec. 14)*
Nature of hearing		Summary. However, the court, justice, or judge, may call for a preliminary conference to simplify the issues and look at possibility of obtaining stipulations and admissions from the parties. Hearing shall be from day to day until completed; same priority of petitions for writ of habeas corpus *(Sec. 13)*	Summary. With possibility of preliminary conference similar to the writ of amparo *(Sec. 14)* Hearing in chambers may be conducted where respondent invokes the defense of national security or state secrets, or trhe data is of privileged character *(Sec. 12)*

Date and time of hearing	As specified in the writ *(Sec. 8)*	As specified in the writ, not later than 7 days from the issuance of the writ *(Sec. 6)*	As specified in the writ, not later than 10 working days from the date of issuance of the writ *(Sec. 7)*
Prohibited pleadings	In custody of minors: a motion to dismiss, except on the ground of lack of jurisdiction [Sec. *6, Rule on Custody of Minors and WHC*	(1) Motion to dismiss (2) Motion for extension of time to file opposition, affidavit, position paper and other pleadings (3) Dilatory motion for postponement (4) Motion for bill of particulars (5) Counterclaims or crossclaims (6) Third-party complaint (7) Reply (8) Motion to declare respondent in default (9) Intervention (10) Memorandum (11) Motion for reconsideration of interlocutory orders or interim relief orders (12) Petition for certiorari, mandamus, or prohibition *(Sec. 11)*	*(same as for Writ of Amparo, Sec. 13)*
Burden of proof / standard of diligenge	Clear and convincing evidence *(Dizon vs. Eduardo, GR No. L-59118 [1988])*	Substantial evidence If respondent is a private individual or entity, ordinary diligence If public official or employee, extraordinary diligence *(Sec. 17)*	Substantial evidence required to prove the allegations in the petition *(Sec. 16)*
Judgment		Within 10 days from the time the petition is submitted for decision *(Sec. 18)*	Within 10 days from the time the petition is submitted for decision *(Sec. 16)*
Appeal	Within 48 hours fromnotice of the judgment of final order appeal *(Sec. 39, BP 129)*	5 working days from the date of notice of adverse judgment to the SC under Rule 45 *(Sec. 19)*	5 working days from the date of notice of adverse judgment to the SC under Rule 45 *(Sec. 19)*

Instances when petition may be heard in chambers

(1) A hearing in chambers may be conducted where the respondent invokes the defense that the release of the data or information in question shall compromise national security or state secrets, or when the data or information cannot be divulged to the public due to its nature or privileged character *(Sec. 12)*.

(2) A Habeas Data Petition is dismissible if it fails to adequately show that there exists a nexus between the right to privacy on the one hand, and the right to life, liberty or security

on the other. Moreover, it is equally dismissible if it is not supported by substantial evidence showing an actual or threatened violation of the right to privacy in life, liberty or security of the victim *(Margate Lee vs. Ilaga, GR No. 203254, 10/08/2014).*

G. CHANGE OF NAME *(Rule 103)*

Differences under Rule 103, RA 9048 and Rule 108

Rule 103	RA 9048	Rule 108
Petition should be filed in the RTC where the petitioner resides	Petitions filed with the city or municipal civil registrar, or with consul general for citizens living abroad	Verified petition filed in the RTC where the corresponding Civil Registry is located
Civil Registrar is not a party. Solicitor General to be notified by service of a copy of petition.		Civil Registrar is an indispensable party. If not made a party, proceedings are null and void. Reason: he is interested party in protecting the integrity of public documents. Solicitor General must also be notified by service of a copy of the petition.
Petition is filed by the person desiring to change his name	Verified petition in the form of affidavit is filed by any person having direct and personal interest in the correction	By a person interested in any acts, event, order or decree
Involves change of name only	Involves first name and nickname	All cancellation or correction of entries of: (a) births; (b) marriages; (c) deaths; (d) legal separation; (e) judgments or annulments of marriage; (f) judgments declaring marriages void from the beginning; (g) legitimations; (h) adoptions; (i) acknowledgments of natural children; (j) naturalizations; (k) election, loss or recovery of citizenship; (l) civil interdiction; (m) judicial determination of filiation; (n)

		voluntary emancipation of a minor; and (o) changes of name.
Involves substantial changes	Involves clerical or typographical errors	Substantial and adversary if change affects the civil status, citizenship or nationality of a party; Summary if involves mere clerical errors *(Republic vs. Valencia, 141 SCRA 462).*
Grounds: (a) Name is ridiculous, dishonorable or extremely difficult to write or pronounce; (b) Change is a legal consequence of legitimation or adoption; (c) Change will avoid confusion; (d) One has continuously used and been known since childhood by a Filipino name and was unaware of alien parentage; (e) Change is based on a sincere desire to adopt a Filipino name to erase signs of former alienage, all in good faith and without prejudice to anybody; and (f) Surname causes embarrassment and there is no showing that the desired change of name was for a fraudulent purpose, or that the change of name would prejudice public interest *(Republic vs. Hernandez, 68 SCAD 279); Republic vs. Avila, 122 SCRA 483).*	Grounds: a) First name or nickname is found to be ridiculous, tainted with dishonor or extremely difficult to write or pronounce; b) The first name or nickname has been habitually and continuous used by petitioner publicly known by that first name or nickname in the community; c) Change will avoid confusion.	Grounds: Cancellation or correction of entries of: (a) births; (b) marriages; (c) deaths; (d) legal separation; (e) judgments or annulments of marriage; (f) judgments declaring marriages void from the beginning; (g) legitimations; (h) adoptions; (i) acknowledgments of natural children; (j) naturalizations; (k) election, loss or recovery of citizenship; (l) civil interdiction; (m) judicial determination of filiation; (n) voluntary emancipation of a minor; and (o) changes of name.
Order for hearing to be published once a week for three consecutive weeks in a newspaper of general circulation in the province.	Petition shall be published at least once a week for two consecutive weeks in a newspaper of general circulation.	Order shall also be published once a week for three consecutive weeks in a newspaper of general circulation in the province, and court shall cause reasonable notice to

	Also to be posted in a conspicuous place for ten consecutive days.	persons named in the petition.
Entry is correct but petitioner desires to change the entry	Entry is incorrect.	Cancellation or correction of correct or incorrect entries
An appropriate adversary proceeding	An appropriate administrative proceeding.	An appropriate summary or adversary proceeding depending on effects
Requires judicial order	Does not require judicial order.	Directed or changed by the city or municipal civil registrar or consul general without judicial order
Service of judgment shall be upon the civil register concerned	Transmittal of decision to civil registrar general	Service of judgment shall be upon the civil register concerned
Appeal may be availed of if judgment or final order rendered affects substantial rights of person appealing.	In case denied by the city or municipal civil registrar or the consul general, petitioner may either appeal the decision to the civil register general or file appropriate petition with proper court by petition for review under Rule 43.	Appeal may be availed of if judgment or final order rendered affects substantial rights of person appealing, to the RTC or to the CA.

Grounds for change of name

(1) The grounds for change of name are:
   (a) When the name is ridiculous, dishonorable or extremely difficult to write or pronounce;
   (b) When the change is a legal consequence of legitimation or adoption;
   (c) When the change will avoid confusion;
   (d) When one has continuously used and been known since childhood by a Filipino name and was unaware of alien parentage;
   (e) When the change is based on a sincere desire to adopt a Filipino name to erase signs of former alienage, all in good faith and without prejudice to anybody; and
   (f) When the surname causes embarrassment and there is no showing that the desired change of name was for a fraudulent purpose, or that the change of name would prejudice public interest *(Republic vs. Hernandez, 68 SCAD 279); Republic vs. Avila, 122 SCRA 483).*

(2) Republic Act No. 10172 defines a clerical or typographical error as a recorded mistake, "which is *visible to the eyes or obvious to the understanding."* Thus:

> Section 2. *Definition of Terms.* - As used in this Act, the following terms shall mean:
>
> (3) "Clerical or typographical error" refers to a mistake committed in the performance of clerical work in writing, copying, transcribing or typing an entry in the civil register that is harmless and innocuous, such as misspelled name or misspelled place of birth, mistake in the entry of day and month in the date of birth or the sex of the person or the like, which is visible to the eyes or obvious

to the understanding, and can be corrected or changed only by reference to other existing record or records: *Provided, however,* That no correction must involve the change of nationality, age, or status of the petitioner.

Likewise, Republic Act No. 9048 states:

Section 2. *Definition of Terms.* - As used in this Act, the following terms shall mean:

(3) "Clerical or typographical error" refers to a mistake committed in the performance of clerical work in writing, copying, transcribing or typing an entry in the civil register that is harmless and innocuous, such as misspelled name or misspelled place of birth or the like, which is visible to the eyes or obvious to the understanding, and can be corrected or changed only by reference to other existing record or records: *Provided, however,* That no correction must involve the change of nationality, age, status or sex of the petitioner.

By qualifying the definition of a clerical, typographical error as a mistake "visible to the eyes or obvious to the understanding," the law recognizes that there is a factual determination made after reference to and evaluation of existing documents presented.

Thus, corrections may be made even though the error is not typographical if it is "obvious to the understanding," even if there is no proof that the name or circumstance in the birth certificate was ever used.

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As stated, the governing law on changes of first name is currently Republic Act No. 10172, which amended Republic Act No. 9048.

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In addition to the change of the first name, the day and month of birth, and the sex of a person may now be changed without judicial proceedings. Republic Act No. 10172 clarifies that these changes may now be administratively corrected where it is patently clear that there is a clerical or typographical mistake in the entry. It may be changed by filing a subscribed and sworn affidavit with the local civil registry office of the city or municipality where the record being sought to be corrected or changed is kept.

Section 1. *Authority to Correct Clerical or Typographical Error and Change of First Name or Nickname.*- No entry in a civil register shall be changed or corrected without a judicial order, except for clerical or typographical errors and *change of first name or nickname,* the day and month in the date of birth or sex of a person *where it is patently clear that there was a clerical or typographical error or mistake in the entry,* which can be corrected or changed by the concerned city or municipal civil registrar or consul general in accordance with the provisions of this Act and its implementing rules and regulations.

However, Republic Act No. 10172 does not apply in the case at bar as it was only enacted on August 15, 2012--more than two (2) years after Gallo filed her Petition for Correction of Entry on May 13, 2010. Hence, Republic Act No. 9048 governs.

(Republic vs. Gallo, GR No. 207074, 01/17/2018).

H. ABSENTEES *(Rule 107)*

(1) Stages of absence:
   (a) provisional absence
   (b) declaration of absence
   (c) presumption of death

Purpose of the Rule

(a) The purpose of the Rule is to allow the court to appoint an administrator or representative to take care of the property of the person who is sought to be judicially declared absent. It also aims to have the court appoint the present spouse as administrator or administratrix of the absent spouse's properties, or for the separation of properties of the spouses.

Who may file; when to file

(1) The following may file an application for the declaration of absence of a person:
   (a) Spouse present;
   (b) Heirs instituted in a will, who may present an authentic copy of the same;
   (c) Relatives who would succeed by the law of intestacy; and
   (d) Those who have over the property of the absentee some right subordinated to the condition of his death *(Sec. 2)*.

(2) After the lapse of two (2) years from his disappearance and without any news about the absentee or since the receipt of the last news, or of five (5) years in case the absentee has left a person in charge of the administration of his property, the declaration of his absence and appointment of a trustee or administrator may be applied for *(Sec. 2)*.

(3) When a person disappears from his domicile, his whereabouts being unknown, and without having left an agent to administer his property, or the power conferred upon the agent has expired, any interested party, relative or friend, may petition the Court of First Instance of the place where the absentee resided before his disappearance for the appointment of a person to represent him provisionally in all that may be necessary *(Sec. 1)*.

I. CANCELLATION OR CORRECTION OF ENTRIES *(Rule 108)*

(1) **2015 Bar:** Hades, an American citizen, through a dating website, got acquainted with Persephone, a Filipina. Hades came to the Philippines and proceeded to Baguio City where Persephone resides. Hades and Persephone contracted marriage, solemnized by the Metropolitan Trial Court judge of Makati City. After the wedding, hades flew back to California, United States of America, to wind up his business affairs. On his return to the Philippines, Hades discovered that Persephone had an illicit affair with Phanes. Immediately, Hades returned to the United States and was able to obtain a valid divorce decree from the Superior Court of the County of San Mateo, California, a court of competent jurisdiction against Persephone. Hades desires to marry Hestia, also a Filipina, whom he met at Baccus Grill in Pasay City.

(A) As Hades lawyer, what petition should you file in order that your client can avoid prosecution for bigamy if he desires to marry Hestia? (2%)

(B) In what court should file the petition? (1%)

(C) What is the essential requisite that you must comply with for the purpose of establishing jurisdictional facts before the court can hear the petition? (3%)

Answer:

(A) As Hades' lawyer, I would file a petition for recognition of foreign divorce decree, or at least file a special proceeding for cancellation or correction of entries in the civil registry under Rule 108 of the Rules of Court and include therein a prayer for recognition of the aforementioned divorce decree.

In *Corpuz vs. Sto. Tomas (GR No. 186571, 08/11/2010)*, the High Court declared that the recognition of the foreign divorce decree may be made in a Rule 108 of the Rules of Court is precisely to establish the status or right of a party or a particular fact *(Fujiki vs. Marinay, GR No. 196049, 06/26/2013)*.

(B) Petition for recornition of foreign divorce decree should be filed in the Regional Trial Court of the place of residence of any of the parties, at the option of the petitioner; or

Petition for cancellation or correction of entries under Rule 108 should be filed in the Regional Trial Court of Makati City, where the corresponding Local Civil Registry is located.

(C) In a petition for recognition of foreign judgment, the petitioner only needs to prove the foreign judgment as a fact under the Rules of Court. To be more specific, a copy of the foreign judgment may be admitted in evidence and proven as fact under Sections 24 and 25 of Rule 132 ub relation to Section 48(b), Rule 39 of the Rules of Court *(Fujiki vs. Marinay, GR No. 196049, 06/26/2013)*.

Before the court can hear the petition under Rule 108 of the Rules of Court, Hades must satisfy the following procedural requirements: (a) filing a verified petition; (b) naming as parties all persons who have or claim any interest which would be affected; (c) issuance of an order fixing the time and place of hearing; (d) giving reasonable notice to the parties named in the petition; and (e) publication of the order once a week for three consecutive weeks in a newspaper of general circulation *(Rule 108; Co vs. Civil Register of Manila, GR No. 138496, 02/23/2004; Corpuz vs. Tirol, GR No. 186571, 08/11/2010)*.

(1) Upon good and valid grounds, the following entries in the civil register may be cancelled or corrected: (a) births; (b) marriages; (c) deaths; (d) legal separations; (e) judgments of annulments of marriage; (f) judgments declaring marriages void from the beginning; (g) legitimations; (h) adoptions; (i) acknowledgments of natural children; (j) naturalization (k) election, loss or recovery of citizenship (l) civil interdiction; (m) judicial determination of filiation; (n) voluntary emancipation of a minor; and (a) changes of name *(Sec. 2, Rule 108).*

(2) The petition for change of first names or nicknames may be allowed when such names or nicknames are ridiculous, tainted with dishonor or extremely difficult to write or pronounce; or the new name or nickname has been used habitually and continuously petitioner and has been publicly known by that first name or nickname in the community; or the change will avoid confusion *(Sec. 4, RA 9048).*

(3) Substantial errors in a civil registry may be corrected and the true facts established provided the parties aggrieved by the error avail themselves of the appropriate adversary proceedings. Thus, correcting the entry on Onde's birth certificate that his parents were married on December 23, 1983 in Bicol to "not married" is a substantial correction requiring adversarial proceedings. Said correction is substantial as it will affect his legitimacy and convert him from a legitimate child to an illegitimate one *(Onde vs. Office of the Local Civil Registrar of Las Pinas, GR No. 197174, 09/10/2014).*

(4) As a general rule, entries in a civil registere shall be changed or corrected through a judicial order, except:
   (a) clerical or typographical errors; and
   (b) change of (1) first name or nickname; (2) the day and month in the date of birth; or (3) sex or a person – where it is patently clear that there was a clerical or typographical error or mistake in the entry, which can be corrected or changed by the concerned city or municipal civil registrar or consul general in accordance with the provisions of this Act and its implementing rules and regulation *(Sec. 1, RA 9048, as amended by RA 10172).*

(5) As stated, Gallo filed her Petition for Correction of Entry on May 13, 2010. The current law, Republic Act No. 10172, does not apply because it was enacted only on August 19, 2012. The applicable law then for the correction of Gallo's name is Republic Act No. 9048.

To reiterate, Republic Act No. 9048 was enacted on March 22, 2001 and removed the correction of clerical or typographical errors from the scope of Rule 108. It also dispensed with the need for judicial proceedings in case of any clerical or typographical mistakes in the civil register, or changes of first name or nickname. Thus:

> Section 1. *Authority to Correct Clerical or Typographical Error and Change of First Name or Nickname.* - No entry in a civil register shall be changed or corrected without a judicial order, except for clerical or typographical errors and change of first name or nickname which can be corrected or changed by the concerned city or municipal civil registrar or consul general in accordance with the provisions of this Act and its implementing rules and regulations.

Therefore, it is the civil registrar who has primary jurisdiction over Gallo's petition, not the Regional Trial Court. Only if her petition was denied by the local city or municipal civil registrar can the Regional Trial Court take cognizance of her case.

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Likewise, the prayers to enter Gallo' s middle name as Soriano, the middle names of her parents as Angangan for her mother and Balingao for her father, and the date of her parents' marriage as May 23, 1981 fall under clerical or typographical errors as mentioned in Republic Act No. 9048 *(Republic vs. Gallo, GR No. 207074, 01/17/2018).*

(6) **2007 Bar**: B files a petition for cancellation of the birth certificate of her daughter R on the ground of falsified material entries therein made by B's husband as the informant. The RTC sets the case for hearing and directs the publication of the order once a week for three consecutive weeks in a newspaper of general circulation. Summons was served on the Civil Registrar but there was no appearance during the hearing. The RTC granted the petition. R filed a petition for annulment of judgment before the Court of Appeals saying that she was not notified of the petition and hence, the decision was issued in violation of due process. B opposed, saying that the publication of the court order was sufficient compliance with due process. Rule *(5%).*

Answer: Jurisdiction of the court over a petition for the cancellation of a birth certificate requires reasonable notice to all interested parties and also publication of the order once a week for three consecutive weeks in a newspaper of general circulation *(Rule 108, Sec. 4).* In this case, publication of the order is insufficient because R, a directly concerned party, was not given reasonable notice, hence, denied due process. The lower court, therefore, did not acquire jurisdiction. Accordingly, the petition for annulment of judgment before the Court of Appeals should be granted *(Cerulla v. Delantar, GR No. 140305, 12/09/2005).*

(7) **2005 Bar**: Helen is the daughter of Eliza, a Filipina, and Tony, a Chinese, who is married to another woman living in China. Her birth certificate indicates that Helen is the legitimate child of Tony and Eliza and that she is a Chinese citizen. Helen wants her birth certificate corrected by changing her filiation fro "legitimate" to "illegitimate" and her citizenship from Chinese to Filipino because her parents were not married. What petition should Helen file and what procedural requirements must be observed? Explain. (5%)

Answer: A petition to change the record of birth by changing the filiation from "legitimate" to "illegitimate" and petitioner's citizenship from "Chinese" to "Filipino" because her parents were not married, does not involve a simple summary correction of her certificate of birth, which could otherwise be done under the authority of RA 9048. A petition has to be filed in and adversarial proceeding under Rule 108, which has now been interpreted to be adversarial in nature. Procedural requirements include: (a) filing a verified petition; (b) naming as parties all persons who have or claim any interest which could be affected; (c) issuance of an order fixing the time and place of hearing; (d) giving reasonable notice to the parties named in the petition; and (e) publication of the order once a week for three consecutive weeks in a newspaper of general circulation *(Co v. The Civil Registrar of Manila, 423 SCRA 420 [2004]).*

J. APPEALS IN SPECIAL PROCEEDINGS *(Rule 109)*

Judgments and orders for which appeal may be taken

(1) An interested person may appeal in special proceedings from an order or judgment rendered by a Court of First Instance or a Juvenile and Domestic Relations Court, where such order or judgment:

(a) Allows or disallows a will;

(b) Determines who are the lawful heirs of a deceased person, or the distributive share of the estate to which such person is entitled;

(c) Allows or disallows, in whole or in part, any claim against the estate of a deceased person, or any claim presented on behalf of the estate in offset to a claim against it;

(d) Settles the account of an executor, administrator, trustee or guardian;

(e) Constitutes, in proceedings relating to the settlement of the estate of a deceased person, or the administration of a trustee or guardian, a final determination in the lower court of the rights of the party appealing, except that no appeal shall be allowed from the appointment of a special administrator; and

(f) Is the final order or judgment rendered in the case, and affects the substantial rights of the person appealing, unless it be an order granting or denying a motion for a new trial or for reconsideration *(Sec. 1)*.

When to appeal

(1) Appeals in special proceedings necessitate a record on appeal as the original record should remain with the trial court, hence the reglementary period of thirty (30) days is provided for the perfection of appeals in special proceedings.

Modes of appeal

(1) While under the concept in ordinary civil actions some of the orders stated in Sec. 1 may be considered interlocutory, the nature of special proceedings declares them as appealable orders, as exceptions to the provisions of Sec., Rule 41. Thus:

(a) Ordinary appeal**.** The appeal to the CA in cases decided by the RTC 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 the 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 CA in cases decided by the RTC in the exercise of its appellate jurisdiction shall be by petition for review in accordance with Rule 42.

(c) Petition for review on certiorari. In all cases where only questions of law are raised or involved, the appeal shall be to the SC by petition for review on certiorari in accordance with Rule 45.

Rule on Advance Distribution

(1) Notwithstanding a pending controversy or appeal in proceedings to settle the estate of a decedent, the court may, in its discretion and upon such terms as it may deem proper and just, permit that such part of the estate as may not be affected by the controversy or appeal be distributed among the heirs or legatees, upon compliance with the conditions set forth in Rule 90 of these rules *(Sec. 2)*.

PART III
RULES OF CRIMINAL PROCEDURE
Rules 110 – 127

General Matters

(1) Criminal jurisdiction pertains to the authority to hear and try a particular offense and impose the punishment therefor *(People vs. Mariano, GR No. L-40527 [1976])*.

(2) Criminal procedure is defined as a proceeding instituted to determine a person's guilt or innocence or to set a convicted person's punishment. Proceeding is defined as any procedural means for seeking redress from a tribunal or agency. It is the business conducted by a court or other official body *(Heirs of Federico Delgado v. Gonzalez, GR No. 184337, 08/07/2009)*.

(3) Jurisdiction over the subject matter refers to the right to act or the power and authority to hear and determine a cause *(Gomez vs. Montalban, GR No. 174414 [2008])*.

(4) Jurisdiction of a court to try a criminal action is determined by the law in force at the time of the institution of the action, and not the law in force at the time of the commission of the crime *(People vs. Lagon, GR No. 45815 [1990])*.

(5) In determining whether or not the court has jurisdiction over an offense, we consider the penalty which may be imposed upon the accused for the charge in the complaint and not the actual penalty imposed after the trial *(People vs. Purisima, GR No. L-40902 [1976])*.

(6) Injunction will not lie to enjoin a criminal prosecution because public interest requires that criminal acts be immediately investigated and prosecuted for the protection of society *(Asutilla v. PNB, 225 Phil. 40]1986])*. However, there are certain exceptions *(People v. Grey, GR No. 180109, 07/26/2010)*:

   (a) to offer adequate protection to the constitutional rights of the accused *(Hernandez v. Albano, L-19272, 01/25/1967)*;

   (b) when necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions *(Fortun v. Labang, L-38383, 05/27/1981)*;

   (c) when there is a prejudicial question which is sub-judice *(De Leon v. Mabanag, 70 Phil. 202)*;

   (d) when the acts of the officer are without or in excess or authority *(Planas v. Gil, 67 Phil 62)*;

   (e) where the prosecution is under an invalid law, ordinance or regulation *(Young v. Rafferty, 33 Phil. 556)*;

   (f) where double jeopardy is clearly apparent *(Sangalang v. People, 109 Phil. 1140)*;

   (g) where the court has no jurisdiction over the case *(Lopex v. City Judge, L-25795, 10/29/1966)*;

   (h) where there is a case of persecution rather than prosecution *(Rustia v. ocampo, CA-GR No. 4760 [03/25/1960])*;

   (i) where the charges are manifestly false and motivated by the lust for vengeance *(Recto v. Castelo, 18 LJ [1953])*;

   (j) when there is clearly no prima facie case against the accused and a motion to quash on that ground has been denied *(Salonga v. Paño, L-59524, 02/18/1985)*;

   (k) when preliminary injunction has been issued by the Supreme Court to prevent the threatened unlawful arrest of petitioners *(Brocka v. Enrile, GR Nos. 69863-65, 12/10/1990)*.

Requisites for exercise of criminal jurisdiction

(1) The offense if one which the court is by law authorized to take cognizance of;
(2) The offense must have been committed within its territorial jurisdiction; and
(3) The person charged with the offense must have been brought into its forum for trial, forcibly or by warrant of arrest or upon his voluntary submission to the court *(Arula vs. Espino)*

Distinguish Jurisdiction over subject matter from jurisdiction over person of the accused

Jurisdiction over the subject matter	Jurisdiction over person of the accused
does not depend upon the consent or omission of the parties to the action or any of them;	may be conferred by consent expressly or impliedly given, or it may, by objection, be prevented from attaching or being removed after it is attached.
Nothing can change the jurisdiction of the court over it or dictate when it shall be removed, insofar as it is a matter of legislative enactment which none but the legislature may change.	Sometimes made to depend, indirectly at least, on the party's volition *(MRR vs. Atty. General)*

(1) Jurisdiction over the subject matter is determined upon the allegations made in the complaint, irrespective of whether the plaintiff is entitled or not, to recover upon the claim asserted therein, a matter resolved only after and as a result of the trial *(Magay vs. Estiandan, 69 SCRA 456).*

(2) Jurisdiction over the person of the accused by voluntary appearance or surrender of the accused or by his arrest *(Choc vs. Vera, 64 Phil. 1066).*

Jurisdiction of Criminal courts

(1) The information charged Antonio Garcia with violation of Article 318 of the Revised Penal Code, which is punishable by arresto mayor, or imprisonment for a period of one (1) month and one (1) day to six (6) months. When the information was filed on September 3, 1990, the law in force was Batas Pambansa Blg. 129 before it was amended by Republic Act No. 7691. Under Section 32 of Batas Pambansa Blg. 129, the Metropolitan Trial Court had jurisdiction over the case *(Garcia v. Ferro Chemicals, Inc., GR No. 172505, 10/01/2014).*

(2) **2003 Bar**: In complex crimes, how is the jurisdiction of a court determined? (4%)

In a complex crime, jurisdiction over the whole complex crime must be lodged with the trial court having jurisdiction to impose the maximum and most serious penalty imposable on an offense forming part of the complex crime *(Cuyos vs. Garcia, 160 SCRA 302 [1988]).*

Court	Original	Exclusive Appellate
Supreme Court	Exclusive: Petitions for *certiorari*, prohibition and *mandamus* against the CA and Sandiganbayan. Concurrent: a) with CA: petitions for certiorari, prohibition and mandamus against RTC; b) with CA and RTC: petitions for certiorari, prohibition and mandamus against lower courts;	By Appeal: a) from the RTC in all criminal cases involving offenses for which the penalty is *reclusion perpetua* or life imprisonment, and those involving other offenses which, although not so punished, arose out of the same occurrence or which may have been

	c) with Sandiganbayan: petitions for mandamus, prohibition, certiorari, *habeas corpus*, injunction and ancillary writs in aid of its appellate jurisdiction and over petitions of similar nature, including *quo warranto* arising or that may arise in cases filed or which may be filed under EO Nos. 1, 2, 14 and 14-A.	committed by the accused on the same occasion; b) Automatic review where death penalty is imposed. By Petition for Review on *Certiorari*: a) from the Court of Appeals; b) from the Sandiganbayan; c) from the RTC where only an error or question of law is involved.
Court of Appeals	Exclusive: Actions for annulment of judgments of the RTC Concurrent: a) with the SC: petitions for certiorari, prohibition and mandamus against RTC; b) with SC and RTC: petitions for certiorari, prohibition and mandamus against lower courts.	By Appeal: From the RTC in cases commenced therein, except those appealable to the SC or the Sandiganbayan; By Petition for Review: From the RTC in cases appealed thereto from the lower courts and not appealable to the Sandiganbayan
Sandiganbayan	Exclusive: a) Violations of RA 3019, as amended, RA 1379, and bribery and corruption offenses under the Revised Penal Code, where one or more of the accused are officials occupying positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense; b) Other offenses or felonies whether simple or complexed with other crimes committed in relation to their office by the public officials and employees mentioned in Sec. 4[a], PD 1606, as amended by RA 7075; b) Criminal cases filed pursuant to and in connection with EO Nos. 1, 2, 14, and 14-A,	By Appeal: a) from the RTC in cases under PD 1606, as amended by PD 1861, whether or not the cases were decided b them in the exercise of their original or appellate jurisdictions;

Regional Trial Courts	Exclusive Original: (a) All criminal cases which are not within the exclusive jurisdiction of any court, tribunal or body. (b) criminal cases where one or more of the accused is below 18 years of age but not less than 15 years, or where one or more of the victims is a minor at the time of the commission of the offense *(RA 9344)*; (c) violations of intellectual property rights *(AM 03-03-03-SC [2003]; RA 8293)*; (d) Money laundering cases *(RA 9160)*, except those committed by public officers and private persons who are in conspiracy with such public officers (under the jurisdiction of the Sandiganbayan)	All cases decided by lower courts in their respective territorial jurisdictions.
Metropolitan, Municipal and Municipal Circuit Trial Courts	Exclusive Original: a) Violations of city or municipal ordinances committed within their respective territorial jurisdictions *(Sec. 32, BP 129)*; b) All offenses punishable with imprisonment of not more than 6 years irrespective of the amount of fine, and in all cases of damage to property through criminal negligence, regardless of other penalties and the civil liabilities arising therefrom *(Sec. 32, BP 129)*; c) All offenses (except violations of RA 3019, RA 1379 and Arts. 210 to 212, RPC) committed by public officers and employees in relation to their office, including those employed in GOCCs, and by private individuals charged as co-principals, accomplices or accessories, punishable with imprisonment of not more than 6 years or where none of the accused holds a position of salary Grade 27 and higher. (d) offenses involving damage to property through criminal negligence *(RA 7691);* (e) violations of BP 22 *(AM 00-11-01-SC [2003])*; (f) Cases classified under the Revised Rules on Summary Procedure *(SC Resolution, October 15, 1991)*; (1) Violations of traffic laws, rules, or regulations; (2) Violations of rental law; (3) Cases where the penalty prescribed by law for the offense charged is imprisonment not exceeding 6 months, *or* a fine not exceeding P1,000, *or* both, irrespective of other imposable	

	penalties, accessory or otherwise, or of the civil liability arising therefrom; (4) Offenses involving damage to property through criminal negligence (imposable fine does not exceed P10,000); Special Jurisdiction: Application for bail in criminal cases in the absence of RTC judges in the province or city *(Sec. 35, BP 129)*	

When injunction may be issued to restrain criminal prosecution

(1) General Rule: Criminal prosecution may not be restrained or stayed by prohibition or injunction because public interest requires that criminal acts be immediately investigated and prosecuted for the protection of society *(Domingo vs. Sandiganbayan, GR No. 109376 [2000])*.

(2) Exceptions:
- (a) To afford adequate protection to the constitutional rights of the accused;
- (b) Then necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions;
- (c) When there is a pre-judicial question which is *sub judice*;
- (d) When the acts of the officer are without or in excess of authority;
- (e) Where the prosecution is under an invalid law, ordinance or regulation;
- (f) When double jeopardy is clearly apparent;
- (g) Where the court has no jurisdiction over the offense;
- (h) Where it is a case of persecution rather than prosecution;
- (i) Where the charges are manifestly false and motivated by the lust for vengeance;
- (j) When there is clearly no prima facie case against the accused and a motion to quash on that ground has been denied; and
- (k) To prevent the threatened unlawful arrest of petitioners *(Brocka v. Enrile, 192 SCRA 183 (1990).*

A. PROSECUTION OF OFFENSES *(Rule 110)*

Criminal actions, how instituted

(1) Criminal actions shall be instituted as follows:

(a) For offenses where a preliminary investigation is required pursuant to section 1 of Rule 112, by filing the complaint with the proper officer for the purpose of conducting the requisite preliminary investigation.

(b) For all other offenses, by filing the complaint or information directly with the Municipal Trial Courts and Municipal Circuit Trial Courts, or the complaint with the office of the prosecutor. In Manila and other chartered cities, the complaint shall be filed with the office of the prosecutor, unless otherwise provided in their charters.

The institution of the criminal action shall interrupt the period of prescription of the offense charged unless otherwise provided in special laws *(Sec. 1)*.

(2) Preliminary investigation is required for offenses punishable by at least 4 years, 2 months, and 1 day, unless the accused was lawfully arrested without a warrant, in which case, an inquest must have been conducted *(Sections. 1 and 7, Rule 112)*.

Who may file them; crimes that cannot be prosecuted *de oficio*

(1) All criminal actions commenced by complaint or information shall be prosecuted under the direction and control of the prosecutor. However, in the Municipal Trial Courts or Municipal Circuit Trial Courts when the prosecutor assigned thereto or to the case is not available, the offended party, any peace officer, or public officer charged with the enforcement of the law violated may prosecute the case. This authority shall cease upon actual intervention of the prosecutor or upon elevation of the case to the Regional Trial Court.

The crimes of adultery and concubinage shall not be prosecuted except upon a complaint filed by the offended spouse. The offended party cannot institute criminal prosecution without including the guilty parties, if they are both alive, nor, in any case, if the offended party has consented to the offense or pardoned the offenders.

The offenses of seduction, abduction, and acts of lasciviousness shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents, or guardian, nor, in any case, if the offender has been expressly pardoned by any of them. If the offended party dies or becomes incapacitated before she can file the complaint, and she has no known parents, grandparents or guardian, the State shall initiate the criminal action in her behalf.

The offended party, even if a minor, has the right to initiate the prosecution of the offenses of seduction, abduction and acts of lasciviousness independently of her parents, grandparents or guardian, unless she is incompetent or incapable of doing so. Where the offended party, who is a minor, fails to file the complaint, her parents, grandparents, or guardian may file the same. The right to file the action granted to parents, grandparents or guardian shall be exclusive of all other persons and shall be exercised successively in the order herein provided, except as stated in the preceding paragraph.

No criminal action for defamation which consists in the imputation of any of the offenses mentioned above shall be brought except at the instance of and upon complaint filed by the offended party.

The prosecution of complaints for violation of special laws shall be governed by their provisions thereof *(Sec. 5)*.

(2) Art. 344 of the Revised Penal Code refers to **crimes that cannot be prosecuted *de oficio***: These are private crimes, namely:

(a) **Adultery and concubinage** – to be prosecuted upon a complaint filed by the offended spouse, impleading both guilty parties, if both alive, unless he shall have consented or pardoned the offenders;

(b) **Seduction, abduction, or acts or lasciviousness** – to be prosecuted upon a complaint filed by the offended party or her parents, grandparents, or guardian, unless expressly pardoned by the above named persons (in such stated order);

(c) **Defamation** – to be prosecuted at the instance of and upon complaint expressly filed by the offended party *(Art. 360, RPC)*.

Control of prosecution

(1) Whenever a criminal case is prosecuted and the State is the offended party, the case must always be prosecuted under the control and guidance of the State through the government prosecutors. Whenever there is acquittal or dismissal of the case and the private complainant intends to question such acquittal or dismissal, the same must likewise be undertaken by the State through the Solicitor General. Only the Solicitor General may represent the People of the Philippines on appeal. The private offended party or complainant may question such acquittal or dismissal or appeal therefrom only insofar as the civil aspect is concerned, in the name of the petitioner or appellant and not in the name of the People of the Philippines *(Metropolitan Bank and Trust Co. vs. Veridiano II, 360 SCRA 359)*.

(2) The prosecution determines the charges to be filed and how the legal and factual elements in the case shall be utilized as components of the information. It is basically the prosecutor's function to determine what degree of complicity to the commission of a crime a person should be charged with, whether as principal, accomplice or accessory *(People vs. Pajo, 348 SCRA 493)*.

(3) The rule that the Solicitor General is the lawyer of the People in appellate courts admits an exception, namely, that which is provided for in RA 8249, which states in part that "in all cases elevated to the Sandiganbayan and fro the Sandiganbayan to the Supreme Court, the Office of the Ombudsman, through its special prosecutor, shall represent the People of the Philippines, except in cases filed pursuant to EO 1, 2, 14 and 14-A, issued in 1986."

(4) Founded on the power of supervision and control over his subordinates, the Secretary of Justice did not act with grave abuse of discretion when he took cognizance of BBB's letter and treated it as a petition for review from the provincial prosecutor's resolution. *(Department of Justice vs. Alaon, GR No. 189596, 04/23/2014)*.

(5) **1999 Bar**: Distinguish a Complaint from Information. (2%)

Answer: In criminal procedure, a complaint is a sworn written statement charging a person with an offense, subscribed by the offended party, any peace officer or other peace officer charged with the enforcement of the law violated *(Rule 110, Sec. 3)*; while information is an accusation in writing charging a person with an offense subscribed by the prosecutor and filed with the court *(Sec. 4)*.

Sufficiency of Complaint or Information

(1) A complaint or information is sufficient if it states:
(a) The name of the accused;
(b) The designation of the offense given by the statute;
(c) The acts or omissions complained of as constituting the offense;
(d) The name of the offended party;
(e) The approximate date of the commission of the offense; and
(f) The place where the offense was committed.

When an offense is committed by more than one person, all of them shall be included in the complaint or information *(Sec. 6)*.

(2) If the prosecutor refuses to include one accused, the remedy is mandamus. The procedure for state witness allows for initial inclusion of the accused in the information.

(3) It is true that the gravamen of the crime of estafa under Article 315, paragraph 1, subparagraph (b) of the RPC is the appropriation or conversion of money or property received to the prejudice of the owner and that the time of occurrence is not a material ingredient of the crime, hence, the exclusion of the period and the wrong date of the occurrence of the crime, as reflected in the Information, do not make the latter fatally defective. Therefore, Corpuz's argument that the Information filed against him is formally defective because the Information does not contain the period when the pieces of jewelry were supposed to be returned and that the date when the crime occurred was different from the one testified to by private complainant Tangcoy is untenable *(Corpus v. People, GR No. 180016, 04/29/2014)*.

(4) The inclusion of the phrase "wearing masks and/or other forms of disguise" in the information does not violate the constitutional rights of appellants Feliciano. Every aggravating circumstance being alleged must be stated in the information. Failure to state an aggravating circumstance, even if duly proven at trial, will not be appreciated as such. It was, therefore, incumbent on the prosecution to state the aggravating circumstance of "wearing masks and/or other forms of disguise" in the information in order for all the evidence, introduced to that effect, to be admissible by the trial court *(People vs. Feliciano, Jr., GR No. 196735, 05/0/2014)*,

(5) In crimes where the date of commission is not a material element, like murder, it is not necessary to allege such date with absolute specificity or certainty in the information. The Rules of Court merely requires, for the sake of properly informing an accused, that the date of commission be approximated. As such, the allegation in an information of a date of commission different from the one eventually established during the trial would not, as a rule, be considered as an error fatal to prosecution. In such cases, the erroneous allegation in the information is just deemed supplanted by the evidence presented during the trial or may even be corrected by a formal amendment of the information.

However, variance in the date of commission of the offense as alleged in the information and as established in evidence becomes fatal when such discrepancy is so great that it induces the perception that the information and the evidence are no longer pertaining to one and the same offense. In this event, the defective allegation in the information is not deemed supplanted by the evidence nor can it be amended but must be struck down for being violative of the right of the accused to be informed of the specific charge against him *(People vs. Delfin, GR No. 201572, 07/09/2014)*.

(6) As a general rule, a complaint or information must charge only one offense; otherwise, the same is defective. The rationale behind this rule prohibiting duplicitous complaints or informations is to give the accused the necessary knowledge of the charge against him and enable him to sufficiently prepare for his defense. The State should not heap upon the accused two or more charges which might confuse him in his defense. Non-

compliance with this rule is a ground for quashing the duplicitous complaint or information under Rule 117 of the Rules on Criminal Procedure and the accused may raise the same in a motion to quash before he enters his plea, otherwise, the defect is deemed waived. The accused herein, however, cannot avail of this defense simply because they did not file a motion to quash questioning the validity of the Information during their arraignment. Thus, they are deemed to have waived their right to question the same. Also, where the allegations of the acts imputed to the accused are merely different counts specifying the acts of perpetration of the same crime, as in the instant case, there is no duplicity to speak of *(People vs. Court of Appeals, GR No. 183652, 02/25/2015)*.

(7) The remedies for insufficient complaint or information are: (a) Bill of Particular; and (b) Motion to Quash.

(8) An information which is an accusation in writing filed by the prosecutor need not be under oath, but must be signed and subscribed by him. A complaint (private crimes) is an accusation in writing under oath, filed by either an offended party, any peace officer, other public officer charged with enforcement of the law violated.

(9) Section 5, Rule 110 of the Revised Rules of Criminal Procedure provides that all criminal actions are prosecuted under the direction and control of the public prosecutor. Therefore, respondent's petition for *certiorari* before the CA which failed to implead the People of the Philippines as a party thereto was defective. It must be stressed that the true aggrieved party in a criminal prosecution is the People of the Philippines whose collective sense of morality, decency and justice has been outraged.

The Court, however, has repeatedly declared that "the failure to implead an indispensable party is not a ground for the dismissal of an action.In such a case, the remedy is to implead the non-party claimed to be indispensable. 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/plaintiff refuses to implead an indispensable party despite the order of the court, the latter may dismiss the complaint/petition for the petitioner's/plaintiff's failure to comply." The Court declared the rationale for this exception in *Commissioner Domingo v. Scheer* in this wise:

> There is nothing sacred about processes or pleadings, their forms or contents. Their sole purpose is to facilitate the application of justice to the rival claims of contending parties. They were created, not to hinder and delay, but to facilitate and promote, the administration of justice. They do not constitute the thing itself, which courts are always striving to secure to litigants. They are designed as the means best adapted to obtain that thing. In other words, they are a means to an end. When they lose the character of the one and become the other, the administration of justice is at fault and courts are correspondingly remiss in the performance of theirobvious duty.

In this case, the CA, in a Resolution dated September 24, 2010, required then DOJ Secretary Leila De Lima, public respondent in the petition for *certiorari,* to comment on the said petition. However, in its Manifestation and Motion dated October 5, 2010, the Office of the Solicitor General (OSG) declared that "being the real party interested in upholding public respond.ent's questioned rulings, private respondents therefore have the duty to appear and defend in their behalf and in behalf of public respondent." It further stated, "being merely a nominal party, public respondent thus should not appear against petitioner, or any party for that matter, who seeks the reversal of her rulings that are unfavorable to the latter." Thus, the People, through the OSG, was given the opportunity to refute respondent's arguments, but it refused in the belief that it was merely a nominal party with little interest in upholding respondent's indictment for reckless imprudence. Accordingly, it would be the height of injustice to sustain the People's claim of denial of due process and to dismiss the petition for *certiorari* for a procedural defect *(People v. Edgar Go, GR Nos. 210816 and 210854, 12/10/2018)*.

Complaint	Information
Subscribed by the offended party, any peace officer or other officer charged with the enforcement of the law violated	Subscribed by the prosecutor – this is an indispensable requirement; lack of authority of the offier signing it cannot be cured by silence, acquiescence or even express consent
May be filed either in court in the prosecutor's office	Filed with the court
Must be sworn, hence under oath	Requires no oath. The prosecutor filing the information is acting under oath of his office
Usually refers to felonies which cannot be prosecuted *de officio*	Usually refers to public crimes

Designation of Offense

(1) The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it *(Sec. 8).*

(2) Moleta filed a case against Consigna, the Municipal Treasurer of General Luna, Surigao del Norte, for the violation of AntiGraft and Corrupt Practices and Estafa before the Sandiganbayan. Cosigna argued that the Sandiganbayan has no jurisdiction because the crime as charged did not specify the provision of law allegedly violated, i.e., the specific type of Estafa. In that issue, the Supreme Court ruled that what is controlling is not the title of the complaint, nor the designation of the offense charge or the particular law or part thereof allegedly violated but the description of the crime charged and the particular facts therein recited *(Consigna vs. People, Sandigabayan Third Division and Moleta, G.R. No. 17575051,04/02/2014).*

Cause of the Accusation

(1) The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment *(Sec. 9).*

Duplicity of the Offense; Exception

(1) A complaint or information must charge only one offense, except when the law prescribes a single punishment for various offenses *(Sec. 13).*

(2) Exception: The law prescribes a single punishment for various offenses, such as in continuing and complex crimes.

Amendment or Substitution of Complaint or Information

AMENDMENT	SUBSTITUTION
Involves either formal or substantial changes	Involves substantial change of the original charge
Effected before plea has been entered, without leave of court	Effected before plea has been entered, with leave of court
Except amendment as to form, another preliminary investigation is required	Another preliminary investigation is required in substitution of the information
Substantial amendment after arraignment at the objection of accused not allowed as the accused can invoke double jeopardy	Since substitution changes the offense charged in the information, accused cannot claim double jeopardy

(1) A complaint or information may be amended, in form or in substance, without leave of court, at any time before the accused enters his plea. After the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused.

However, any amendment before plea, which downgrades the nature of the offense charged in or excludes any accused from the complaint or information, can be made only upon motion by the prosecutor, with notice to the offended party and with leave of court. The court shall state its reasons in resolving the motion and copies of its order shall be furnished all parties, especially the offended party.

If it appears at any time before judgment that a mistake has been made in charging the proper offense, the court shall dismiss the original complaint or information upon the filing of a new one charging the proper offense in accordance with Section 19, Rule 119, provided the accused would not be placed in double jeopardy. The court may require the witnesses to give bail for their appearance at the trial *(Sec. 14)*.

(2) The test as to whether the rights of an accused are prejudiced by the amendment of a complaint or information is whether a defense under the complaint or information, as it originally stood, would no longer be available after the amendment is made, and when any evidence the accused might have, would be inapplicable to the complaint or information *(People vs. Montenegro, 159 SCRA 236)*.

(3) Amendment and substitution distinguished:

(a) Amendment may involve either formal or substantial changes; substitution necessarily involves a substantial change from the original charge;

(b) Amendment before plea has been entered can be effected without leave of court; substitution of information must be with leave of court, as the original information has to be dismissed;

(c) Where the amendment is only as to form, there is no need for another preliminary investigation and the retaking of the plea of the accused; in substitution of information, another preliminary investigation is entailed and the accused has to plead anew to the new information; and

(d) An amended information refers to the same offense charged in the original information or to an offense which necessarily includes or is necessarily included in the original charge; hence substantial amendments to the information after the plea has been taken cannot be made over the objection of the accused, for if the original information would be withdrawn, the accused could invoke double jeopardy. Substitution requires or presupposes that the new information involves different offense which does not include or is not necessarily included in the original charge, hence the accused cannot claim double jeopardy *(Teehankee vs. Madayag, 207 SCRA 685)*.

(e) In substitution under the second paragraph of Sec. 14, where the new information charges an offense distinct and different from the one initially charged, due to mistake in charging the proper offense, there is need for a new preliminary investigation and another arraignment *(People vs. Jaralba, 226 SCRA 602).* Amendments that do not charge another offense different from that charged in the original one, or do not alter the prosecution's theory of the case as to cause surprise to the accused and affect the form of defense he has or will assume are considered merely as formal amendments *(Mendes vs. People, GR No. 179962, 06/11/2014).*

(4) (Dr. Joel Mendez was charged with tax evasion. However, the prosecutor filed amended complaint which changed the date of the commission of the offense.) Amendments that do not charge another offense different from that charged in the original one; or do not alter the prosecution's theory of the case so as to cause surprise to the accused and affect the form of defense he has or will assume are considered merely as formal amendments. *(Mendez vs. People, GR No. 179962, 06//11/2014).*

(5) Before an accused enters his or her plea, either formal or substantial amendment of the complaint or information may be made without leave of court. After an entry of plea, only a formal amendment can be made provided it is with leave of court and it does not prejudice the rights of the accused. After arraignment, there can be no substantial amendment except if it is beneficial to the accused.

Since only petitioner Samonte has been arraigned, only he can invoke this rule. Petitioner Corpus cannot invoke this argument because he has not yet been arraigned.

Once an accused is arraigned and enters his or her plea, Section 14 prohibits any substantial amendment especially those that may prejudice his or her rights. One of these rights include the constitutional right of the accused to be informed of the nature of the accusations against him or her, which is given life during arraignment.

Xxx

Apart from violating the right of the accused to be informed of the nature and cause of his or her accusation, substantial amendments to the information after plea is prohibited to prevent having the accused put twice in jeopardy *(Corpus, Jr. vs. Judge Pamular, GR No. 186403, 09/05/2018).*

(6) Any amendment to an information which only states with precision something which has already been included in the original information, and therefore, adds nothing crucial for conviction of the crime charged is only a formal amendment that can be made at anytime. 185 It does not alter the nature of the crime, affect the essence of the offense, surprise, or divest the accused of an opportunity to meet the new accusation. Thus, the following are mere formal amendments:

> (1) new allegations which relate only to the range of the penalty that the court might impose in the event of conviction; (2) an amendment which does not charge another offense different or distinct from that charged in the original one; (3) additional allegations which do not alter the prosecution's theory of the case so as to cause surprise to the accused and affect the form of defense he has or will assume; and (4) an amendment which does not adversely affect any substantial right of the accused, such as his right to invoke prescription. (Citations omitted)

On the other hand, "[a] substantial amendment consists of the recital of facts constituting the offense charged and detenninative of the jurisdiction of the court" *(Corpus, Jr. vs. Judge Pamular, GR No. 186403, 09/05/2018).*

(7) The test as to whether a defendant is prejudiced by the amendment of an information has been said to be *whether a defense under the information as it originally stood would be available after the amendment is made, and whether any evidence defendant might have would be equally applicable to tile information in tile one form as in tile other.* A look into Our jurisprudence on the matter shows that an amendment to an information introduced

after the accused has pleaded not guilty thereto, which does not change the nature of the crime alleged therein, does not expose the accused to a charge which could call for a higher penalty, does not affect the essence of the offense or cause surprise or deprive the accused of an opportunity to meet the new averment had each been held to be one of form and not of substance - not prejudicial to the accused and, therefore, not prohibited by Section 13, Rule 110 of the Revised Rules of Court *(cited in Corpus, Jr. vs. Judge Pamular, GR No. 186403, 09/05/2018).*

(8) **2001 Bar**: Armando was charged with frustrated homicide. Before he entered his plea and upon the advice of his counsel, he manifested his willingness to admit having committed the offense of serious physical injuries. The prosecution then filed an amended information for serious physical injuries against Armando. What steps or action should the prosecution take so that the amended information against Armando which downgrades the nature of the offense could be validly made? Why? (5%)

Answer: In order that the amended information which downgrades the nature of the offense could be validly made, the prosecution should file a motion to ask for leave of court with notice to the offended party *(Rule 110, Sec. 14).* The new rule is for the protection of the interest of the offended party and to prevent possible abuse by the prosecution.

Venue of criminal actions

(1) Place where action is to be instituted:
   (a) Subject to existing laws, the criminal action shall be instituted and tried in the court of the municipality or territory where the offense was committed or where any of its essential ingredients occurred.
   (b) Where an offense is committed in a train, aircraft, or other public or private vehicle in the course of its trip, the criminal action shall be instituted and tried in the court of any municipality or territory where said train, aircraft or other vehicle passed during its trip, including the place of its departure and arrival.
   (c) Where an offense is committed on board a vessel in the course of its voyage, the criminal action shall be instituted and tried in the court of the first port of entry or of any municipality or territory where the vessel passed during such voyage, subject to the generally accepted principles of international law.
   (d) Crimes committed outside of the Philippines but punishable under Article 2 of the Revised Penal Code shall be cognizable by the court where the criminal action is first filed *(Sec. 15).*
   (e) Where the statute provides especially for venue where action shall be instituted.

Crime	Venue
Felonies under Art. *2*, RPC	Proper court where criminal action was first filed
Those committed on a railroad train, aircraft, or any other public or private vehicle in the court of its trip	May be instituted and tried in the court of any municipality or territory where such train, aircraft, or other vehicle passed during such trip, including place of departure and arrival
Those committed on board a vessel in the course of its voyage	May be instituted and tried in the proper court of the first port of entry or of any municipality or territory through which vessel passed, subject to the generally accepted principles of international law

Piracy, which has no territorial limits	May be instituted anywhere *(People v. Lol-lo and Saraw, G.R. No. 17958 [1922])*
Libel	May be instituted at the election of the offended party or suing party in the province or city, subject to Art. *360,* RPC
Cases filed under BP 22	May be filed in the place where the check was dishonored or issued, or in case of a crosscheck, in the place of the depositary or collecting bank
Violations of RA 10175 (Cybercrime Prevention Act of 2012)	RTCs have jurisdiction over any violation of the provisions of the Act, including any violation committed by a Filipino national regardless of the place of commission *(Sec. 21)*
In exceptional circumstances to ensure a fair trial and impartial inquiry	SC has the power to order a change of venue or place of trial to avoid miscarriage of justice *(Sec. 5(4), Art. VII, Constitution)*

Intervention of offended party

(1) Where the civil action for recovery of civil liability is instituted in the criminal action pursuant to Rule 111, the offended party may intervene by counsel in the prosecution of the offense *(Sec. 16).*

(2) Sec. 16 of Rule 110 of the Revised Rules of Criminal Procedure expressly allows an offended party to intervene by counsel in the prosecution of the offense for the recovery of civil liability where the civil action for the recovery of civil liability arising from the offense charged is instituted with the criminal action. The civil action shall be deemed instituted with the criminal action, except when the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action. In this case, the CA found no such waiver from or reservation made by Chan. The fact that Chan, who was already based abroad, had secured the services of an attorney in the Philippines reveals her willingness and interest to participate in the prosecution of the bigamy case and to recover civil liability from the petitioners. Thus, the RTC should have allowed, and should not have disqualified, Atty. Atencia from intervening in the bigamy case as Chan, being the offended party, is afforded by law the right to participate through counsel in the prosecution of the offense with respect to the civil aspect of the case. *(Villalon vs. Chan, GR No. 196508, 09/24/2014).*

B. PROSECUTION OF CIVIL ACTION *(Rule 111)*

Rule on implied institution of civil action with criminal action

(1) The general rule is that the institution or filing of the criminal action includes the institution therein of the civil action for recovery of civil liability arising from the offense charged, except in the following cases:
(a) The offended party waives the civil action;

(b) He reserves his right to institute the civil action separately; or
(c) He institutes the civil action prior to the criminal action.

(2) The exception to the reservation requirement is a claim arising out of a dishonored check under BP 22, where no reservation to file such civil action separately shall be allowed, which means that the filing of the criminal action for violation of BP 22 shall be deemed to include the corresponding civil action and that unless a separate civil action has been filed before the institution of the criminal action, no such civil action can be instituted after the criminal action has been filed as the same has been included therein.

(3) Another instance where no reservation shall be allowed and where a civil action filed prior to the criminal action has to be transferred to the subsequently filed criminal action for joint hearing is a claim arising from an offense which is cognizable by the Sandiganbayan.

(4) **2001 Bar**: Saturnino filed a criminal action against Alex for the latter's bouncing check. On the date of the hearing after its arraignment, Saturnino manifested to the court that he is reserving his right to file a separate civil action. The court allowed Saturnino to file a civil action separately and proceeded to hear the criminal case. Alex filed a motion for reconsideration contending that the civil action is deemed included in the criminal case. The court reconsidered its order and ruled that Saturnino could not file a separate civil action. Is the court's order granting the motion for reconsideration correct? Why (5%)

Answer: Yes, the court's order granting the motion for reconsideration is correct. The rules provide that the criminal action for violation of BP 22 shall be deemed to include the corresponding civil action, and that no reservation to file such civil action separately shall be allowed *(Rule 111, Section 1b).*

(5) **2002 Bar**: Delia sued Victor for personal injuries which she allegedly sustained when she was struck by a car driven by Victor. May the court receive in evidence, over proper and timely objection by Delia, a certified true copy of a judgment of acquittal in a criminal prosecution charging Victor with hit-and-run driving in connection with Delia's injuries? Why? (3%)

Answer: If the judgment of acquittal in the criminal case finds that the act or omission from which the civil liability may arise does not exist, the court may receive it in evidence over the objection by Delia *(Rule 111, Section 2).*

When civil action may proceed independently

(1) In the cases provided for in Articles 32, 33, 34 and 2176 of the Civil Code of the Philippines, the independent civil action may be brought by the offended party. It shall proceed independently of the criminal action and shall require only a preponderance of evidence. In no case, however, may the offended party recover damages twice for the same act or omission charged in the criminal action *(Sec. 3).*

(2) Civil Code provisions on the matter:

Art. 32. Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:

In any of the cases referred to in this article, whether or not the defendant's act or omission constitutes a criminal offense, the aggrieved party has a right to commence an entirely separate and distinct civil action for damages, and for other relief. Such civil action shall proceed independently of any criminal

prosecution (if the latter be instituted), and may be proved by a preponderance of evidence.

The indemnity shall include moral damages. Exemplary damages may also be adjudicated.

The responsibility herein set forth is not demandable from a judge unless his act or omission constitutes a violation of the Penal Code or other penal statute.

Art. 33. In cases of defamation, fraud, and physical injuries a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence.

Art. 34. When a member of a city or municipal police force refuses or fails to render aid or protection to any person in case of danger to life or property, such peace officer shall be primarily liable for damages, and the city or municipality shall be subsidiarily responsible therefor. The civil action herein recognized shall be independent of any criminal proceedings, and a preponderance of evidence shall suffice to support such action.

Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

Art. 2177. Responsibility for fault or negligence under the preceding article is entirely separate and distinct from the civil liability arising from negligence under the Penal Code. But the plaintiff cannot recover damages twice for the same act or omission of the defendant.

(3) Under the Rules, only civil liability arising from the crime charged is deemed instituted. Hence, the civil actions under the Civil Code, specifically Art. *32, 33, 34, and 2176*, remain separate, distinct, and independent of any criminal prosecution although based on the same act *(Phil. Rabbit Bus Lines v. People, GR No. 147703 [2004]).*

(4) Our law recognizes two kinds of acquittal, with different effects on the civil liability of the accused. First is an acquittal on the ground that the accused is not the author of the actor omission complained of. This instance closes the door to civil liability, for a person who has been found to be not the perpetrator of any act or omission cannot and can never be held liable for such act or omission. The second instance is an acquittal based on reasonable doubt on the guilt of the accused. In this case, even if the guilt of the accused has not been satisfactorily established, he is not exempt from civil liability which may be proved by preponderance of evidence only. However, even if respondent was acquitted because the prosecution failed to prove his guilt beyond reasonable doubt, his guilt was not proven by preponderance of evidence that would make him liable to civil liability. *(Castillo vs. Salvador, GR No. 191240, 07/30/2014).*

When separate civil action is suspended

(1) After the criminal action has been commenced, the separate civil action arising therefrom cannot be instituted until final judgment has been entered in the criminal action.

If the criminal action is filed after the said civil action has already been instituted, the latter shall be suspended in whatever stage it may be found before judgment on the merits. The suspension shall last until final judgment is rendered in the criminal action. Nevertheless, before judgment on the merits is rendered in the civil action, the same may, upon motion

of the offended party, be consolidated with the criminal action in the court trying the criminal action. In case of consolidation, the evidence already adduced in the civil action shall be deemed automatically reproduced in the criminal action without prejudice to the right of the prosecution to cross-examine the witnesses presented by the offended party in the criminal case and of the parties to present additional evidence. The consolidated criminal and civil actions shall be tried and decided jointly.

During the pendency of the criminal action, the running of the period of prescription of the civil action which cannot be instituted separately or whose proceeding has been suspended shall be tolled.

The extinction of the penal action does not carry with it extinction of the civil action. However, the civil action based on delict may be deemed extinguished if there is a finding in a final judgment in the criminal action that the act or omission from which civil liability may arise did not exist *(Sec. 2)*.

(2) Effect of criminal action on separate civil action

(a) If criminal action has been commenced earlier – separate civil action cannot be instituted until final judgment has been entered in the criminal action.

(b) If the criminal action is filed after the separate civil action has already been instituted –

i. Civil action suspended, in whatever stage it may be found before judgment on the merits, until final judgment is rendered in the criminal action.

ii. Civil action may, upon motion of the offended party, be consolidated with the criminal action in the court trying the criminal action

1. Evidence already adduced in the civil action shall be deemed automatically reproduced in the criminal action

2. Without prejudice to the right of the prosecution to cross-examine the witnesses presented by the offended party in the criminal case and the parties to present additional evidence.

iii. The consolidated criminal and civil actions shall be tried and decided jointly.

(c) During the pendency of the criminal action, the running of prescription of the civil action which cannot be instituted separately or whose proceeding has been suspended shall be tolled.

Effect of the death of accused or convict on civil action

(1) The death of the accused after arraignment and during the pendency of the criminal action shall extinguish the civil liability arising from the delict. However, the independent civil action instituted under section 3 of this Rule or which thereafter is instituted to enforce liability arising from other sources of obligation may be continued against the estate or legal representative of the accused after proper substitution or against said estate, as the case may be. The heirs of the accused may be substituted for the deceased without requiring the appointment of an executor or administrator and the court may appoint a guardian *ad litem* for the minor heirs.

The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.

A final judgment entered in favor of the offended party shall be enforced in the manner especially provided in these Rules for prosecuting claims against the estate of the deceased.

If the accused dies before arraignment, the case shall be dismissed without prejudice to any civil action the offended party may file against the estate of the deceased *(Sec. 4)*.

(2) It is clear that the death of the accused pending appeal of his conviction extinguishes his criminal liability. However, the recovery of civil liability subsists as the same is not based on delict but by contract and the reckless imprudence he was guilty of under Article 365 of the Revised Penal Code. For this reason, a separate civil action may be enforced either against the executor/administrator or the estate of the accused, depending on the source of obligation upon which the same is based, and in accordance with Section 4, Rule 111 of the Rules on Criminal Procedure *(Cabugao vs. People, GR No. 163879, 07/30/2014)*.

(3) When death occurs during pendency of appeal, it extinguishes criminal liability and the civil liability based thereon *(People v. Ayochok, GR No. 175784 [2010])*.

Prejudicial Question

(1) A petition for suspension of the criminal action based upon the pendency of a prejudicial question in a civil action may be filed in the office of the prosecutor or the court conducting the preliminary investigation. When the criminal action has been filed in court for trial, the petition to suspend shall be filed in the same criminal action at any time before the prosecution rests *(Sec. 6)*.

(2) The elements of a prejudicial question are: (a) the previously instituted civil action involves an issue similar or intimately related to the issue raised in the subsequent criminal action, and (b) the resolution of such issue determines whether or not the criminal action may proceed *(Sec. 7)*.

(3) General Rule: Criminal action takes precedence over civil actions.

Exceptions:

b. independent civil actions
c. prejudicial question

Even a preliminary investigation may be suspended by a prejudicial question.
To suspend a criminal action, the move to suspend should be filed before the prosecution rests.

(4) Prejudicial question is that which arises in a case the resolution of which is a logical antecedent of the issues involved in said cases, and the cognizance of which pertains to another tribunal *(Lu Hayco vs. CA, 08/26/1985)*.

(5) The test in determining the existence of a prejudicial question: It must appear not only that the civil case involves the same facts upon which the criminal prosecution is based, but also that the resolution of the issues in said civil action would be necessarily determinative of the guilt or innocence of the accused *(Yap vs. Paras, GR 101236, 01/30/1992)*.

(6) A prejudicial question can be interposed at the Office of the Prosecutor, but;
(a) The question can also be raised in court;
(b) If raised, the court should merely suspend the criminal case;
(c) The court must wait for a motion, otherwise, that is a waiver;
(d) The court cannot *motu propio* suspend the criminal case *(Yap vs. Paras, supra)*.

(7) A prejudicial question does not conclusively resolve the guilt or innocence of the accused but simply tests the sufficiency of the allegations in the information in order to sustain the further prosecution of the criminal case. A party who raises a prejudicial question is deemed to have hypothetically admitted that all the elements of a crime have been adequately alleged in the information, considering that the prosecution has not yet presented a single evidence on the indictment or may not yet have rested its case. A challenge of the allegations is in effect a question on the merits of the criminal charge through a non-criminal suit *(Nlñal vs. Badayog, GR 133778, 03/14/2000)*.

(8) A prejudicial question is that which arises in a case the resolution of which is a logical antecedent of the issue involved therein, and the cognizance of which pertains to another tribunal *(People vs. Consing, G.R. No. 148193 [2003]).*

(9) **2000 Bar**: CX is charged with Estafa in court for failure to remit to MM sums of money collected by him (CX's) for MM in payment for goods purchased form MM, by depositing the amounts in his personal bank account. CX files a motion to suspend proceedings pending resolution of a civil case earlier filed in court by CX against MM for accounting and damages involving the amounts subject of the criminal case. As the Prosecutor in the criminal case, briefly discuss your ground in support of your opposition to the motion to suspend proceedings. (5%)

Answer: As the prosecutor, I will argue that the motion to suspend is not in order for the following reasons:

(a) The civil case filed by CX against MM for accounting and damages does not involve an issue similarly or intimately related to the issue of Estafa raised in a criminal action.

(b) The resolution of the issue in the civil case for accounting will not determine whether or not the criminal action for Estafa may proceed *(Rule 111, Section 5).*

Rule on Filing Fees in civil action deemed instituted with the criminal action

(1) When the offended party seeks to enforce civil liability against the accused by way of moral, nominal, temperate or exemplary damages without specifying the amount thereof in the complaint or information, the filing fees therefor shall constitute a first lien on the judgment awarding such damages. Where the amount of damages, other than actual, is specified in the complaint or information, the corresponding filing fees shall be paid by the offended party upon filing thereof in court. Except as otherwise provided in these Rules, no filing fees shall be required for actual damages *(Sec. 1).*

C. PRELIMINARY INVESTIGATION *(Rule 112)*

Nature of right

(1) The preliminary investigation as defined in Sec. 1 is the preliminary investigation proper, which is not a judicial function, but a part of the prosecution's job, a function of the executive. Preliminary investigation is generally inquisitorial, and it is often the only means of discovering the persons who may be reasonably charged with a crime, to enable the prosecutor to prepare his complaint or information *(Paderanga vs. Drilon, 196 SCRA 86).*

(2) The right to preliminary investigation is not a constitutional grant; it is merely statutory and may be invoked only when specifically created by statute *(People vs. Carlos, 78 Phil. 535).* While the right to preliminary investigation is statutory rather than constitutional in its fundament, since it has in fact been established by statute, it is a component part of due process in criminal justice. The right to have a preliminary investigation conducted before being bound over to trial of a criminal offense and hence formally at risk of incarceration of some other penalty is not a mere formal or technical right; it is a substantive right…to deny

petitioner's claim to a preliminary investigation would be to deprive him of the full measure of his right to due process *(Go vs. CA, 206 SCRA 138)*.

(3) Preliminary investigation is a function that belongs to the public prosecutor. It is an executive function, although the prosecutor, in the discharge of such function, is a quasi-judicial authority tasked to determine whether or not a criminal case must be filed in court.

(4) The right to preliminary investigation may be waived by the accused either expressly or impliedly. The posting of a bond by the accused constitutes such a waiver, such that even if the warrant was irregularly issued, any infirmity attached to it is cured when the accused submits himself to the jurisdiction of the court by applying for bail *(In Re: Letter of Freddie Manuel, 54 SCAD 97, 08/04/1994)*. It is also cured by submitting himself to arraignment *(People vs. Hubilo, 220 SCRA 389)*.

(5) Agdeppa's assertion that he had been denied due process is misplaced, bearing in mind that the rights to be informed of the charges, to file a comment to the complaint, and to participate in the preliminary investigation, belong to Junia. Clearly, the right to preliminary investigation is a component of the right of the respondent/accused to substantive due process. A complainant cannot insist that a preliminary investigation be held when the complaint was dismissed outright because of palpable lack of merit. It goes against the very nature and purpose of preliminary investigation to still drag the respondent/accused through the rigors of such an investigation so as to aid the complainant in substantiating an accusation/charge that is evidently baseless from the very beginning *(Agdeppa v. Office of the Ombudsman, GR No. 146376, 04/23/2014)*.

(6) The sole issue is whether or not the CA erred in ordering the dismissal of the complaint because of the petitioner's failure to appear at the clarificatory hearig set by the investigating prosecutor.

It is error to dismiss a criminal complaint for falsification if the records already contained sufficient evidence to establish probable cause to charge the respondents therewith on the basis alone that the complainant, already residing abroad, did not herself submit to the clarificatory hearing, and the investigating prosecutor dide not state the matters that still required clarification.

Preliminary investigation is an inquiry or proceeding to determine whether or not there is sufficient ground to engender a well-founded belief that a crime has been committed; and that the respondent, who is probably guilty thereof, should be held for trial. The nature and purposes of the preliminary investigation have been expounded in *Ang-Abaya* vs. *Ang (GR No. 178511, 12/04/2008)*:

(7) The determination by the Department of Justice of the existence of probable cause is not a quasi-judicial proceeding. However, the actioins of the Secretary of Justice in affirming or reversing the findings of the prosecutors may still be subject to judicial review if it is tainted with grave abuse of discretion.

Xxx A quasi-judicial function is "the action, discretion, etc., of public administrative officersor bodies, who are required to investigate facts, or ascertain the existence of facts, hold hearings, and draw conclusions from them, as a basis for their official action and to exercise discretion of a judicial nature." Otherwise stated, an administrative agency performs quasi-judicial functions if it renders awards, determines the right of the opposing parties, or if their decisions have the same effect as the judgment of a court.

In a preliminary investigation, the prosecutor does not determine the guilt or innocence of an accused. The prosecutor only determines "whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial." As such, the prosecutor does not perform quasi-judicial functions.

Xxx The fact that the DOJ is the primary prosecution arm of the Government does not make it a quasi-judicial office or agency. Its preliminary investigation of cases is not a

quasi-judicial proceeding. Nor does the DOJ exercise a quasi-judicial function when it reviews the findings of a public prosecutor on the finding of probable cause in any case *(Secretary De Lima vs. Reyes, GR No. 209330, 01/11/2016).*

(8) A preliminary investigation is in effect a realistic judicial appraisal of the merits of the case; sufficient proof of the guilt of the criminal respondent must be adduced so that when the case is tried, the trial court may not be bound, as a matter of law, to order an acquittal. Although a preliminary investigation is not a trial and is not intended to usurp the function of the trial court, it is not a casual affair; the officer conducting the same investigates or inquires into the facts concerning the commission of the crime with the end in view of determining whether or not an information may be prepared against the accused. After all, the purpose of preliminary investigation is not only to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent therein is probably guilty thereof and should be held for trial; it is just as well for the purpose of securing the innocent against hasty, malicious and oppressive prosecution, and to protect him from an open and public accusation of a crime, from the trouble, expense and anxiety of a public trial. More importantly, in the appraisal of the case presented to him for resolution, the duty of a prosecutor is more to do justice and less to prosecute *(Sales vs. Adapon, Gr No. 171420, 10/05/2016).*

(9) First, there is nothing capricious or whimsical about petitioner's lack of opportunity to cross-examine the witnesses.

A person's rights in a preliminary investigation are subject to the limitations of procedural law. These rights are statutory, not constitutional.

The purpose of a preliminary investigation is merely to present such evidence "as may engender a well-grounded belief that an offense has been committed and that [the respondent in a criminal complaint] is probably guilty thereof." It does not 'call for a "full and exhaustive display of the parties' evidence."

Thus, petitioner has no right to cross-examine the witnesses during a preliminary investigation. At this early stage, the Ombudsman has yet to file an information that would trigger into operation the rights of the accused (found under Section 14(2) of Article III of the Constitution). "It is the filing of a complaint or information in court that initiates a criminal action," and carries with it all the accompanying rights of an accused.

Only when a person stands trial may he or she demand "the right to confront and cross-examine his [or her] accusers." This right cannot apply to petitioner, who has yet to be arraigned and face trial as he left the country at the time he was initially charged with plunder *(Dichaves vs. Office of the Ombudsman, GR No. 206310-11, 12/07/2016).*

(10) Upon filing of an information in court, trial court judges must determine the existence or non-existence of probable cause based on their personal evaluation of the prosecutor's report and its supporting documents. They may dismiss the case, issue an arrest warrant, or require the submission of additional evidence. However, they cannot remand the case for another conduct of preliminary investigation on the ground that the earlier preliminary investigation was improperly conducted *(Maza v. Judge Turla, GR No. 187094, 02/15/2017).*

> The trial court judge's determination of probable cause is based on her or his personal evaluation of the prosecutor's resolution and its supporting evidence. The determination of probable cause by the trial court judge is a judicial function, whereas the determination of probable cause by the prosecutors is an executive function. This Court clarified this concept in *Napoles v. De Lima, GR No. :213529, 07/13/2016:*
>
> > During preliminary investigation, the prosecutor determines the existence of probable cause for filing an information in court or dismissing the criminal complaint. As worded in the Rules of Court, the prosecutor determines during preliminary investigation whether "there is sufficient ground to engender a well-founded belief that

a crime has been committed and the respondent is probably guilty thereof, and should be held for trial." At this stage, the determination of probable cause is an executive function. Absent grave abuse of discretion, this determination cannot be interfered with by the courts. This is consistent with the doctrine of separation of powers.

On the other hand, if done to issue an arrest warrant, the determination of probable cause is a judicial function. No less than the Constitution commands that "no . . . warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce[.]" This requirement of personal evaluation by the judge is reaffirmed in Rule 112, Section 5 (a) of the Rules on Criminal Procedure[.]

Therefore, the determination of probable cause for filing an information in court and that for issuance of an arrest warrant are different. Once the information is filed in court, the trial court acquires jurisdiction and "any disposition of the case as to its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court" *(Maza vs. Judge Turla, GR No. 187094, 02/15/2017).*

(11) **1999 Bar**: If the information is not accompanied by a certificate that a preliminary investigation has been conducted, is the Information void? (3%)
Answer: No, the certification which provided in Sec. 4, Rule 112, is not an indispensable part of the information *(People v. Lapura, 255 SCAR 85).*

(12) **1999 Bar**: A filed with the Office of the Fiscal a Complaint for Estafa against B. After the preliminary investigation, the Fiscal dismissed the complaint for lack of merit. May the Fiscal be compelled by mandamus to file the case in court? Explain. (2%)

Answer: No. The public prosecutor may not be compelled by mandamus to file the case in court because the determination of probable cause is within the discretion of the prosecution. The remedy is an appeal to the Secretary of Justice *(Rule 112, Sec. 4).*

(13) **2003 Bar**: After the requisite proceedings, the Provincial Prosecutor filed an Information for homicide against X. The latter, however, timely filed a Petition for Review of the Resolution of the Provincial Prosecutor with the Secretary of Justice who, in due time, issued a Resolution reversing the resolution of the Provincial Prosecutor and directing him to withdraw the Information.

Before the Provincial Prosecutor could comply with the directive of the Secretary of Justice, the court issued a warrant of arrest against X. The Public Prosecutor filed a Motion to Quash the Warrant of Arrest and to Withdraw the Information, attaching to it the Resolution of the Secretary of Justice. The court denied the motion. Was there a legal basis for the court to deny the motion? (6%)

Answer: Yes, there is a legal basis for the court to deny the motion to quash the warrant of arrest and to withdraw the information. The court is not bound by the Resolution of the Secretary of Justice *(Crespo v. Mogul, 151 SCRA 462 [1987]).*

Purposes of preliminary investigation

(1) Preliminary investigation is an inquiry or proceeding for the purpose of determining whether there is sufficient ground to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof, and should be held for trial *(Sec. 1).*

(2) The basic purpose of preliminary investigation is to determine whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof *(Cruz, Jr. vs. People, 52 SCAD 516 , June 17, 1994).*

(3) Generally, preliminary investigation has a three-fold purpose:
   (a) To inquire concerning the commission of crime and the connection of accused with it, in order that he may be informed of the nature and character of the crime charged against him, and if there is probable cause for believing him guilty, that the state may take the necessary steps to bring him to trial;
   (b) To preserve the evidence and keep the witnesses within the control of the state; and
   (c) To determine the amount of bail, if the offense is bailable *(Arula vs. Espino, 28 SCRA 540 [1969]).*

(4) The preliminary investigation is not yet a trial on the merits, for its only purpose is to determine whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof. The scope of the investigation does not approximate that of a trial before the court; hence, what is required is only that the evidence be sufficient to establish probable cause that the accused committed the crime charged, not that all reasonable doubt of the guilt of the accused be removed. As the MTC and RTC rightly held, the presentation of the medical certificates to prove the duration of the victims' need for medical attendance or of their incapacity should take place only at the trial, not before or during the preliminary investigation *(Enrile v. Manalastas, GR No. 166414, 10/22/2014).*

(5) The admissibility of evidence cannot be ruled upon in a preliminary investigation.

In a preliminary investigation, ... the public prosecutors do not decide whether there is evidence beyond reasonable doubt of the guilt of the person charged; they merely determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof, and should be held for trial *(People vs. Castillo, 607 Phil. 754 [2009]).*

To emphasize, "a preliminary investigation is merely preparatory to a trial[;] [i]t is not a trial on the merits."84 Since "it cannot be expected that upon the filing of the information in court the prosecutor would have already presented all the evidence necessary to secure a conviction of the accused," the admissibility or inadmissibility of evidence cannot be ruled upon in a preliminary investigation *(Maza vs. Judge Turla, GR No. 187094, 02/15/2017).*

(6) *The preliminary investigation conducted by the fiscal for the purpose of determining whether a prima facie case exists warranting the prosecution of the accused is terminated upon the filing of the information in the proper court. In turn, as above stated, the filing of said information sets in motion the criminal action against the accused in Court.* Should the fiscal find it proper to conduct a reinvestigation of the case, at such stage, the permission of the Court must be secured. After such reinvestigation the finding and recommendations of the fiscal should be submitted to the Court for appropriate action. *While it is true that the fiscal has the quasi-judicial discretion to determine whether or not a criminal case should be filed in court or not, once the case had already been brought to Court whatever disposition the fiscal may feel should be proper in the case thereafter should be addressed for the consideration of the Court.* The only qualification is that the action of the Court must not impair the substantial rights of the accused or the right of the People to due process of law.

Whether the accused had been arraigned or not and whether it was due to a reinvestigation by the fiscal or a review by the Secretary of Justice whereby a motion to dismiss was submitted to the Court, the Court in the exercise of its discretion may grant the motion or deny it and require that the trial on the merits proceed for the proper determination of the case.

However, one may ask, ifthe trial court refuses to grant the motion to dismiss filed by the fiscal upon the directive of the Secretary of Justice will there not be a vacuum in the prosecution? A state prosecutor to handle the case cannot possibl[y be] designated by the Secretary of Justice who does not believe that there is a basis for prosecution nor can

the fiscal be expected to handle the prosecution of the case thereby defying the superior order of the Secretary of Justice.

The answer is simple. The role of the fiscal or prosecutor as We all know is to see that justice is done and not necessarily to secure the conviction of the person accused before the Courts. Thus, in spite of his opinion to the contrary, it is the duty of the fiscal to proceed with the presentation of evidence of the prosecution to the Court to enable the Court to arrive at its own independent judgment as to whether the accused should be convicted or acquitted. The fiscal should not shirk from the responsibility of appearing for the People of the Philippines even under such circumstances much less should he abandon the prosecution of the case leaving it to the hands of a private prosecutor for then the entire proceedings will be null and void. The least that the fiscal should do is to continue to appear for the prosecution although he may tum over the presentation of the evidence to the private prosecutor but still under his direction and control.

Hence, when a Regional Trial Court has already determined that probable cause exists for the issuance of a warrant of arrest, like in this case, jurisdiction is already with the Regional Trial Court. Therefore, it can proceed in conducting further proceedings on the amended information and on the issuance of a warrant despite the pendency of a Petition for Review before the Department of Justice *(Mayor Corpus, Jr. vs. Juge Pamular, GR No. 186403, 09/05/2018)*.

Who may conduct determination of existence of probable cause

(1) On basis of the evidence before him, the investigating office must decide whether to dismiss the case or to file the information in court. This involves the determination of probable cause. Although there is no general formula or fixed rule for the determination of probable cause since the same must be decided in the light of the conditions obtaining in given situations and its existence depends to a large degree upon the finding or opinion of the municipal trial judge or prosecutor conducting the examination, such a finding should not disregard the facts before him nor run counter to the clear dictates of reasons *(Ortiz vs. Palaypayon, 234 SCRA 391)*.

(2) The Court has maintained the policy of non-interference in the determination of the existence of probable cause, provided there is no grave abuse in the exercise of such discretion. The rule is based not only upon respect for the investigatory and prosecutor powers of prosecutors upon practicality as well *(Rodrigo, Jr. vs. Sandiganbayan, 303 SCRA 309)*.

(3) Officers authorized to conduct preliminary investigation:
(a) Provincial or city prosecutors and their assistants:
(b) National and Regional State Prosecutors; and
(c) Other officers as may be authorized by law (COMELEC, PCGG, Ombudsman)

Their authority to conduct preliminary investigation shall include all crimes cognizable by the proper court in their respective territorial jurisdictions *(Sec. 2, as amended by AM 05-8-26-SC, 10/03/2005)*.

(4) The COMELEC may conduct investigation as regards election offenses *(Sec. 2[6], Art. IX-C, Constitution; Sec. 265, Omnibus Election Code)*.

(5) The Ombudsman and his deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government owned and controlled corporations and shall, in appropriate case, notify the complainants of the action taken and the result thereof *(Sec. 12, Art. XI, Constitution)*.

The Ombudsman is authorized to conduct preliminary investigation and to prosecute all criminal cases involving public officers and employees, not only those within the

jurisdiction of the Sandiganbayan, but also those within the jurisdiction of regular courts as well *(Uy vs. Sandiganbayan, GR No. 105965-70 [2001])*.

(6) The DOJ resolution is appealable administratively before the Office of the President, and the decision of the latter may be appealed before the CA pursuant to Rule 43 *(De Ocampo vs. Sec. of Justice, GR No. 147932 [2006])*. The resolution of the Secretary of Justice may be nullified in a petition for *certiorari* under Rule 65 on grounds of grave abuse of discretion amounting to lack or excess of jurisdiction *(Ching vs. Secretary of Justice, GR No. 164317 [2006])*.

(7) While the determination of probable cause charge a person of a crime is the sole function of the prosecutor, the trial court may, in the prosecution of one's fundamental right to liberty, dismiss the case, if upon a personal assessment of the evidence, it finds that the evidence does not establish probable cause. Hence, while the information filed by the Prosecutor was valid, Judge Umali still had the discretion to make her own finding of whether probable cause existed to order the arrest of the accused and proceed with trial *(Mendoza vs. People, GR No. 197293, 04/21/2014)*.

(8) Probable cause need not be based on clear and convincing evidence of guilt, neither on evidence establishing guilt beyond reasonable doubt and definitely not on evidence establishing absolute certainty of guilt. It implies probability of guilt and requires more than bare suspicion but less than evidence which would justify conviction. However, Agdeppa's accusations were mere suspicions that do not support a finding of probable cause to criminally charge Jarlos-Martin, Laurezo, and Junia under Section 3(a), (e), (f), and (j) of Republic Act No. 3019 *(Agdeppa vs. Office of the Ombudsman, GR No. 146376, 04/23/2014)*.

(9) A person who induced another to invest his money to a corporation which does not exist or dissolved shall be liable for estafa. And when the said corporation was made to solicit from the public, the offense shall be syndicated estafa *(Hao vs. People, GR No. 183345, 09/17/2014)*.

(10) It must be stressed that in our criminal justice system, the public prosecutor exercises a wide latitude of discretion in determining whether a criminal case should be filed in court, and the courts must respect the exercise of such discretion when the information filed against the person charged is valid on its face, and that no manifest error or grave abuse of discretion can be imputed to the public prosecutor. In this case, there is no question that the Information filed against the respondents was sufficient to hold them liable for the crime of Theft because it was compliant with Section 6, Rule 110 of the Rules of Court. Moreover, a review of the resolutions of the MCTC, the Provincial Prosecutor, the RTC, and the CA shows that there is substantial basis to support finding of probable cause against the respondents. Hence, as the Information was valid on its face and there was no manifest error or arbitrariness on the part of the MCTC and the Provincial Prosecutor, the RTC and the CA erred when they overturned the finding of probable cause against the respondents *(People vs. Yecyec, GR No. 183551, 11/12/2014)*.

(11) Respondents assailed the Ombudsman's finding of probable cause and the filing of plunder case against them. People maintains that the preliminary investigation conducted by the Office of the Ombudsman is an executive, not a judicial function. As such, it asserts that respondent Sandiganbayan should have given deference to the finding and determination of probable cause in their preliminary investigation. People is correct. It is well settled that courts do not interfere with the discretion of the Ombudsman to determine the presence or absence of probable cause believing that a crime has been committed and that the accused is probably guilty thereof necessitating the filing of the corresponding information with the appropriate courts. This rule is based not only on respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well.

The Ombudsman in this case found probable cause which would warrant the filing of an information against respondents. For purposes of filing a criminal information, probable cause has been defined as such facts as are sufficient to engender a well-founded belief

that a crime has been committed and that respondents are probably guilty thereof. It is such set of facts and circumstances which would lead a reasonably discreet and prudent man to believe that the offense charged in the Information, or any offense included therein, has been committed by the person sought to be arrested. A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and was committed by the suspect. It need not be based on clear and convincing evidence of guilt, neither on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt. Thus, unless it is shown that the Ombudsman's finding of probable cause was done in a capricious and whimsical exercise of judgment evidencing a clear case of grave abuse of discretion amounting to lack or excess of jurisdiction, the Court will not interfere with the same *(People vs. Borje, Jr., GR No. 170046, 12/10/2014).*

(12) Probable cause, for purposes of filing a criminal information, has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof, and should be held for trial. In determining probable cause, the average person weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. *A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused.* Probable cause demands more than bare suspicion, but it requires less than evidence that would justify a conviction.

A finding of probable cause does not require an inquiry as to whether there is sufficient evidence to secure a conviction. It is enough that the act or omission complained of constitutes the offense charged. The term does not mean "actual and positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. A trial is intended precisely for the reception of prosecution evidence in support of the charge. The court is tasked to determine guilt beyond reasonable doubt based on the evidence presented by the parties at a trial on the merits *(Chiang vs. Philippine Long Distance Telephone Company, GR No. 196679, 12/13/2017).*

(13) Two (2) kinds of determination of probable cause exist: executive and judicial. These two (2) kinds of determination of probable cause were distinguished in *People v. Castillo.* Thus,

> There are two kinds of determination of probable cause: executive and judicial. *The executive determination of probable cause is one made during preliminary investigation. It is a .fimction that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime as defined by law and thus should be held for trial.* Otherwise stated, such official has the quasi-judicial authority to determine *whether or not a criminal case must be filed in court.* Whether or not that function has been conectly discharged by the public prosecutor, *i.e.* whether or not he has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon.
>
> The ***judicial*** determination of probable cause, on the other hand, is *one made by the judge to ascertain whether a warrant of arrest should be issued against the accused.* The judge must satisfy himself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice. If the judge finds no probable cause, the judge cannot be forced to issue the anest wan·ant.
>
> [T]he public prosecutor exercises a wide latitude of discretion in determining whether a criminal case should be filed in court, and that courts *must respect the exercise of such discretion when the information filed against the person charged*

is valid on its face, and that no manifest error or grave abuse of discretion can be imputed to the public prosecutor. (Emphasis supplied, citations omitted)

Thus, courts do not meddle with the prosecutor's conduct of a preliminary investigation because it is exclusively within the prosecutor's discretion. However, once the information is already filed in court, the court has acquired jurisdiction of the case. Any motion to dismiss or determination of the guilt or innocence of the accused is within its discretion *(Mayor Corpus, Jr. vs. Judge Pamular, GR No. 186403, 09/05/2018)*.

(14) In *First Women's Credit Corporation v. Hon. Perez,* 37 the Court declared that the policy of non-interference in the conduct of preliminary investigations was meant to leave to the investigating prosecutor "ample latitude of discretion in the determination of what constitutes sufficient evidence as will establish probable cause for the filing of an information against a supposed offender."

The rationale for this policy was enunciated in *PCGG Chairman Elma v. Jacobi, viz.:*

> The necessary component of the Executive's power to faithfully execute the laws of the land is the State's self-preserving power to prosecute violators of its penal laws. This responsibility is primarily lodged with the DOJ, as the principal law agency of the government. The prosecutor has the discretionary authority to determine whether facts and circumstances exist meriting reasonable belief that a person has committed a crime. The question of whether or not to dismiss a criminal complaint is necessarily dependent on the sound discretion of the investigating prosecutor and, ultimately, of the Secretary (or Undersecretary acting for the Secretary) of Justice. Who to charge with what crime or none at all is basically the prosecutor's call.

Accordingly, the Court has consistently adopted the policy of noninterference in the conduct of preliminary investigations, and to leave the investigating prosecutor sufficient latitude of discretion in the determination of what constitutes sufficient evidence to establish probable cause. Courts cannot order the prosecution of one against whom the prosecutor has not found a *prima facie* case; as a rule, courts, too, cannot substitute their own judgment for that of the Executive. (Citations omitted)

In accordance with the policy of non-interference, courts do not reverse the Secretary of Justice's findings and conclusions on the matter of probable cause except in clear cases of grave abuse of discretion. "[j]udicial review of the resolution of the Secretary of Justice is limited to a determination of whether there has been a grave abuse of discretion amounting to lack or excess of jurisdiction considering that full discretionary authority has been delegated to the executive branch in the determination of probable cause during a preliminary investigation. Courts are not empowered to substitute their judgment for that of the executive branch; it may, however, look into the question of whether such exercise has been made in grave abuse of discretion" *(People v. Edgar go, GR Nos. 210816 and 210854, 12/10/2018)*.

(15) Probable cause refers to the existence of such facts and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted. It does not mean "actual and positive cause" nor does it require absolute certainty. A finding of probable cause is merely based on opinion and reasonable belief that the act or omission complained of constitutes the offense charged. A finding of probable cause merely binds over the suspect to stand trial for the reception of prosecution evidence in support of the charge. It is not a pronouncement of guilt *(People v. Edgar go, GR Nos. 210816 and 210854, 12/10/2018)*.

(16) This Court has adopted a policy of non-interference with public respondent's determination of probable cause. In *Dichaves* v. *Office of the Ombudsman, et al. (802 Phil. 564 [2016]):*

> As a general rule, this Court does not interfere with the Office of the Ombudsman's exercise of its constitutional mandate. Both the Constitution and Republic Act No. 6770 (The Ombudsman Act of 1989) give the Ombudsman wide latitude to act on criminal complaints against public officials and government employees. The rule on non-interference is based on the respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman.
>
> An independent constitutional body, the Office of the Ombudsman is beholden to no one, acts as the champion of the people, and is the preserver of the integrity of the public service. Thus, it has the sole power to determine whether there is probable cause to warrant the filing of a criminal case against an accused. This function is executive in nature.
>
> The Office of the Ombudsman is armed with the power to investigate. It is, therefore, in a better position to assess the strengths or weaknesses of the evidence on hand needed to make a finding of probable cause. As this Court is not a trier of facts, we defer to the sound judgment of the Ombudsman *(Degamo vs. Office of the Ombudsman, GR No. 212416, 12/05/2018)*.

(17) This Court generally does not interfere with public respondent Office of the Ombudsman's finding or lack of finding of probable cause out of respect for its constitutionally granted investigatory and prosecutor powers. *Dichaves v. Office of the Ombudsman* pointed out that the Office of the Ombudsman's power to determine probable cause is executive in nature and with its power to investigate, it is in a better position than this Court to assess the evidence on hand to substantiate its finding of probable cause or lack of it.
Probable cause is:

> [T]he existence of such facts and circumstances as would lead a person of ordinary caution and prudence to entertain an honest and strong suspicion that the person charged is guilty of the crime subject of the investigation. Being based merely on opinion and reasonable belief, it does not import absolute certainty. Probable cause need not be based on clear and convincing evidence of guilt, as the investigating officer acts upon reasonable belief. Probable cause implies probability of guilt and requires more than bare suspicion but less than evidence which would justify a conviction. (Citations omitted)

Nonetheless, despite this well-established principle, petitioner asks this Court to interfere with public respondent's assessment purportedly on the ground of grave abuse of discretion. However, disagreeing with public respondent's findings does not rise to the level of grave abuse of discretion.

A court or tribunal is said to have committed grave abuse of discretion if it performs an act in "a capricious or whimsical exercise of judgment amounting to lack of jurisdiction." Ultimately, for the petition to prosper, it would have to prove that public respondent "conducted the preliminary investigation in such a way that amounted to a virtual refusal to perform a duty under the law" *(PCGG vs. Office of the Ombudsman, GR No. 187794, 11/28/2018)*.

Resolution of investigation prosecutor

(1) If the investigating prosecutor finds cause to hold the respondent for trial, he shall prepare the resolution and information. He shall certify under oath in the information that he, or as shown by the record, an authorized officer, has personally examined the complainant and

his witnesses; that there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof; that the accused was informed of the complaint and of the evidence submitted against him; and that he was given an opportunity to submit controverting evidence. Otherwise, he shall recommend the dismissal of the complaint.

Within five (5) days from his resolution, he shall forward the record of the case to the provincial or city prosecutor or chief state prosecutor, or to the Ombudsman or his deputy in cases of offenses cognizable by the *Sandiganbayan* in the exercise of its original jurisdiction. They shall act on the resolution within ten (10) days from their receipt thereof and shall immediately inform the parties of such action.

No complaint or information may be filed or dismissed by an investigating prosecutor without the prior written authority or approval of the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy.

Where the investigating prosecutor recommends the dismissal of the complaint but his recommendation is disapproved by the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy on the ground that a probable cause exists, the latter may, by himself, file the information against the respondent, or direct another assistant prosecutor or state prosecutor to do so without conducting another preliminary investigation.

If, upon petition by a proper party under such Rules as the Department of Justice may prescribe or *motu proprio*, the Secretary of Justice reverses or modifies the resolution of the provincial or city prosecutor or chief state prosecutor, he shall direct the prosecutor concerned either to file the corresponding information without conducting another preliminary investigation, or to dismiss or move for dismissal of the complaint or information with notice to the parties. The same Rule shall apply in the preliminary investigations conducted by the officers of the Office of the Ombudsman *(Sec. 4)*.

Review

(1) A preliminary investigation falls under the authority of the state prosecutor who is given by law the power to direct and control criminal actions. He is, however, subject to the control of the Secretary of Justice, which the latter may exercise *motu propio* or upon petition of the proper party. In reviewing resolutions of state prosecutors, the Secretary of Justice is not precluded from considering errors, although unassigned, for the purpose of determining whether there is probable cause for filing cases in court *(Joaquin, Jr. vs. Drilon, 302 SCRA 225)*.

(2) Decisions or resolutions of prosecutors are subject to appeal to the Secretary of Justice. The Secretary of Justice exercises the power of direct control and supervision over prosecutors, and may thus affirm, nullify, reverse or modify their rulings. Supervision and control include the authority to act directly whenever specific function is entrusted by law or regulation to a subordinate; direct the performance of duty; restrain the commission of acts; review, approve, reverse or modify acts and decisions of subordinate officials. Sec. 37 of RA 3783 provides that any specific power, authority, duty, function or activity entrusted to a chief of a bureau, office, division or service shall be understood as also conferred upon the Secretary of Justice who shall have the authority to act directly in pursuance thereof, or to review, modify, revoke any decision or action of said chief of bureau, office, division or service *(Dimatulac vs. Villon, 297 SCRA 679)*.

(3) The recommendation of the investigating prosecutor on whether to dimiss the complaint or to file the corresponding information in court is still subject to the approval of the provincial or city prosecutor or chief state prosecutor.

However, a party is not precluded from appealing the resolution of the provincial or city prosecutor or chief state prosecutor to the Secretary of Justice *(Secretary De Lima v. Reyes, GR No. 209330, 01/11/2016)*.

When warrant of arrest may issue

(1) (a) *By the Regional Trial Court.* – Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to section 6 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information.

(b) *By the Municipal Trial Court.* – When required pursuant to the second paragraph of section 1 of this Rule, the preliminary investigation of cases falling under the original jurisdiction of the Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court, or Municipal Circuit Trial Court shall be conducted by the prosecutor. The procedure for the issuance of a warrant of arrest by the judge shall be governed by paragraph (a) of this section.

(c) *When warrant of arrest not necessary.* – A warrant of arrest shall not issue if the accused is already under detention pursuant to a warrant issued by the Municipal Trial Court in accordance with paragraph (b) of this section, or if the complaint or information was filed pursuant to section 6 of this Rule or is for an offense penalized by fine only. The court shall then proceed in the exercise of its original jurisdiction *(Sec. 5, as amended by AM 05-8-26-SC)*.

Cases not requiring a preliminary investigation

(1) No preliminary investigation is required in the following cases:

(a) *If filed with the prosecutor.* – If the complaint is filed directly with the prosecutor involving an offense punishable by imprisonment of less than four (4) years, two (2) months and one (1) day, the procedure outlined in section 3(a) of this Rule shall be observed. The prosecutor shall act on the complaint based on the affidavits and other supporting documents submitted by the complainant within (10) days from its filing.

(b) *If filed with the Municipal Trial Court.* – If the complaint or information is filed with the Municipal Trial Court or Municipal Circuit Trial Court, for an offense covered by this section, the procedure in section 3(a) of this Rule shall be observed. If within ten (10) days after the filing of the complaint or information, the judge finds no probable cause after personally evaluating the evidence or after personally examining in writing and under oath the complainant and his witnesses in the form of searching questions and answers, he shall dismiss the same. He may, however, require the submission of additional evidence, within ten (10) days from notice, to determine further the existence of probable cause. If the judge still finds no probable cause despite the additional evidence, he shall, within ten (10) days from its submission or expiration of the said period, dismiss the case. When he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused had already been arrested,

and hold him for trial. However, if the judge is satisfied that there is no necessity for placing the accused under custody, he may issue summons instead of a warrant of arrest *(Sec. 8)*.

Remedies of accused if there was no preliminary investigation

(1) One remedy if there was no preliminary investigation is to hold in abeyance the proceedings and order the prosecutor to hold preliminary investigation *(Pilapil vs. Sandiganbayan, 04/07/1993)*.

(2) Section 7, last paragraph thereof, provides that if the case has been conducted, the accused may within five (5) days from the time he learns of its filing ask for a preliminary investigation. The five-day period to file the motion for preliminary investigation is mandatory, and an accused is entitled to ask for preliminary investigation by filing the motion within the said period. The failure to file the motion within the five-day period amounts to a waiver of the right to ask for preliminary investigation. Apart from such waiver, posting bail without previously or simultaneously demanding for a preliminary investigation justifies denial of the motion for investigation *(People vs. CA, 242 SCRA 645)*.

(3) The absence of preliminary investigation (a) does not impair the validity of the information or otherwise render it defective; (b) does not affect the jurisdiction of the court; and (c) does not constitute a ground for quashing the information *(Villaflor vs. Vivar, GR No. 134744 [2001])*.

Inquest

(1) Inquest is the informal and summary investigation conducted by a public prosecutor in criminal cases involving persons arrested and detained without the benefit of a warrant of arrest issued by the court for the purpose of determining whether or not said persons should remain under custody and correspondingly be charged in court. Such proceedings must terminate within the period prescribed under Art. 125 of the Revised Penal Code *(DOJ-NPS Manual)*.

D. ARREST *(Rule 113)*

(1) Arrest is the taking of a person into custody in order that he may be bound to answer for the commission of an offense *(Sec 1)*.

(2) Senators and Members of the House of Representatives, while Congress is in session and for offenses punishable by not more than six (6) years imprisonment are immune from arrest *(Sec. 11, Art. VI, Constitution)*.

(3) Ambassadors and ministers of foreign countries and their duly registered domestics subject to the principle of reciprocity are immune from arrest *(RA 75)*.

(4) **2004 Bar**: RP and State XX have a subsisting Extradition Treaty. Pursuant thereto RP's Secretary of Justice (SOJ) filed a Petition for Extradition before the MM Regional Trial Court alleging that Juan Kwan is the subject of an arrest warrant duly issued by the proper criminal court of State XX in connection with criminal case for tax evasion and fraud before his return to RP as a balikbayan. Petitioner prays that Juan be extradited and delivered to proper authorities of State XX for trial, and that to prevent Juan's flight in the

interim, a warrant for his immediate arrest be issued. Before the RTC could act on the petition for extradition, Juan filed before it an urgent motion, in sum praying (1) that SOJ's application for an arrest warrant be set for hearing and (2) that Juan be allowed to post bail in the event the court would issue an arrest warrant. Should the court grant or deny Juan's prayer? Reason. (5%)

Answer: Under the Extradition Treaty Law, the application of the secretary of Justice for a warrant of arrest need not be set for hearing, and Juan cannot be alloweod to post bail if the court would issue a warrant of arrest. The provision in the Rules of Court on arrest and bail are not applicable *(Government of the United States of America vs. Puruganan, 389 SCRA 623 [2002]).*

Arrest, how made

(1) An arrest is made by an actual restraint of a person to be arrested, or by his submission to the custody of the person making the arrest. No violence or unnecessary force shall he used in making an arrest. The person arrested shall not be subject to a greater restraint than is necessary for his detention *(Sec. 2).*

(2) Any irregularity attending the arrest of an accused should be timely raised in a motion to quash the Information at any time before arraignment, failing which, he is deemed to have waived his right to question the regularity of his arrest *(People vs. Cunanan, GR No. 198024, 03/16/2015).*

Arrest without warrant, when lawful

(1) A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with Section 7 of Rule 113 *(Sec. 5).*

(2) Any objection involving the arrest or the procedure in the court's acquisition of jurisdiction over the person of the accused must be made before he enters his pleas; otherwise, the objection is deemed waived *(Zalameda vs. People, GR No. 183656 [2009]).*

(3) The phrase "personal knowledge of the facts and circumstances that the person to be arrested committed it" means that matters in relation to the supposed commission of the crime were within the actual perception, personal evaluation or observation of the police officer at the scene of the crime. Thus, even though the police officer has not seen someone actually fleeing, he could still make a warrantless arrest if, based on his personal evaluation of the circumstances at the scene of the crime, he could determine the existence of probable cause that the person sought to be arrested has committed the crime; however, the determination of probable cause and the gathering of facts ir circumstances should be made immediately after the commission ofn the crime in order to comply with the element of immediacy *(Pestillos vs. Generoso, GR No. 182601, 11/10/2014).*

(4) For a warrantless arrest of an accused caught in flagrante delicto under paragraph (a) of the afore-quoted Rule, two requisites must concur: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer. In this case, the arrest of appellant was effected under paragraph (a) or what is termed "in flagrante delicto." For a warrantless arrest of an accused caught *in flagrante delicto* under paragraph (a) of the afore-quoted Rule, two requisites must concur: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer *(People v. Endaya, GR No. 205741, 07/23/2014).*

(5) A buy-bust operation is a form of entrapment which in recent years has been accepted as a valid and effective mode of apprehending drug pushers. In such an instance, the violator is caught in flagrante delicto and the police officers conducting the operation are not only authorized but duty-bound to apprehend the violator and to search him for anything that may have been part of or used in the commission of the crime. Hence, a warrant of arrest is not needed to make a valid buy-bust operation *(People v. Adriano, GR No. 208169, 10/08/2014).*

(6) The probable cause to justify warrantless arrest ordinarily signifies a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man to believe that the person accused is guilty of the offense with which he is charged, or an actual belief or reasonable ground of suspicion, based on actual facts. In light of the discussion above on the developments of Section 5(b), Rule 113 of the Revised Rules of Criminal Procedure and our jurisprudence on the matter, we hold that the following must be present for a valid warrantless arrest: 1) the crime should have been just committed; and 2) the arresting officer's exercise of discretion is limited by the standard of probable cause to be determined from the facts and circumstances within his personal knowledge. The requirement of the existence of probable cause objectifies the reasonableness of the warrantless arrest for purposes of compliance with the Constitutional mandate against unreasonable arrests. Hence, for purposes of resolving the issue on the validity of the warrantless arrest of the present petitioners, the question to be resolved is whether the requirements for a valid warrantless arrest under Section 5(b), Rule 113 of the Revised Rules of Criminal Procedure were complied with, namely: 1) has the crime just been committed when they were arrested? 2) did the arresting officer have personal knowledge of facts and circumstances that the petitioners committed the crime? and 3) based on these facts and circumstances that the arresting officer possessed at the time of the petitioners' arrest, would a reasonably discreet and prudent person believe that the attempted murder of Atty. Generoso was committed by the petitioners? We rule in the affirmative *(Pastillos vs. Generoso and People, GR No. 182601, 11/10/2014).*

(7) A waiver of an illegal arrest, however, is not a waiver of an illegal search. While the accused has already waived his right to contest the legality of his arrest, he is not deemed to have equally waived his right to contest the legality of the search *(Villanueva v. People, GR No. 199042, 11/17/2014).*

(8) An accused cannot assail any irregularity in the manner of his arrest after arraignment. Objections to a warrant of arrest or the procedure by which the court acquired jurisdiction over the person of the accused must be manifested prior to entering his plea. Otherwise, the objection is deemed waived *(People vs. Araza, GR No. 190623, 111/17/2014).*

(9) Hence, when the [port authorities'] search of the bag of the accused revealed the firearms and ammunitions, accused is deemed to have been caught *in flagrante delicto*, justifying his arrest even without a warrant under Section 5(a), Rule 113 of the Rules of Criminal Procedure. The firearms and ammunitions obtained in the course of such valid search

are thus admissible as evidence against the accused *(Libo-on Dela Cruz vs. People, GR No. 209387, 01/11/2016)*.

(10) **2007 Bar**: On his way home, a member of the Caloocan City police force witnesses a bus robbery in Pasay City and effects the arrest of the suspect. Can he bring the suspect to Caloocan City for booking since that is where his station is? Explain briefly. (5%)

Answer: No. Under the Rules on Criminal Procedure, it is the duty of the officer executing the warrant to arrest the accused and to deliver him to the nearest police station or jail without unnecessary delay. This rule equally applies to situations of warrantless arrest *(Rule 113, Sec. 3)*.

(b) In the course of serving the search warrant, the police finds an unlicensed firearm. Can the police take the firearm even if it is not covered by the search warrant? If the warrant is subsequently quashed, is the police required to return the firearm? Explain briefly (5%)

Answer: Yes. The police can take the unlicensed firearm even if it was not covered by the search warrant following judicial precedent that prohibited articles may be seized for as long as the search warrant is valid. If the warrant is subsequently quashed, the police are not required to return the firearm because it is unlicensed. It can, in fact, be ordered forfeited by the court. The search warrant does not refer to the unlicensed firearm *(People vs. Mendi, GR Nos. 112978-81, 02/19/2001)*.

(11) **2004 Bar**: AX swindled RY in the amount of P10,000 sometime in mid-2003. On the strength of the sworn statement given by RY personally to SP01 Juan Ramos sometime in mid-2004, and without securing a warrant, the police officer arrested AX. Forthwith the police officer filed with the City Prosecutor of Manila a complaint for Estafa supported by ZY's sworn statement and other documentary evidence. After due inquest, the prosecutor filed the requisite information with the MM Regional Trial Court. No preliminary investigation was conducted either before or after the filing of the information and the accused at no time asked for such as investigation. However, before arraignment, the accused moved to quash the information on the ground that the prosecutor suffered from a want of authority to file the information because of his failure to conduct a preliminary investigation before filing the information, as required by the Rules of Court.

Is the warrantless arrest of AX valid? Is he entitled to a preliminary investigation before the filing of the information? Explain. (5%)

Answer; No. The warrantless arrest is not valid because the alleged offense has not just been committed. The crime was allegedly committed one year before the arrest *(Rule 113, Sec. 5b)*.

Yes, he is entitled to a preliminary investigation because he was not lawfully arrested without a warrant *(Rule 113, Sec. 7)*. He can move for reinvestigation.

(12) **2016 Bar**: How long after the commission of the crime can the peace officer still execute the warrantless arrest?

In executing a warrantless arrest under Section 5, Rule 113, the Supreme Court held that the requirement that an offense has just been committed means that there must be a large measure of immediacy between the time the offense was committed and the time of the arrest *(Pestillos vs. Generoso, GR No. 182601, 11/10/2014)*. If there was an appreciable lapse of time between the arrest and the commission of the crime, a warrant of arrest must be secured. In any case, personal knowledge by the arresting officer is an indispensable requirement to the validity of a valid warrantless arrest. The exact period varies on a case to case basis. In *People vs. Gerente (GR Nos. 95847-48, 03/10/1993)*, the Supreme Court ruled that a warrantless arrest was validly executed upon therein accused three (3) hours after the commission of the crime. In *People vs. Tonog, Jr. (GR No. 94533, 02/04/1992)*, the Supreme Court likewise upheld the valid warrantless arrest which was executed on the same day as the commission of the crime. However, in *People vs. Del Rosario (GR No. 127755, 04/14/1999)*, the Supreme Court held that the warrantless arrest effected a day after the commission

of the crime is invalid. In *Go vs. CA (GR No. 101837, 02/11/1992)*, the Supreme Court also declared invalid a warrantless arrest effected six (6) days after the commission of the crime.

Method of arrest

(1) ***Method of arrest by officer by virtue of warrant.*** – When making an arrest by virtue of a warrant, the officer shall inform the person to be arrested of the cause of the arrest and the fact that a warrant has been issued for his arrest, except when he flees or forcibly resists before the officer has opportunity to so inform him, or when the giving of such information will imperil the arrest. The officer need not have the warrant in his possession at the time of the arrest but after the arrest, if the person arrested so requires, the warrant shall be shown to him as soon as practicable *(Sec. 7)*.

(2) ***Method of arrest by officer without warrant.*** – When making an arrest without a warrant, the officer shall inform the person to be arrested of his authority and the cause of the arrest, unless the latter is either engaged in the commission of an offense, is pursued immediately after its commission, has escaped, flees or forcibly resists before the officer has opportunity to so inform him, or when the giving of such information will imperil the arrest *(Sec. 8)*.

(3) ***Method of arrest by private person.*** – When making an arrest, a private person shall inform the person to be arrested of the intention to arrest him and cause of the arrest, unless the latter is either engaged in the commission of an offense, is pursued immediately after its commission, or has escaped, flees or forcibly resists before the person making the arrest has opportunity to so inform him, or when the giving of such information will imperil the arrest *(Sec. 9)*.

Requisites of a valid warrant of arrest

(1) Requisites for arrest warrant issued by a RTC judge under Sec. 5, Rule 112:

(a) Within 10 days from the filing of the complaint or information
(b) The judge shall personally evaluate the resolution of the prosecutor and its supporting evidence.
(c) If he finds probable cause, he shall issue a warrant of arrest
(d) In case of doubt on the existence of probable cause
    1) The judge may order the prosecutor to present additional evidence within 5 days from notice; and
    2) The issue must be resolved by the court within 30 days from the filing of the complaint of information.

(2) Requisites for issuing search warrant under Sec. 4, Rule 126:

(a) It must be issued upon probable cause in connection with one specific offense;
(b) The probable cause must be determined by the judge himself and not by the applicant or any other person;
(c) In the determination of probable cause, the judge must examine under oath or affirmation, the complainant and the witness he may produce; and
(d) The warrant issued must particularly describe the place to be searched and the things to be seized which may be anywhere in the Philippines.

Determination of Probable Cause for issuance of warrant of arrest

(1) It is the judge alone who determines the probable cause for the issuance of warrant of arrest. It is not for the provincial fiscal or prosecutor to ascertain *(People vs. Inting, 187 SCRA 788).*

(2) The power of the judge to determine probable cause for the issuance of a warrant of arrest is enshrined in Section 2, Article III of the Constitution:

> Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

That this power is provided under no less than the Bill of Rights and the same section enunciating the inviolable right of persons to be secure in their persons only shows that the power is strictly circumscribed. It implies that a warrant of arrest shall issue only upon a judge's personal determination of the evidence against the accused. Thus, when Informations are filed before the courts and the judges are called upon to determine the existence of probable cause for the issuance of a warrant of arrest, what should be foremost in their minds is not anxiety over stepping on executive toes, but their constitutional mandate to order the detention of a person rightfully indicted or to shield a person from the ordeal of facing a criminal charge not committed by the latter.

Indeed, under the above-cited provision (Section 6 [a], rule 112), judges may very well:

(1) dismiss the case if the evidence on record has clearly failed to establish probable cause;
(2) issue a warrant of arrest upon a finding of probable cause; or
(3) order the prosecutor to present additional evidence within five days from notice in case of doubt as to the existence of probable cause.

When judges dismiss a case or require the prosecutor to present additional evidence, they do so not in derogation of the prosecutor's authority to determine the existence of probable cause.

First, judges have no capacity to review the prosecutor's determination of probable cause. That falls under the office of the DOJ Secretary. ***Second***, once a complaint or an Information has been filed, the disposition of the case is addressed to the sound discretion of the court, subject only to the qualification that its action must not impair the substantial rights of the accused or the right of the People to due process of law. ***Third***, and most important, the judge's determination of probable cause has a different objective than that of the prosecutor. The judge's finding is based on a determination of the existence of facts and circumstances that would lead a reasonably discreet and prudent person to believe that an offense has been committed by the person sought to be arrested. The prosecutor, on the other hand, determines probable cause by ascertaining the existence of facts sufficient to engender a well-founded belief that a crime has been committed, and that the respondent is probably guilty thereof. [Emphases supplied]

To be sure, in the determination of probable cause for the issuance of a warrant of arrest, the judge is not compelled to follow the prosecutor's certification of the existence of probable cause *(Fenix, et al. vs. Court of Appeals, GR No. 189878, 07/11/2016).*

(3) **2015 Bar:** An information for murder was filed against Rapido. The RTC judge, after personally evaluating the procutor's resolution, documents and parties' affidavits submitted by the prosecutor, found probable cause and issued a warrant of arrest. Rapido's lawyer examined the *rollo* of the case and found that it only contained the copy of the information, the submissions of the prosecutor and a copy of the warrant of arrest.

Immediately, Rapido's counsel filed a motion to quash the arrest warrant for being void, citing as grounds:

a) The judge before issuing the warrant did not personally conduct a searcbhing examnination of the prosecution witnesses in violation of his client's constitutionally-mandated rights;
b) There was no prior order finding probable cause before the judge issued the arrest warrant.

May the warrant of arrest be quashed on the grounds cited byRapido's counsel? State each ground. (4%)

Answer: No, the warrant of arrest may not be quashed based on the grounds cited by Rapido's caounsel. In the issuance of warrant of arrest, the mandate of the Constitution is for the judge to personally determine the existence of probable cause. The words "personal determination," was interpretation by the Supreme Court in *Soliven vs. Makasiar (GR No. 82585, 11/14/1988)*, as the exclusive and personal responsibility of the issuing judge to satisfy himself as to the existence of probable cause.

What the law requires as personal determination on the part of a judge is that he should not rely solely on the report of the investigating presecutor. Thus, personal examination of the complainant and his witnesses is, thus, not mandatory and indispensable in the determination of probable cause for the issuance of a warrant of arrest *(People vs. Joseph "Jojo" Grey, GR No. 10109, 07/26/2010)*.

At any rate, there is no law or rule that requires the judge to issue a prior Order finding probable cause before the issuance of a warrant of arrest.

Distinguish probable cause of fiscal from that of a judge

(1) The determination by the prosecutor of probable cause is for the purpose of either filing an information in court or dismissing the charges against the respondent, which is an executive function. The determination by the judge of probable cause begins only after the prosecutor has filed the information in court and the latter's determination of probable cause is for the purpose of issuing an arrest warrant against the accused, which is judicial function *(People vs. CA, 301 SCRA 475)*.

(2) Probable cause to hold a person for trial refers to the finding of the investigating prosecutor after the conduct of a preliminary investigation, that there is sufficient ground to hold a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof and should be held for trial. Based on such finding, the investigating prosecutor files the corresponding complaint or information in the competent court against the accused. The determination of probable cause to issue a warrant of arrest is a judicial function. A judge cannot be compelled to issue a warrant of arrest if he or she believes honestly that there is no probable cause for doing so *(People vs. CA, 102 SCAD 375, Jan. 21, 1999)*.

(3) Once the public prosecutor (or the Ombudsman) determines probable cause and thus, elevates the case to the trial court (or the Sandiganbayan), a judicial determination of probable cause is made in order to determine if a warrant of arrest should be issued ordering the detention of the accused. The Court, in *People v. Castillo (607 Phil. 754 [2009])*, delineated the functions and purposes of a determination of probable cause made by the public prosecutor, on the one hand, and the trial court, on the other:

> There are two kinds of determination of probable case: executive and judicial. The executive determination of probable cause is one made during preliminary investigation. It is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime as defined by law

and thus should be held for trial. Otherwise stated, such official has the quasi-judicial authority to determine whether or not a criminal case must be filed in court. Whether or not that function has been correctly discharged by the public prosecutor, *i.e.,* whether or not he has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon.

The judicial determination of probable cause, on the other hand, is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused. The judge must satisfy himself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice. If the judge finds no probable cause, the judge cannot be forced to issue the arrest warrant. (Emphasis and underscoring supplied)

As above-articulated, the executive determination of probable cause concerns itself with whether there is enough evidence to suppot an Information being filed. The judicial determination of probable cause, on the other hand, determines whether a warrant of arrest should be issued *(Reyes vs. Sandiganbayan, GR No. 212593-94, etc., 03/15/2016, En Banc).*

E. BAIL *(Rule 114)*

Nature

(1) All persons, except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong, shall before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of *habeas corpus* is suspended. Excessive bail shall not be required *(Sec. 13, Art. III, The Constitution).*

(2) Bail is the security given for the release of a person in custody of the law, furnished by him or a bondsman, to guarantee his appearance before any court as required under the conditions hereinafter specified. Bail may be given in the form of corporate surety, property bond, cash deposit, or recognizance *(Sec. 1).*

(3) Bail is the security required by the court and given by the accused to ensure that the accused appear before the proper court at the scheduled time and place to answer the charges brought against him. It is awarded to the accused to honor the presumption of innocence until his guilt is proven beyond reasonable doubt, and to enable him to prepare his defense without being subject to punishment prior to conviction *(Cortes vs. Catral, 279 SCRA 1).* Its main purpose is to relieve an accused from the rigors of imprisonment until his conviction and secure his appearance at the trial *(Paderanga vs. CA, 247 SCRA 741).*

(4) The person seeking provisional release need not wait for a formal complaint or information to be filed against him as it is available to all persons where the offense is bailable, so long as the applicant is in the custody of the law *(Paderanga vs. CA, 247 SCRA 741).*

(5) Kinds of bail:
   (a) Corporate bond – one issued by a corporation licensed to provide bail subscribed jointly by the accused and an officer duly authorized by its board of directors *(Sec. 10).*
   (b) Property bond – an undertaking constituted as a lien on the real property given as security for the amount of the bond *(Sec. 11).*
   (c) Recognizance – an obligation of record entered into usually by the responsible members of the community before some court or magistrate duly authorized to take it, with the condition to do some particular act, the most usual act being to assure the appearance of the accused for trial *(People vs. Abner, 87 Phil. 566).*
   (d) Cash deposit – the money deposited by the accused or any person acting on his behalf, with the nearest collector of internal revenue, or provincial, city or municipal treasurer. Considered as bail, it may be applied to the payment of any fees and costs, and the excess, if any, shall be returned to the accused or to whoever made the deposit *(Sec. 14).*

(6) Brita asserts that the grant of bail bolsters his claim that the evidence of the prosecution is not strong enough to prove his guilt. The Court is not convinced. "A grant of bail does not prevent the trial court, as the trier of facts, from making a final assessment of the evidence after full trial on the merits." It is not an uncommon occurrence that an accused person granted bail is convicted in due course *(People vs. Brita, GR No. 191260, 11/24/2014),*

(7) **2002 Bar**: If an information was filed in the RTC-Manila charging D with homicide and he was arrested in Quezon City, in what court or courts may he apply for bail? (4%)

   Answer: D may apply for bail in the RTC-Manila where the information was filed or in the RTC-Quezon City where he was arrested, or if no judge thereof is available, with any metropolitan trial judge, municipal trial judge, or municipal circuit trial judge therein *(Rule 114, Sec, 17).*

(8) **2002 Bar**: D was charged with murder, a capital offense. After arraignment, he applied for bail.. the trial court ordered the prosecution to present its evidence in full on the ground that only on the basis of such presentation could it determine whether the evidence of D's guilt was strong for purposes of bail. Is the ruling correct? Why? (3%)

Answer: No, the prosecution is only required to present as much evidence as is necessary to determine whether the evidence of D's guilt is strong for purposes of bail *(Rule 114, Sec. 8).*

(9) **2015 Bar:** Paz was awakened by the commotion coming from a condo unit next to hers. Alarmed, she called up the nearby police station. PO1 Ramus and PO2 Romulus proceeded to the condo unit identified by Paz. PO1 Remus knocked at the door and when a man opened the door, PO1 Remus and his companions introduced themselves as plice officers. The man readily identified himself as Oasis Jung and gestured to them to come in. Inside, the police officers saw a young lady with her nose bleeding and face swollen. Asked by PO2 Romulus what happened, the lady responded that she was beaten up by Oasis Jung. The police officers arrested Oasis Jung and brought him and the young lady back to the police station. PO1 Remus took the young lady's statement who identified herself as AA. She narrated that she is a sixteen-year-old high school student; that previous to the incident, she had sexual intercourse with Oasis Jung at least five times on different occasions and she was paid P5,000.00 each time and it was the first time that Oasis Jung hysicallyhurt her. PO2 Romulus detained Oasis Jung at the station's jail. After the inquest proceeding, the public prosecutor filed an information for Violation of RA 9262 (the VAWC Law) for physical violence and five separate informations for violation of RA 7610 (the Child Abuse Law). Oasis Jung's lawyer filed a motion to be admitted to bail but the court issued an order that approval of his bail bond shall be made onlyafter his arraignment.

(A) Did the court properly impose the bail condition? (3%)

(C) After his release from detention on bail, can Oasis Jung still question the validity of his arrest? (2%)

Answer:

(A) No. The court did not properly impose the bail condition. The Rules on Criminal Procedure does not require the arraignment of the accused as a prerequisite to the conduct of hearings in the bail petition. A person is allowed to file a petition for bail as soon as he is deprived of his liberty by virtue of his arrest or voluntary surrender. An accused need not wait for his arraignment before filing the bail petition *(Serapio vs. Sandiganbayan, GR No. 149116, 01/28/2003).*

Moreover, the condition that the approval of bail bonds shall be made only after arraignment would place the accused in a position where he has to choose between: (1) filing a motion to quash the Information and thus delay h is release on bail because until his motion to quash can be resolved, his arraignment cannot be held; and (2) forego the filing of the motion to quash the Information so that he can be arraigned at once and thereafter be released on bail *(Lavides vs. Court of Appeals, GR No. 129670, 02/01/2000).*

(C) Yes. Oasis Jung can still question the validity of his arrest even after his release from detention on bail. Under Section 26, Rule 114 of the Rules of Court, an application for or admission to bail shall not bar the accused from challenging the validity of his arrest or the legality of the warrant issued therefor, or from assailing the regularity or questioning the absence of a preliminary investigation of the charge against him, provided that he raises them before entering his plea.

When a matter of right; exceptions

(1) All persons in custody shall be admitted to bail as a matter of right, with sufficient sureties, or released on recognizance as prescribed by law or this Rule (a) before or after conviction by the Metropolitan Trial Court, Municipal Trial Court, Municipal Trial Court in Cities, or Municipal Circuit Trial Court, and (b) before conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua*, or life imprisonment *(Sec. 4, Rule 114)*.

(2) If bail can be granted in deportation cases, we see no justification why it should not also be allowed in extradition cases. After all, both are administrative proceedings where the innocence or guilt of the person detained is not in issue *(Govt. of Hongkong vs. Olalia, GR 153675, 04/19/2007)*.

(3) Bail is a matter of right before final conviction, but the rule is not absolute. The exception is when a person is charged with a capital offense when the evidence of guilt is strong, or when the offense for which on is charged is punishable by *reclusion perpetua*. The exception to this rule, however, is even if a person is charged with a capital offense where the evidence of guilt is strong, if the accused has failing health, hence, for humanitarian reasons, he may be admitted to bail, but that is discretionary on the part of the court *(De La Ramos vs. People's Court, 77 Phil. 461; Catiis vs. CA, 487 SCRA 71)*.

(4) **2006 Bar**: When is bail a matter of right and when is it a matter of discretion? (5%)

Answer: Bail is a matter of right (a) before or after conviction by the inferior courts; (b) before conviction by the RTC of an offense not punishable by death, reclusion perpetua of life imprisonment, when the evidence of guilt is not strong *(Rule 114, Sec. 4)*.

Bail is discretionary: Upon conviction by the RTC of an offense not punishable by death, reclusion perpetua or life imprisonment *(Rule 114, Sec. 5)*.

(5) **2003 Bar**: After the requisite proceedings, the Provincial Prosecutor filed an information for homicide against X. The latter, however, timely filed a petition for review of the resolution of the Provincial Prosecutor with the Secretary of Justice (SOJ) who, in due time, issued a resolution reversing the resolution of the provincial prosecutor and directing him to withdraw the information. Before the provincial prosecutor could comply with the directive of the Secretary of Justice, the court issued a warrant of arrest against X. The public prosecutor filed a motion to quash the warrant of arrest and to withdraw the information, attaching to it the resolution of the SOJ. The court denied the motion. If you were the counsel for the accused, what remedies, if any, would you pursue? (6%)

Answer: If I were the counsel for the accused, I would surrender the accused and apply for bail because the offense is merely homicide, a non-capital offense. At the pre-trial, I would make a stipulation of facts with the prosecution which would show that no offense was committed.

(6) **2008 Bar**: After Alma had started serving her sentence for violation of Batas Pambansa Blg. 22 (BP 22), she filed for a writ of habeas corpus, citing *Vaca v. CA* where the sentence of imprisonment of a party found guilty of violation of BP 22 was reduced to a fine equal to double the amount of the check involved. She prayed that her sentence be similarly modified and that she be immediately released from detention. In the alternative, she prayed that pending determination of whether the *Vaca* ruling applies to her, she be allowed to post bail pursuant to Rule 102, Sec. 14, which provides that if a aperson is lawfully imprisoned or restrained on a charge of having committed an offense not punishable by death, he may be admitted to bail in the discretion of the court. Accordingly, the trial court allowed Alma to post bail and then ordered her release. In your opinion, is the order of the trial court correct under the Rules of Criminal Procedure? (2%)

Answer: Under the Rules of Criminal Procedure, Rule 114, Sec. 24 clearly prohibits the grant of bail after conviction by final judgment and after the convict has started to serve

sentence. In the present case, Alma had already started serving her sentence. She cannot, therefore, apply for bail *(Peo v. Fitzgerald, GR No. 149723, 10/27/2006).*

When a matter of discretion

(1) Upon conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua*, or life imprisonment, admission to bail is discretionary. The application for bail may be filed and acted upon by the trial court despite the filing of a notice of appeal, provided it has not transmitted the original record to the appellate court. However, if the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable, the application for bail can only be filed with and resolved by the appellate court.

Should the court grant the application, the accused may be allowed to continue on provisional liberty during the pendency of the appeal under the same bail subject to the consent of the bondsman.

If the penalty imposed by the trial court is imprisonment exceeding six (6) years, the accused shall be denied bail, or his bail shall be cancelled upon a showing by the prosecution, with notice to the accused, of the following or other similar circumstances:

(a) That he is a recidivist, quasi-recidivist, or habitual delinquent, or has committed the crime aggravated by the circumstance of reiteration;
(b) That he has previously escaped from legal confinement, evaded sentence, or violated the conditions of his bail without valid justification;
(c) That he committed the offense while under probation, parole, or under conditional pardon;
(d) That the circumstances of his case indicate the probability of flight if released on bail; or
(e) That there is undue risk that he may commit another crime during the pendency of the appeal.

The appellate court may, *motu proprio* or on motion of any party, review the resolution of the Regional Trial Court after notice to the adverse party in either case *(Sec. 5, Rule 114).*

(2) Where the grant of bail is a matter of discretion, or the accused seeks to be released on recognizance, the application may only be filed in the court where the case is pending, whether on preliminary investigation, trial, or on appeal *(Sec. 17[a]).*

(3) The discretion lies in the determination of whether the evidence of guilt is strong. If it is determined that it is not strong, then bail is a matter of right. There is no more discretion of the court in denying the bail, the moment there is a determination that the evidence of guilt is not strong.

Hearing of application for bail in capital offenses

(1) A hearing in an application for bail is absolutely indispensable before a judge can properly determine whether the prosecution's evidence is weak or strong. In receiving evidence on bail, while a court is not required to try the merits of the case, he must nevertheless conduct a summary hearing which is "such brief and speedy method of receiving and considering the evidence of guilt as is practicable and consistent with the purpose of the hearing which is to determine the weight of the evidence for purposes of the bail *(In re complaint against Judge Elma, AM RTJ-94-1183, 02/08/1994).*

(2) A judge should not hear a petition for bail in capital offenses on the same day that the petition was filed. He should give the prosecution a reasonable time within which to

oppose the same. Neither is he supposed to grant bail solely on the belief that the accused will not flee during the pendency of the case by reason of the fact that he had even voluntarily surrendered to the authorities. Voluntary surrender is merely a mitigating circumstance in decreasing the penalty that may eventually be imposed upon the accused in case of conviction but is not a ground for granting bail to an accused charged with a capital offense *(Sule vs. Judge Bitgeng, 60 SCAD 341, 04/18/1995)*.

(3) A bail application in capital offense does not only involve the right of the accused to temporary liberty, but likewise the right of the State to protect the people and the peace of the community from dangerous elements. Accordingly, the prosecution must be given ample opportunity to show that the evidence of guilt is strong, because, by the very nature of deciding applications for bail, it is on the basis of such evidence that judicial discretion is exercised in determining whether the evidence of guilt is strong is a matter of judicial discretion. Though not absolute nor beyond control, the discretion within reasonable bounds *(People vs. Antona, GR No.137681, 01/31/2002)*.

(4) It is basic, however, that bail hearing is necessary even if the prosecution does not interpose any objection or leaves the application for bail to the sound discretion of the court. Thus, in *Villanueva v. Judge Buaya*, therein respondent judge was held administratively liable for gross ignorance of the law for granting an *ex parte* motion for bail without conducting a hearing. Stressing the necessity of bail hearing, this Court pronounced that:

> The court has always stressed the indispensable nature of a bail hearing in petitions for bail. Where bail is a matter of discretion, the grant or the denial of bail hinges on the issue of whether or not the evidence on the guilt of the accused is strong is matter of judicial discretion which remains with the judge. In order for the judge to properly exercise this discretion, he must first conduct a hearing to determine whether the evidence of guilt is strong. This discretion lies not in the determination of whether or not a hearing should be held, but in the appreciation and evaluation of the weight of the prosecution's evidence of guilt against the accused.

In any event, whether bail is a matter of right or discretion, a hearing for a petition for bail is required in order for the court to consider the guidelines set forth in Section 9, Rule 114 of the Rules of Court in fixing the amount of bail.

A *fortiriori*, respondent is administratively liable for gross ignorance of the law for granting *ex parte* motions to allow Adama's temporary liberty without setting the same for hearing. If hearing is indispensable in motions for bail, more so in this case where the motions for the temporary liberty of Adamas were filed without offering any bail or without any prayer that he be released on recognizance *(Balanay vs. Judge White, Br. 5 RTC-Eastern Samar, AM No. RTJ-16-2443, 01/11/2016)*.

Guidelines in fixing amount of bail

(1) The judge who issued the warrant or granted the application shall fix a reasonable amount of bail considering primarily, but not limited to, the following factors:
- (a) Financial ability of the accused to give bail;
- (b) Nature and circumstances of the offense;
- (c) Penalty for the offense charged;
- (d) Character and reputation of the accused;
- (e) Age and health of the accused;
- (f) Weight of the evidence against the accused;
- (g) Probability of the accused appearing at the trial;
- (h) Forfeiture of other bail;

(i) The fact that the accused was a fugitive from justice when arrested; and
(j) Pendency of other cases where the accused is on bail.

Excessive bail shall not be required *(Sec. 9)*.

Bail when not required

(1) No bail shall be required when the law or these Rules so provide.

When a person has been in custody for a period equal to or more than the possible maximum imprisonment prescribed for the offense charged, he shall be released immediately, without prejudice to the continuation of the trial or the proceedings on appeal. If the maximum penalty to which the accused may be sentenced is *destierro*, he shall be released after thirty (30) days of preventive imprisonment.

A person in custody for a period equal to or more than the minimum of the principal penalty prescribed for the offense charged, without application of the Indeterminate Sentence Law or any modifying circumstance, shall be released on a reduced bail or on his own recognizance, at the discretion of the court *(Sec. 16)*.

Increase or Reduction of Bail

(1) After the accused is admitted to bail, the court may, upon good cause, either increase or reduce its amount. When increased, the accused may be committed to custody if he does not give bail in the increased amount within a reasonable period. An accused held to answer a criminal charge, who is released without bail upon filing of the complaint or information, may, at any subsequent stage of the proceedings whenever a strong showing of guilt appears to the court, be required to give bail in the amount fixed, or in lieu thereof, committed to custody *(Sec. 20)*.

Forfeiture and Cancellation of bail

(1) When the presence of the accused is required by the court or these Rules, his bondsmen shall be notified to produce him before the court on a given date and time. If the accused fails to appear in person as required, his bail shall be declared forfeited and the bondsmen given thirty (30) days within which to produce their principal and to show cause why no judgment should be rendered against them for the amount of their bail. Within the said period, the bondsmen must:

(a) produce the body of their principal or give the reason for his non-production; and

(b) explain why the accused did not appear before the court when first required to do so.

Failing in these two requisites, a judgment shall be rendered against the bondsmen, jointly and severally, for the amount of the bail. The court shall not reduce or otherwise mitigate the liability of the bondsmen, unless the accused has been surrendered or is acquitted *(Sec. 21)*.

(2) Upon application of the bondsmen, with due notice to the prosecutor, the bail may be cancelled upon surrender of the accused or proof of his death. The bail shall be deemed automatically cancelled upon acquittal of the accused, dismissal of the case, or execution of the judgment of conviction. In all instances, the cancellation shall be without prejudice to any liability on the bail *(Sec. 22)*.

Application not a bar to objections in illegal arrest, lack of or irregular preliminary investigation

(1) The posting of the bail does not constitute a waiver of any question on the irregularity attending the arrest of person. He can still question the same before arraignment, otherwise, the right to question it is deemed waived. It was also said that posting bail is deemed to be a forfeiture of a *habeas corpus* petition which becomes moot and academic *(Arriba vs. People. 107 SCRA 191; Bagcal vs. Villaroza, 120 SCRA 525).*

(2) An application for or admission to bail shall not bar the accused from challenging the validity of his arrest or the legality of the warrant issued therefor, or from assailing the regularity or questioning the absence of a preliminary investigation of the charge against him, provided that he raises them before entering his plea. The court shall resolve the matter as early as practicable but not later than the start of the trial of the case *(Sec. 26).*

(3) The arraignment of an accused is not a prerequisite to the conduct of hearings on his petition for bail. A person is allowed to petition for bail as soon as he is deprived of his liberty by virtue of his arrest or voluntary surrender *(Mendoza vs. CFI of Quezon, 51 SCAD 369).* An accused need not wait for his arraignment before filing a petition for bail. In *Lavides vs. CA, 324 SCRA 321*, it was held that in cases where it is authorized, bail should be granted before arraignment, otherwise the accused may be precluded from filing a motion to quash. This pronouncement should be understood in the light of the fact that the accused in said case filed a petition for bail as well as a motion to quash the informations filed against him. It was explained that to condition the grant of bail to an accused on his arraignment would be to place him in a position where he has to choose between: (1) filing a motion to quash and thus delay his release on bail because until his motion to quash can be resolved, his arraignment cannot be held; and (2) foregoing the filing of a motion to quash so that he can be arraigned at once and thereafter be released on bail. This would undermine his constitutional right not to be put on trial except upon a valid complaint or information sufficient to charge him with a crime and his right to bail. It is therefore not necessary that an accused be first arraigned before the conduct of hearings on his application for bail. For when bail is a matter of right, an accused may apply for and be granted bail even prior to arraignment *(Serapio vs. Sandiganbayan, GR Nos. 148468-69, 149116, 01/28/2003).*

Hold Departure Order & Bureau of Immigration Watchlist

(1) Supreme Court Cir. No. 39-97 dated June 19, 1997 limits the authority to issue hold departure orders to the RTCs in criminal cases within their exclusive jurisdiction. Consequently, MTC judges have no authority to issue hold-departure orders, following the maxim, express mention implies the exclusion. Neither does he have authority to cancel one which he issued *(Huggland vs. Lantin, AM MTJ-98-1153, Feb. 29, 2000).*

(2) A hold-departure order may be issued only in criminal cases within the exclusive jurisdiction of the Regional Trial Courts *(SC Circ. No. 39-97).*

(3) A court has the power to prohibit a person admitted to bail from leaving the Philippines. This is necessary consequence of the nature and function of a bail bond. Where it appears that the accused had the propensity to evade or disobey lawful orders, the issuance of a hold departure order is warranted *(Santos vs. CA, 116 SCAD 575, Dec. 3, 1999).*

(4) The fact that the accused surreptitiously left for Hongkong, after getting a clearance for purposes of leaving the country but without permission of the trial court, and thereafter could not return for trial as she was imprisoned in Hongkong for a criminal offense, does not relieve the bondsman of liability.

Bail not a bar to objections on illegal arrest

(1) An application for or admission to bail shall not bar the accused from challenging the validity of his arrest or the legality of the warrant issued therefor, or from assailing the regularity or questioning the absence of a preliminary investigation of the charge against him, provided that he raises them before entering his plea. The court shall resolve the matter as early as practicable but not later than the start of the trial of the case *(Sec. 26)*.

F. RIGHTS OF THE ACCUSED *(Rule115)*

Rights of accused at the trial

(1) In all criminal prosecutions, the accused shall be entitled to the following rights:

(a) To be presumed innocent until the contrary is proved beyond reasonable doubt.
(b) To be informed of the nature and cause of the accusation against him.
(c) To be present and defend in person and by counsel at every stage of the proceedings, from arraignment to promulgation of the judgment. The accused may, however, waive his presence at the trial pursuant to the stipulations set forth in his bail, unless his presence is specifically ordered by the court for purposes of identification. The absence of the accused without any justifiable cause at the trial of which he had notice shall be considered a waiver of his right to be present thereat. When an accused under custody escapes, he shall be deemed to have waived his right to be present on all subsequent trial dates until custody over him is regained. Upon motion, the accused may be allowed to defend himself in person when it sufficiently appears to the court that he can properly protect his rights without the assistance of counsel.
(d) To testify as a witness in his own behalf but subject to cross-examination on matters covered by direct examination. His silence shall not in any manner prejudice him;
(e) To be exempt from being compelled to be a witness against himself.
(f) To confront and cross-examine the witnesses against him at the trial. Either party may utilize as part of its evidence the testimony of a witness who is deceased, out of or cannot with due diligence be found in the Philippines, unavailable, or otherwise unable to testify, given in another case or proceeding, judicial or administrative, involving the same parties and subject matter, the adverse party having the opportunity to cross-examine him.
(g) To have compulsory process issued to secure the attendance of witnesses and production of other evidence in his behalf.
(h) To have speedy, impartial and public trial.
(i) To appeal in all cases allowed and in the manner prescribed by law *(Sec. 1)*.

(2) The variance between the allegations in the Information and the evidence offered by the prosecution does not of itself entitle the accused to an acquittal, more so if the variance relates to the designation of offended party, a mere formal defect, which does not prejudice the substantial rights of the accused.

Furthermore, the rule is that if the subject matter of the offense is generic and not identifiable, an error in the designation of the offended party is fatal and would result in the acquittal of the accused. However, if the subject matter of the offense is specific and identifiable, an error in the designation of the offended party is immaterial. Here, the subject matter of the offense is specific and identifiable, i.e., the various pieces of jewelry as enumerated and specified in the Trust Receipt Agreement. Thus, the error in the

designation of the offended party is immaterial. Consequently, petitioner has not been denied of her constitutional right to be informed of the nature and cause of the accusation against her and it was proper for the lower courts to convict her as charged *(Senador v. People, GR No. 201620, 06/06/2013).*

(3) Speedy trial is a relative term and necessarily a flexible concept. In determining whether the accused's right to speedy trial was violated, the delay should be considered in view of the entirety of the proceedings. The factors to balance are the following: (a) duration of the delay; (b) reason therefor; (c) assertion of the right or failure to assert it; and (d) prejudice caused by such delay. Surely, mere mathematical reckoning of the time involved would not suffice as the realities of everyday life must be regarded in judicial proceedings which, after all, do not exist in a vacuum, and that particular regard must be given to the facts and circumstances peculiar to each case. While the Court recognizes the accused's right to speedy trial and adheres to a policy of speedy administration of justice, we cannot deprive the State of a reasonable opportunity to fairly prosecute criminals. Unjustified postponements which prolong the trial for an unreasonable length of time are what offend the right of the accused to speedy trial *(Co vs. New Prosperity Plastic Products, GR No. 183994, 06/30/2014).*

(4) A dismissal grounded on the denial of the right of the accused to speedy trial has the effect of acquittal that would bar the further prosecution of the accused for the same offense. *(Bonsubre vs. Yerro, GR No. 205952, 02/11/2015).*

(5) The right to be assisted by counsel is an indispensable component of due process in criminal prosecution. As such, right to counsel is one of the most sacrosanct rights available to the accused. A deprivation of the right to counsel strips the accused of an equality in arms resulting in the denial of a level playing field. Simply put, an accused without counsel is essentially deprived of a fair hearing which is tantamount to a grave denial of due process.

Xxx Mere opportunity and not actual cross-examination is the essence of the right to cross-examine. The case of *Savory Luncheonette v. Lakas ng Manggagawang Pilipino, et al.* thoroughly explained the meaning and substance of right to cross-examine as an integral component of due process with a *colatilla* that the same right may be expressly or impliedly waived: The right of a party to confront and cross-examine opposing witnesses ina anjudicial litigation, be it criminal or civil in nature, or in proceedings before administrive tribunals with quasi-judicial powers, is a fundamental right which is part of due process. However, the right is a personal one which may be waived expressly or impliedly, by conduct amounting to a renunciation of the right of cross-examination. Thus, where a party has had the opportunity to cross-examine a witness but failed to avail himself of it, he necessarily forfeits the right to cross-examine and the testimony given on direct examination of the witness will be received or allowed to remain in the record *(Ibañez vs. People, GR No. 190798, 01/27/2016).*

(6) To our mind, even assuming that transfers of records from one court to another oftentimes entails significant delays, the period of six (6) years is too long solely for the transfer of records from the RTC in Tarlac City to the Sandiganbayan. This is already an inordinate delay in resolving a criminal complaint that the constitutionally guaranteed right of the accused to due process and to the speedy disposition of cases. Thus, the dismissal of the criminal case is in order.

Moreover, the prosecution cannot attribute the delay to Inocentes for filing numerous motions because the intervals between these incidents are miniscule compared to the six-year transfer of records to the Sandiganbayan.

The prosecution likewise blames Inocentes for not seasonably invoking his right to a speedy disposition of his case. It claims that he has no right to complain about the delay when the delay is because he allegedly slept on his rights.

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Plainly, the delay of at least seven (7) years before the informations were filed skews the fairness which the right to speedy disposition of cases seeks to maintain. Undoubtedly, the delay in the resolution of this case prejudiced Inocentes since the defense witnesses he would present would be unable to recall accurately the events of the distant past.

Considering the clear violation of Inocentes' right to the speedy disposition of his case, we find that the Ombudsman gravely abused its discretion in not acting on the case within a reasonable time after it had acquired jurisdiction over it *(Inocentes vs. People, GR No. 205963-64, 07/07/2016)*.

(7) **2016 Bar**: Pedro, the principal witness in a criminal case, testified and completed his testimony on direct examination in 2015. Due to several postponements by the accused, grounded on his recurring illness, which were all granted by the judge, the cross-examination of Pedro was finally set on October 15, 2016. Before the said date, the accused moved to expunge Pedro's testimony on the ground that it violates his right of confrontation and the right to cross-examine the witness. The prosecution opposed the motion and asked Pedro's testimony on direct examination be admitted as evidence. Is the motion meritorious? Explain. (5%)

Answer:

The Motion is meritorious. The cross-examination of a witness is an absolute right, not a mere privilege, of the party against whom he is called. With regard to the accused, it is a right guaranteed by the fundamental law as part of due process. Art. III, Sec. 14, par. (2), of the 1987 Constitution specifically mandates that "the accused shall enjoy the right to meet the witnesses face to face," and Rule 115, Sec. 1, par. (f), of the 2000 *Rules of Criminal Procedure* enjoins that in all criminal prosecutions the accused shall be entitled to confron and cross-examine the witnesses against him at the trial. Accordingly, the testimony of a witness given on direct examination should be stricken off the record where there was no adequate opportunity for cross-examination *(People vs. Rosario, GR No. 146689, 09/27/2002)*.

In *People vs. Manchetti (GR No. L-48883, 08/06/1980)*, the Supreme Court also held that if a party is deprived of the opportunity of cross examination without fault on his part, as in the case of the illness and death of a witness after direct examination, he is entitled to have the direct testimony stricken from the records. Since the accused was deprived of his opportunity to cross examine the witness without fault on his part, the motion to expunge is meritorious.

(7) Under the ***doctrine of incomplete testimony***, the direct testimony of a witness who dies before conclusion of the cross-examination can be stricken only insofar as not covered by the cross-examination *(Curtice vs. West, 2 NYS 507, 50 Hun 47, affirmed 24 NE 1099, 121 NY, 696)*, and that a referee has no power to strike the examination of a witness on his failure to appear for cross-examination where a good excuse is given *(People vs. Hon. Seneris, GR No. L-48883, 08/06/1980)*.

Rights of persons under Custodial Investigation

(1) The rights of an accused person under custody investigation are expressly enumerated in Sec. 12, Art. III of the Constitution, viz:
   (a) Any person under investigation for the commission of an offense shall have the right to be informed of his rights to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel;

(b) No torture, force, violence, intimidation or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited;
(c) Any confession or admission in violation of this or Sec. 17 (Self-Incrimination Clause) hereof shall be inadmissible in evidence against him;
(d) The law shall provide for penal and civil sanctions for violation of this section as well as compensation to aid rehabilitation of victims of torture or similar practice, and their families.

(2) Under RA 7834, the following are the rights of persons arrested, detained or under custodial investigation:
(a) Any person arrested, detained or under custodial investigation shall at all times be assisted by counsel;
(b) Any public officer or employee, or anyone acting under his order or in his place, who arrests, detains or investigates any person for the commission of an offense shall inform the latter, in a language known to and understood by him, of his right to remain silent and to have competent and independent counsel, preferably of his own choice, who shall at all times be allowed to confer privately with the person arrested, detained or under custodial investigation. If such person cannot afford the services of his own counsel, he must be provided with a competent and independent counsel by the investigating officer;
(c) The custodial investigation report shall be reduced to writing by investigating officer, provided that before such report is signed, or thumbmarked if the person arrested or detained does not know how to read and write, it shall be read and adequately explained to him by his counsel or by the assisting counsel provided by the investigating officer in the language or dialect known to such arrested or detained person, otherwise, such investigation report shall be null and void and of no effect whatsoever;
(d) Any extrajudicial confession made by a person arrested, detained or under custodial investigation shall be in writing and signed by such person in the presence of his counsel or in the latter's absence, upon a valid waiver, and in the presence of any of the parents, older brothers and sisters, his spouse, the municipal mayor, the municipal judge, district school supervisor, or priest or minister of the gospel as chosen by him; otherwise, such extrajudicial confession shall be inadmissible as evidence in any proceeding;
(e) Any waiver by person arrested or detained under the provisions of Art. 125 of the Revised Penal Code or under custodial investigation, shall be in writing signed by such person in the presence of his counsel; otherwise such waiver shall be null and void and of no effect;
(f) Any person arrested or detained or under custodial investigation shall be allowed visits by his or conferences with any member of his immediate family, or any medical doctor or priest or religious minister chosen by him or by his counsel, or by any national NGO duly accredited by the Office of the President. The person's "immediate family" shall include his or her spouse, fiancé or fiancée, parent or child, brother or sister, grandparent or grandchild, uncle or aunt, nephew or niece and guardian or ward.

(3) Three rights are made available by Sec. 12(1):
(a) The right to remain silent – Under the right against self-incrimination in Sec. 17, only an accused has the absolute right to remain silent. A person who is not an accused may assume the stance of silence only when asked an incriminatory question. Under Sec. 12, however, a person under investigation has the right to refuse to answer any question. His silence, moreover, may not be used against him *(People vs. Alegre and Gordoncillo, 94 SCRA 109)*;

(b) The right to counsel – Example of those who are not impartial counsel are (1) Special counsel, private or public prosecutor, counsel of the police, or a municipal attorney whose interest is adverse to that of the accused; (2) a mayor, unless the accused approaches him as counselor or adviser; (3) a barangay captain; (4) any other whose interest may be adverse to that of the accused *(People vs. Tomaquin, GR 133188, 07/23/2004)*;

(c) The right to be informed o his rights – the right guaranteed here is more than what is shown in television shows where the police routinely reads out the rights from a note card; he must also explain their effects in practical terms *(People vs. Rojas, 147 SCRA 169)*. Short of this, there is a denial of the right, as it cannot then truly be said that the person has been informed of his rights *(People vs. Nicandro, 141 SCRA 289)*.

(4) Custodial investigation involves any questioning initiated by law enforcement officers after a person has been taken into custody otherwise deprived of his freedom of action in any significant way. The right to custodial investigation begins only when the investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect, the suspect has been taken into police custody, the police carry out a process of interrogations that lends itself to eliciting incriminating statements *(Escobedo vs. Illinois, 378 US 478; People vs. Marra, 236 SCRA 565)*. It should be noted however, however, that although the scope of the constitutional right is limited to the situation in Escobedo and Marra, RA 7438 has extended the guarantee to situations in which an individual has not been formally arrested but has merely been "invited" for questioning *(People vs. Dumantay, GR 130612, 05/11/1999; People vs. Principe, GR 135862, 05/02/2002)*.

(5) Further, a "request for appearance" issued by law enforcers to a person identified as a suspect is akin to an "invitation." Thus, the suspect is covered by the rights of an accused while under custodial investigation. Any admission obtained from the "request for appearance" without the assistance of counsel is inadmissible in evidence.

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The Court of Appeals held that "[t]he constitutional procedures on custodial investigation do not apply to a spontaneous statement, not elicited through questioning by the authorities, but given in an ordinary manner whereby the accused orally admits having committed the crime."

However, the record shows that petitioner's appearance before the police station was far from being voluntary.

In this case, the so-called "request for appearance" is no different from the "invitation" issued by police officers for custodial investigation.

Section 2 of Republic Act No. 7438 provides:

> SEC. 2. *Rights of Persons Arrested, Detained or under Custodial Investigation; Duties of Public Officers*. -
>
> . . .
>
> As used in this Act, "custodial investigation" shall include the practice of issuing an "invitation" to a person who is investigated in connection with an offense he is suspected to have committed, without prejudice to the liability of the "inviting" officer for any violation of law.

Custodial investigation has also been defined as:

> Custodial investigation commences when a person is taken into custody and is singled out as a suspect in the commission of a crime under investigation and the police officers begin to ask questions on the suspect's participation therein and which tend to elicit an admission *(People vs. Gutting, GR No. 205412, 09/09/2015)*.

The circumstances surrounding petitioner's appearance before the police station falls within the definition of custodial investigation. Petitioner was identified as a

suspect in the theft of large cattle. Thus, when the request for appearance was issued, he was already singled out as the probable culprit *(Lopez vs. People, GR No. 212186, 06/29/2016).*

G. ARRAIGNMENT AND PLEA *(Rule 116)*

(1) Arraignment is the formal mode of implementing the constitutional right of the accused to be informed of the nature of the accusation against him.

(2) Some rules on arraignment:
   (a) Trial in absentia is allowed only after arraignment;
   (b) Judgment is generally void if the accused has not been arraigned;
   (c) There can be no arraignment in absentia;
   (d) If the accused went to trial without arraignment, but his counsel had the opportunity to cross-examine the witnesses of the prosecution and after prosecution, he was arraigned, the defect was cured *(People vs. Atienza, 86 Phil. 576).*

(3) Arraignment is important because it is the mode of implementing the constitutional right to be informed of the nature of the accusation against him, and to fix the identity of the accused. It is not a mere formality, but an integral part of due process; it implements the constitutional right of the accused to be informed and the right to speedy trial *(Lumanlaw vs. Peralta, 482 SCRA 396).*

Arraignment and Plea, how made

(1) Section 1, Rule 116 provides:

(a) The accused must be arraigned before the court where the complaint or information was filed or assigned for trial. The arraignment shall be made in open court by the judge or clerk by furnishing the accused with a copy of the complaint or information, reading the same in the language or dialect known to him, and asking him whether he pleads guilty or not guilty. The prosecution may call at the trial witnesses other than those named in the complaint or information.

(b) The accused must be present at the arraignment and must personally enter his plea. Both arraignment and plea shall be made of record, but failure to do so shall not affect the validity of the proceedings.

(c) When the accused refuses to plead or makes a conditional plea, a plea of not guilty shall be entered for him.

(d) When the accused pleads guilty but presents exculpatory evidence, his plea shall be deemed withdrawn and a plea of not guilty shall be entered for him.

(e) When the accused is under preventive detention, his case shall be raffled and its records transmitted to the judge to whom the case was raffled within three (3) days from the filing of the information or complaint. The accused shall be arraigned within ten (10) days from the date of the raffle. The pre-trial conference of his case shall be held within ten (10) days after arraignment.

(f) The private offended party shall be required to appear at the arraignment for purposes of plea-bargaining, determination of civil liability, and other matters requiring his presence. In case of failure of the offended party to appear despite due notice, the court may allow the accused to enter a plea of guilty to a lesser offense which is

necessarily included in the offense charged with the conformity of the trial prosecutor alone. *(Cir. 1-89)*

(g) Unless a shorter period is provided by special law or Supreme Court circular, the arraignment shall be held within thirty (30) days from the date the court acquires jurisdiction over the person of the accused. The time of the pendency of a motion to quash or for a bill of particulars or other causes justifying suspension of the arraignment shall be excluded in computing the period.

When should plea of Not Guilty be entered

(1) At any time before the judgment of conviction becomes final, the court may permit an improvident plea of guilty to be withdrawn and be substituted by a plea of not guilty *(Sec. 5)*.

(2) A plea of "not guilty" should be entered where
   (a) The accused so pleaded;
   (b) When he refuses to plead;
   (c) Where in admitting the act charged, he sets up matters of defense or with a lawful justification;
   (d) When he enters a conditional plea of guilt;
   (e) Where, after a plea of guilt, he introduces evidence of self-defense or other exculpatory circumstances ; and
   (f) When the plea is indefinite or ambiguous *(US vs. Kelly, 35 Phil 419; People vs. Sabilul, 93 Phil. 567; People vs. Balisacan; People vs. Stron, L-38626, Mar. 14, 1975)*.

When may accused enter a plea of guilty to a lesser offense

(1) At arraignment, the accused, with the consent of the offended party and the prosecutor, may be allowed by the trial court to plead guilty to a lesser offense which is necessarily included in the offense charged. After arraignment but before trial, the accused may still be allowed to plead guilty to said lesser offense after withdrawing his plea of not guilty. No amendment of the complaint or information is necessary *(Sec. 2)*.

(2) An accused can enter a plea to a lesser offense if there is consent of the other party and the prosecutor. If he did so without the consent of the offended party and the prosecutor and he was convicted, his subsequent conviction in the crime charged would not place him in dhouble jeopardy. It has been held that the accused can still plead guilty to a lesser offense after the prosecution has rested *(People vs. Villarama, Jr., 210 SCRA 246; People vs. Luna, 174 SCRA 204)*. It is further required that the offense to which he pleads must be necessarily included in the offense charged *(Sec. 2)*.

(3) **2002 Bar**: D was charged with theft of an article worth P15,000. Upon being arraigned, he pleaded not guilty to the offense charged. Thereafter, before trial commenced, he asked the court to allow him to change his plea of not guilty to a plea of guilty but only to Estafa involving P5,000. Can the court allow D to charge his plea? Why? (2%)

Answer: No, because a plea of guilty to a lesser offense may be allowed if the lesser offense is necessarily included in the offense charged *(Rule 116, Sec. 2)*. Estafa involving P5,000 is not necessarily included in theft of an article worth P15,000.

Accused pleads guilty to capital offense, what the court should do

(1) The court should accomplish three (3) things:
   (a) It should conduct searching inquiry into the voluntariness and full comprehension of the consequences of the plea;
   (b) It should require the prosecution to prove the guilt of the accused and the precise degree of culpability; and
   (c) It should inquire whether or not the accused wishes to present evidence on his behalf and allow him if he so desires *(Sec. 3; People vs. Dayot, 187 SCRA 637).*

Searching Inquiry

(1) Searching question means more than informing cursorily the accused that he faces a jail term. It also includes the exact lengthy of imprisonment under the law and the certainty that he will serve at the national penitentiary or a penal colony *(People vs. Pastor, GR 140208, 03/12/2002).* It is intended to undermine the degree of culpability of the accused in order that the court may be guided in determining the proper penalty.

Improvident plea

(1) Conviction based on an improvident plea of guilty may set aside only when such plea is the sole basis of the judgment. But if the trial court relied on the evidence of the prosecution and convincing evidence to convict beyond reasonable doubt, not on his plea of guilty, such conviction must be sustained *(People vs. Lunia, GR 128289, 04/23/2002).*

(2) Courts must be careful to avoid improvident pleas of guilt and, where grave crimes are involved, the proper course is to take down evidence to determine guilt and avoid doubts *(People vs. Siabilul, supra).*

(3) The withdrawal of an improvident plea of guilty, to be substituted by a plea of not guilty, is permitted even after judgment has been promulgated but before the same becomes final. While this Rule is silent on the matter, a plea of not guilty can likewise be withdrawn so that the accused may instead plead guilty to the same offense, but for obvious reasons, this must be done before promulgation of judgment. In either case, however, if the prosecution had already presented its witnesses, the accused will generally not be entitled to the mitigating circumstance based on a plea of guilty *(People vs. Lumague, GR 53586, 01/31/1982).*

Grounds for suspension of arraignment

(1) Upon motion by the proper party, the arraignment shall be suspended in the following cases:
   (a) The accused appears to be suffering from an unsound mental condition which effectively renders him unable to fully understand the charge against him and to plead intelligently thereto. In such case, the court shall order his mental examination and, if necessary, his confinement for such purpose.
   (b) There exists a prejudicial question; and
   (c) A petition for review of the resolution of the prosecutor is pending at either the Department of Justice, or the Office of the President; *provided*, that the period of

suspension shall not exceed sixty (60) days counted from the filing of the petition with the reviewing office *(Sec. 11)*.

(2) Arraignment was suspended pending the resolution of the Motion for Reconsideration before the DOJ. However, the lapse of almost 1 year and 7 months warranted the application of the limitation of the period for suspending arraignment. While the pendency of a petition for review is a ground for suspension of the arraignment, the aforecited provision limits the deferment of the arraignment to a period of 60 days reckoned from the filing of the petition with the reviewing office. It follows, therefore, that after the expiration of said period, the trial court is bound to arraign the accused or to deny the motion to defer arraignment *(Aguinaldo v. Ventus, GR No. 176033, 03/112015)*.

(3) Rule 116, Section 11 of the Revised Rules of Criminal Procedure pertains to a suspension of an arraignment in case of a pending petition for review before the Department of Justice. It does not suspend the execution of a warrant of arrest for the purpose of acquiring jurisdiction over the person of an accused.

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Petitioners filed a Manifestation and Motion dated February 9, 2009 before the Regional Trial Court, informing it about their pending Petition for Review of the Prosecutor's January 26, 2009 Resolution before the Department of Justice. Thus, respondent judge committed an error when he denied petitioners' motion to suspend the arraignment of Corpus because of the pendency of their Petition for Review before the Department of Justice.

However, this Court's rule merely requires a maximum 60-day period of suspension counted from the filing of a petition with the reviewing office. Consequently, therefore, after the expiration of the 60-day period, "the trial court is bound to arraign the accused or to deny the motion to deferarraignment *(Mayor Corpus, Jr. vs. Judge Pamular, GR No. 186403, 09/05/2018)*.

H. MOTION TO QUASH *(Rule 117)*

(1) A motion to quash is a hypothetical admission of the facts alleged in the information, hence the court in resolving the motion cannot consider facts contrary to those alleged in the information or which do not appear on the face of the information, except those admitted by the prosecution *(People vs. Navarro, 75 Phil. 516)*.

(2) The motion to quash must be filed before the arraignment. Thereafter, no motion to quash can be entertained by the court, the only exceptions being those in Sec. 9 which adopts the omnibus motion rule, subject to said exceptions. Sec. 3 has been amended to separately refer to lack of jurisdiction over the offense, not over the person of the accused since, by filing a motion to quash on other grounds, the accused has submitted himself to the jurisdiction of the court.

(3) It is clearly provided by the Rules of Criminal Procedure that if the motion to quash is based on an alleged defect in the information which can be cured by amendment, the court shall order the amendment to be made. In the present case, the RTC judge outrightly dismissed the cases without giving the prosecution an opportunity to amend the defect in the Informations. Thus, the RTC and the CA, by not giving the State the opportunity to present its evidence in court or to amend the Informations, have effectively curtailed the State's right to due process *(People vs. Andrade, GR No. 187000, 11/24/2014)*.

(4) **2002 Bar**: D was charged with slight physical injuries in the MTC. He pleaded not guilty and went to trial. After the prosecution had presented its evidence, the trial court set the continuation of the hearing on another date. On the date scheduled for hearing, the prosecutor failed to appear, whereupon the court, on motion of D, dismissed the case. A few minutes later, the prosecutor arrived and opposed the dismissal of the case. The court reconsidered its order and directed D to present his evidence. Before the next date of trial came, however, D moved that the last order be set aside on the ground that the reinstatement of the case had placed him twice in double jeopardy. Acceding to this motion, the court again dismissed the case. The prosecutor then filed an information in the RTC, charging D with direct assault based on the same facts alleged in the information for slight physical injuries but with the added allegation that D inflicted the injuries out of resentment for what the complainant had done in the performance of his duties as chariman of the board of election inspectors. D moved to quash the second information on the ground that its filing had placed him in double jeopardy.

a. How would D's motion to quash be resolved? (4%)

b. In a prosecution for robbery against D, the prosecutor moved for the postponement of the first scheduled hearing on the ground that he had lost his records of the case. The court granted the motion but, when the new date of trial arrived, the prosecutor, alleging that he could not locate his witnesses, moved for the provisional dismissal of the case. If D's counsel does not object, may the court grant the motion of the prosecutor? Why? (3%)

c. D was charged with murder, a capital offense. After arraignment, he applied for bail. The trial court ordered the prosecution to present its evidence in full on the ground that only on the basis of such presentation could it determine whether the evidence of D's guilt was strong for purposes of bail. Is the ruling correct? Why? (3%)

Answers:

a. D's motion to quash should be granted on the ground of double jeopardy because the first offense charged is necessarily included in the second offense charged *(Draculan v. Donato, 140 SCRA 425 [1985])*.

b. No, because a case cannot be provisionally dismissed except upon the express consent of the accused and with notice to the offended party *(Rule 117, Sec. 8)*.

c. No. The prosecution is only required to present as much evidence as is necessary to determine whether the evidence of D's guilt is strong for purposes of bail.

(5) **2005 Bar**: Rodolfo is charged with possession of unlicensed firearms in an Information filed in the Regional Trial Court. It was alleged therein that Rodolfo was in possession of two unlicensed firearms: a .45 caliber and a .32 caliber. Under R.A. No. 8294, possession of an unlicensed .45 caliber gun is punishable by prision mayor in its minimum period and a fine of P30,000.00 while possession of an unlicensed of .32 calliber gun is punishable by prision correccional in its minimum period and a fine of not less than P15,000.00. As counsel of the accused, you intend to file a motion to quash the Information. What ground or grounds should you invoke? Explain. *(4%)*

Answer: The ground for the motion to quash is that more than one offense is charged in the Information *(Sec. 3[f], Rule 117)*. Likewise, the RTC has no jurisdiction over the second offense of possession of an unlicensed .32 caliber gun, punishable by prision correctional in its maximum period and a fine of not less than P15,000.00. It is the MTC that has exclusive and original jurisdiction over offenses punishable by imprisonment not exceeding six years.

(6) **2005 Bar**: Police operatives of the Western Police District, Philippine National Police, applied for a search warrant in the Regional Trial Court for the search of the house of Juan Santos and the seizure of an undetermined amount of shabu. The team arrived at the house of Santos but failed to find him there. Instead, the team found Roberto Co.

The team conducted a search in the house of Santos in the presence of Roberto Co and barangay officials and found ten (10) grams of shabu. Roberto Co was charged in court with illegal possession of ten grams of shabu.

Before his arraignment, Roberto Co filed a motion to quash the search warrant on the following grounds: (a) he was not the accused named in the search warrant; and (b) the warrant does not describe the article to be seized with sufficient particularity. Resolve the motion with reasons. (4%)

Answer: The motion to quash should be denied. The name of the person in the seach warrant is not important. It is not even necessary that a particular person be implicated, so long as the search is conducted in the place where the search warrant is served. Moreover, it is sufficient to describe the shabu in an undetermined amount. Notably, what is to be seized is a particular drug and an undetermined amount thereof particularizes the things to be seized *(Mantaring vs. Roman, 259 SCRA 158 [1996])*.

(8) **2005 Bar**: For the multiple stab wounds sustained by the victim, Noel was charged with frustrated homicide in the Regional Trial Court. Upon arraignment, he entered a plea of guilty to said crime. Neither the court nor the prosecution was aware that the victim had died two days earlier on account of his stab wounds.

Because of his guilty plea, Noel was convicted of frustrated homicide and meted the corresponding penalty. When the prosecution learned of the victim's death, it filed within fifteen (15) days therefrom a motion to amend the information to upgrade the charge from frustrated homicide to consummated homicide. Noel opposed the motion claiming that the admission of the amended information would place him in double jeopardy.

Resolve the motion with reasons. (4%)

Answer: Amending the information from frustrated homicide to consummated homicide does not place the accused in double jeopardy. The conviction of the accused shall be a bar to another prosecution for an offense of which necessarily includes the offense charged in the former complaint or information when (a) the graver offense developed due to supervening facts arising from the same act or omission constituting the former charge; or (b) the facts constituting the graver offense became known or were discovered only after plea was entered in the former complaint or information *(Sec. 7, Rule 117)*. Here, when the plea to frustrated homicide was made, neither the court nor the prosecution was aware that the victim had died two days earlier on account of stab wounds.

The case falls under (b), since the facts constituting the graver charge became known or were discovered only after a plea was entered in the former complaint or information.

(9) **2003 Bar**: Before the arraignment for the crime of murder, the private complainant executed an Affidavit of Desistance stating that she was not sure if the accused was the man who killed her husband. The public prosecutor filed a Motion to Quash the Information on the ground that with private complainant's desistance, he did not have evidence sufficient evidence to convict the accused. On 02 January 2001, the court without further proceedings granted the motion and provisionally dismissed the case. The accused gave his express consent to the provisional dismissal of the case. The offended party was notified of the dismissal but she refused to give her consent.

Subsequently, the private complainant urged the public prosecutor to refile the murder charge because the accused failed to pay the consideration which he had promised for the execution of the Affidavit of Desistance. The public prosecutor obliged and refiled the murder charge against the accused on 01 February 2003. The accused filed a Motion to Quash the Informatiobn on the ground that the provisional dismissal of the case had already become permanent. Resolve the motion to quash. (4%)

Answer: The motion to quash the information should be denied because, while the provisional dismissal had already become permanent, the prescriptive period for filing the

murder charge had not prescribed. There was no double jeopardy because the first case was dismissed before the accused had pleaded the charge *(Sec. 7, Rule 117)*.

Grounds

(1) The accused may move to quash the complaint or information on any of the following grounds:

(a) That the facts charged do not constitute an offense;
(b) That the court trying the case has no jurisdiction over the offense charged;
(c) That the court trying the case has no jurisdiction over the person of the accused;
(d) That the officer who filed the information had no authority to do so;
(e) That it does not conform substantially to the prescribed form;
(f) That more than one offense is charged except when a single punishment for various offenses is prescribed by law;
(g) That the criminal action or liability has been extinguished;
  i. By the death of the convict, as to the personal penalties; as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment.
  ii. By service of the sentence;
  iii. By amnesty, which completely extinguishes the penalty and all its effects;
  iv. By absolute pardon;
  v. By prescription of the crime;
  vi. By prescription of the penalty;
  vii. By the marriage of the offended woman in
    1. Seduction
    2. abduction or
    3. acts of lasciviousness *(Art. 344 RPC)*
(h) That it contains averments which, if true, would constitute a legal excuse or justification; and
(i) That the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent *(Sec. 3)*.

(2) Grounds that are not waived even if not alleged:

(a) Failure to charge an offense;
(b) Lack of jurisdiction;
(c) Extinction of criminal action or liability;
(d) Double jeopardy *(People vs. Leoparte, 187 SCRA 190)*.

Distinguish from demurrer to evidence

	Motion to Quash	Demurer to Evidence
	Rule 117	Section 23, Rule 119
When filed	At any time before accused enters plea	After the prosecution rests its case
Grounds	a) That the facts charged do not constitute an offense;	(1) Insufficiency of evidence

	(b) That the court trying the case has no jurisdiction over the offense charged; (c) That the court trying the case has no jurisdiction over the person of the accused; (d) That the officer who filed the information had no authority to do so; (e) That it does not conform substantially to the prescribed form; (f) That more than one offense is charged except when a single punishment for various offenses is prescribed by law; (g) That the criminal action or liability has been extinguished; (h) That it contains averments which, if true, would constitute a legal excuse or justification; and (i) That the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent *(Sec. 3)*.	
Effect if granted	If the motion to quash is sustained, the court may order that another complaint or information be filed except as provided in Section 6 of this rule. If the order is made, the accused, if in custody, shall not be discharged unless admitted to bail. If no order is made or if having been made, no new information is filed within the time specified in the order or within such further time as the court may allow for good cause, the accused, if in custody, shall be discharged unless he is also in custody of another charge *(Sec. 5)*. The remedy of prosecution is to amend the information to correct the defects thereof, except on the grounds of (g) and (i); of the prosecution may appeal the quashal of information or complaint	If leave of court is granted, the accused shall file the demurrer to evidence within a non-extendible period of ten (10) days from notice. The prosecution may oppose the demurrer to evidence within 10 days from receipt of the motion.
Effect if denied	The usual course to take is for the accused to proceed with trial, and in case of conviction, to appeal therefrom and assign as error the	An accused who files a demurrer to evidence with leave of court does not lose the right to present evidence in the event his motion is denied. On the other hand, if he files the

	denial of the motion to quash *(Lalican vs. Vergara, 276 SCRA 518).*	demurrer without leave of court and the same is denied, he loses the right to present evidence, in which event the case will be deemed submitted for decision *(De Carlos vs. CA, 312 SCRA 397).*
Remedies if denied	The order denying the motion to quash is interlocutory and therefore not appealable, nor can it be the subject of a petition for *certiorari*.	The order denying the motion for leave of court to file demurrer to evidence or to demur itself shall not be reviewable by appeal or certiorari before judgment.

(1) A special civil action may lie against an order of denial of a motion to quash, as an exception to the general rule, in any of the following instances:
   (a) Where there is necessity to afford protection to the constitutional rights of the accused;
   (b) When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions;
   (c) Where there is prejudicial question which is *sub judice*;
   (d) When the acts of the officer are without or in excess of authority;
   (e) Where the prosecution is under an invalid law, ordinance or regulation;
   (f) When double jeopardy is clearly apparent;
   (g) Where the court has no jurisdiction over the offense;
   (h) Where it is a case of persecution rather than prosecution;
   (i) Where the charges are manifestly false and motivated by the lust for vengeance;
   (j) When there is clearly no *prima facie* case against the accused; and
   (k) To avoid multiplicity of actions *(Brocka vs. Enrile, 192 SCRA 183).*

Effects of sustaining the motion to quash

(1) If the motion to quash is sustained, the court may order that another complaint or information be filed except as provided in section 6 of this rule. If the order is made, the accused, if in custody, shall not be discharged unless admitted to bail. If no order is made or if having been made, no new information is filed within the time specified in the order or within such further time as the court may allow for good cause, the accused, if in custody, shall be discharged unless he is also in custody of another charge *(Sec. 5).*

Exception to the rule that sustaining the motion is not a bar to another prosecution

(1) An order sustaining the motion to quash is not a bar to another prosecution for the same offense unless the motion was based on the grounds specified in Sec. 3(g) and (i) – that the criminal action or liability has been extinguished and that the accused has been previously convicted or in jeopardy of being convicted, or acquitted of the offense charged *(Sec. 6).*

(2) An order denying a motion to quash is interlocutory and not appealable *(People vs. Macandog, L-18601, 01/31/1963)* and generally, such denial cannot be controlled by *certiorari (Ricafort vs. Fernan, 101 Phil. 575)*; and the denial of a motion to quash grounded on double jeopardy is not controllable by *mandamus (Tiongson vs. Villacete, 55 OG 7017).*

(1) No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act *(Sec. 21, Art. III, Constitution)*.

(2) The requirements of double jeopardy are:

(a) Valid indictment;
(b) Competent court;
(c) Valid arraignment;
(d) Valid plea entered;
(e) Case is dismissed or terminated without the express consent of the accused *(People vs. Bocar, 08/10/1985; Navallo vs. Sandiganbayan, 53 SCAD 294, 07/18/1994)*.

(3) When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

However, the conviction of the accused shall not be a bar to another prosecution for an offense which necessarily includes the offense charged in the former complaint or information under any of the following instances:

(a) the graver offense developed due to supervening facts arising from the same act or omission constituting the former charge;

(b) the facts constituting the graver charge became known or were discovered only after a plea was entered in the former complaint or information; or

(c) the plea of guilty to the lesser offense was made without the consent of the prosecutor and of the offended party except as provided in section 1(f) of Rule 116.

In any of the foregoing cases, where the accused satisfies or serves in whole or in part the judgment, he shall be credited with the same in the event of conviction for the graver offense *(Sec. 7)*.

(4) Double jeopardy shall not attach when the court that declared the revival of the case has no jurisdiction to the same. When the court does not have jurisdiction over the case, all subsequent issuances or decisions of the said court related to the pending case shall be null and void *(Quiambao vs. People, GR No. 185267, 09/17/2014)*.

(5) Grave abuse of discretion amounts to lack of jurisdiction, and lack of jurisdiction prevents double jeopardy from attaching.

In *People* v. *Hernandez (531 Phil. 289 [2006])*, this Court explained that "an acquittal rendered in grave abuse of discretion amounting to lack or excess of jurisdiction does not really 'acquit' and therefore does not terminate the case as there can be no double jeopardy based on a void indictment" *(Javier vs. Gonzales, GR No. 193159, 01/23/2017)*.

(6) The first sentence of the provision [Article III, Section 21 of the Constitution] speaks of "the same offense," which this Court has interpreted to mean offenses having identical essential elements. Further, the right against double jeopardy serves as a protection: first, "against a second prosecution for the same offense after acquittal"; second, "against a second prosecution for the same offense after conviction"; and, finally, "against multiple punishments for the same offense."

Meanwhile, the second sentence of Article III, Section 21 speaks of "the same act," which means that this act, punished by a law and an ordinance, may no longer be prosecuted under either if a conviction or acquittal already resulted from a previous prosecution involving the very same act.

For there to be double jeopardy, "a first jeopardy [must] have attached prior to the second; . . . the first jeopardy has been validly terminated; and . . . a second jeopardy is for the same offense as that in the first."

A first jeopardy has attached if: first, there was a "valid indictment"; second, this indictment was made "before a competent court"; third, "after [the accused's] arraignment"; fourth, "when a valid plea has been entered"; and lastly, "when the accused was acquitted or convicted, or the case was dismissed or otherwise terminated without his express consent." Lack of express consent is required because the accused's consent to dismiss the case means that he or she actively prevented the court from proceeding to trial based on merits and rendering a judgment of conviction or acquittal. In other words, there would be a waiver of the right against double jeopardy if consent was given by the accused.

To determine the essential elements of both crimes for the purpose of ascertaining whether or not there is double jeopardy in this case, below is a comparison of Article 266-A of the Revised Penal Code punishing rape and Section 5(b) of Republic Act No. 7610 punishing sexual abuse . . . *(People vs. Udang, Sr., GR No. 210160, 01/10/2018).*

(7) In substantiating a claim for double jeopardy, the following requisites should be present:

> (1) a first jeopardy must have attached prior to the second; (2) the first jeopardy must have been validly terminated; and (3) the second jeopardy must be for the same offense as the first.
>
> With regard [to] the first requisite, the first jeopardy only attaches:
>
> (a) after a valid indictment; (b) before a competent court; (c) after arraignment; (d) when a valid pleas has been entered; and (e) when the accused was acquitted or convicted, or the case was dismissed or otherwise terminated without his express consent.

The test for the third requisite is "whether one offense is identical with the other or is and attempt to commit it or a frustration thereof; or whether the second offense includes or is necessarily included in the offense charged in the first information.

Also known as "*res judicata* in prison grey," the mandate against double jeopardy forbids the "prosecution of a person for a crime of which he [or she] has been previously acquitted or convicted. This is to "set the effects of the first prosecution forever at rest, assuring the accused that he [or she] shall not thereafter be subjected to the danger and anxiety of a second charge against him [or her] for the same offense *(Corpus, Jr. vs. Judge Pamular, GR No. 186403, 09/05/2018)*.

(8) Clearly, the filing of a motion for reconsideration should not havestalled the OMB's duty to promptly file the Informations in court upon its finding of probable cause.

In fact, Section· 7(a) above-cited provides that a leave of court is necessary before a motion for reconsideration is given due course where an information has been already filed in court, implying that an information may be filed in court immediately after an approved order of resolution .

Thus, we find no justifiable reason for the OMB to delay the filing of the Informations before the Sandiganbayan after it has already determined the existence of probable cause.

Indeed, these unexplained and unreasonable institutional delays cannot impinge on the citizens' fundamental rights. No less than our Constitution guarantees all persons the right

to speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

Having established that the Sandiganbayan correctly ruled for the dismissal of the criminal cases against respondents due to undue delay in the conduct of preliminary investigation, we find that the concept of double jeopardy becomes relevant.

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As we have explained in our assailed Decision, "double jeopardy attaches only when the following elements concur: (1) the accused is charged under a complaint or information sufficient in form and substance to sustain their conviction; (2) the court has jurisdiction; (3) the accused has been arraigned and has pleaded; and (4) he/she is convicted or acquitted, or the case is dismissed without his/her consent."

The first and second elements are undisputed. As to the third element, again, in our assailed Decision, the Court was misled by the petitioner's assertion in its petition that respondents were not yet arraigned due to their refusal to appear therein. It appears, however, in this motion that respondents have already been arraigned, satisfying thus the third element.

What is crucial, however, is the fourth element since the criminal cases were clearly dismissed at the instance of the respondents and the *general rule* is that the dismissal of a criminal case resulting in acquittal, made with the express consent of the accused or upon his own motion, will not place the accused in double jeopardy.16 This rule, however, admits of two exceptions, namely: insufficiency of evidence and denial of the right to speedy trial or disposition of case. Thus, indeed respondents were the ones who filed the motion to dismiss the criminal cases before the Sandiganbayan, the dismissal thereof was due to the violation of their right to speedy disposition, which would thus put them in double jeopardy should the charges against them be revived *(People vs. Sandiganbayan 4th Division, GR No. 232197-98, 12/05/2018).*

Provisional Dismissal

(1) A case shall not be provisionally dismissed except with the express consent of the accused and with notice to the offended party.

The provisional dismissal of offenses punishable by imprisonment not exceeding six (6) years or a fine of any amount, or both, shall become permanent one (1) year after issuance of the order without the case having been revived. With respect to offenses punishable by imprisonment of more than six (6) years, their provisional dismissal shall become permanent two (2) years after issuance of the order without the case having been revived *(Sec. 8).*

(2) Requisites for Sec. 8 to apply:
   (a) The prosecution with the express conformity of the accused or the accused moves for a provisional (sin perjuicio) dismissal of the case; or both the prosecution and the accused moves for a provisional dismissal of the case;
   (b) The offended party is notified of the motion for a provisional dismissal of the case;
   (c) The court issues an order granting the motion and dismissing the case provisionally;
   (d) The public prosecutor is served with a copy of the order or provisional dismissal of the case.

(3) The foregoing requirements are conditions *sine qua non* to the application of the **time-bar** in the second paragraph of the Rule. The *raison d'etre* for the requirement of the express consent of the accused to a provisional dismissal of a criminal case is to bar him from subsequently asserting that the revival of the criminal case will place him in double

jeopardy for the same offense or for an offense necessarily included therein *(People vs. Bellosillo, 8 SCRA 835)*.

(4) The order of dismissal shall become permanent one year after service of the order of the prosecution *(Sec. 5, Rule 112)*, without the criminal case having been revived. The public prosecutor cannot be expected to comply with the timeline unless he is served with a copy of the order of dismissal *(People vs. Lacosan, GR 149453, 04/01/2003)*.

I. PRE-TRIAL *(Rule 118)*

(1) The process whereby the accused and the prosecutor in a criminal case work out a mutually satisfactory disposition of the case subject to court approval. It usually involves the defendant's pleading guilty to a lesser offense or to only one or some of the counts of a multi-count indictment in return for a lighter sentence than that for the graver charge *(Black's Law Dictionary, 5th Ed.)*.

Matters to be considered during pre-trial

(1) In all criminal cases cognizable by the Sandiganbayan, Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court and Municipal Circuit Trial Court, the court shall, after arraignment and within thirty (30) days from the date the court acquires jurisdiction over the person of the accused, unless a shorter period is provided for in special laws or circulars of the Supreme Court, order a pre-trial conference to consider the following:

(a) plea bargaining;

(b) stipulation of facts;

(c) marking for identification of evidence of the parties;

(d) waiver of objections to admissibility of evidence;

(e) modification of the order of trial if the accused admits the charge but interposes a lawful defense; and

(f) such matters as will promote a fair and expeditious trial of the criminal and civil aspects of the case *(Sec. 1)*.

What the court should do when prosecution and offended party agree to the plea offered by the accused

(1) The agreements covering the matters referred to in section 1 of this Rule shall be approved by the court *(Sec. 2)*.

Pre-trial agreement

(1) All agreements or admissions made or entered during the pre-trial conference shall be reduced in writing and signed by the accused and counsel, otherwise, they cannot be used against the accused. The agreements covering the matters referred to in section 1 of this Rule shall be approved by the court *(Sec. 2)*.

(2) **2004 Bar**: Mayor TM was charged of malversation through falsification of official documents. Assisted by Atty. OP as counsel de parte during pre-trial, he signed together with Ombudsman Prosecutor TG a "Joint Stipulation of Facts and Documents" which was presented to the Sandiganbayan. Before the court could issue a pre-trial order but after some delay caused by Atty. OP, he was substituted by Atty. QR as a defense counsel. Atty. QR forthwith filed a motion to withdraw the "Joint Stipulation" alleging that it is prejudicial to the accused because it contains, inter alia, the statement that the "Defense admitted all the documentary evidence of the Prosecution," thus leaving the accused little or no room to defend himself, and violating his right against self incrimination.

Should the court grant or deny QR's motion? Reason. (5%)

Answer: The court should deny QR's motion. If in the pre-trial agreement signed by the accused and his counsel, the accused admits the documentary evidence of the prosecution, it does not violate his right against self-incrimination. His lawyer cannot file a motion to withdraw. A pre-trial order is not needed. The admission of such documentary evidence is allowed by the rules *(Sec. 2, Rule 118; Bayas vs. Sandiganbayan, 392 SCRA 415 [2002]).*

Non-appearance during pre-trial

(1) If the counsel for the accused or the prosecutor does not appear at the pre-trial conference and does not offer an acceptable excuse for his lack of cooperation, the court may impose proper sanctions or penalties *(Sec. 3).*

(2) The rule is intended to discourage dilatory moves or strategies as these would run counter to the purposes of pre-trial in criminal cases, more specifically those intended to protect the right of the accused to fair and speedy trial.

Pre-trial order

(1) After the pre-trial conference, the court shall issue an order reciting the actions taken, the facts stipulated, and evidence marked. Such order shall bind the parties, limit the trial to matters not disposed of, and control the course of the action during the trial, unless modified by the court to prevent manifest injustice *(Sec. 4).*

Referral of some cases for Court Annexed and Mediation and Judicial Dispute Resolution *(AM 11-1-6-SC-PHILJA)*

Concept of court diversion of pending cases

(1) The diversion of pending court cases both to Court-Annexed Mediation (CAM) and to Judicial Dispute Resolution (JDR) is plainly intended to put an end to pending litigation through a compromise agreement of the parties and thereby help solve the ever-pressing problem of court docket congestion. It is also intended to empower the parties to resolve their own disputes and give practical effect to the State Policy expressly stated in the ADR Act of 2004 *(R.A. No. 9285),* to wit:

> "*to actively promote party autonomy in the resolution of disputes or the freedom of the parties to make their own arrangement to resolve disputes. Towards this end, the State shall encourage and actively promote the use of*

Alternative Dispute Resolution (ADR) as an important means to achieve speedy and impartial justice and de-clog court dockets."

(2) The following cases shall be (1) referred to Court-Annexed Mediation (CAM) and (2) be the subject of Judicial Dispute Resolution (JDR) proceedings:

(1) All civil cases and the civil liability of criminal cases covered by the Rule on Summary Procedure, including the civil liability for violation of B.P. 22, except those which by law may not be compromised;

(2) Special proceedings for the settlement of estates;

(3) All civil and criminal cases filed with a certificate to file action issued by the *Punong Barangay* or the *Pangkat ng Tagapagkasundo* under the Revised *Katarungang Pambarangay Law (Chapter 7, RA 7160);*

(4) The civil aspect of Quasi-Offenses under Title 14 of the Revised Penal Code;

(5) The civil aspect of less grave felonies punishable by correctional penalties not exceeding 6 years imprisonment, where the offended party is a private person;

(6) The civil aspect of estafa, theft and libel;

(7) All civil cases and probate proceedings, testate and intestate, brought on appeal from the exclusive and original jurisdiction granted to the first level courts under Section 33, par. (1) of the Judiciary Reorganization Act of 1980 *(A.M. No. 08-9-10-SC-PHILJA)*;

(8) All cases of forcible entry and unlawful detainer brought on appeal from the exclusive and original jurisdiction granted to the first level courts under Section 33, par. (2) of the Judiciary Reorganization Act of 1980;

(9) All civil cases involving title to or possession of real property or an interest therein brought on appeal from the exclusive and original jurisdiction granted to the first level courts under Section 33, par.(3) of the Judiciary Reorganization Act of 1980; and

(10) All habeas corpus cases decided by the first level courts in the absence of the Regional Trial Court judge, that are brought up on appeal from the special jurisdiction granted to the first level courts under Section 35 of the Judiciary Reorganization Act of 1980.

(3) The following cases shall not be referred to CAM and JDR:

1. Civil cases which by law cannot be compromised (Article 2035, New Civil Code);
2. Other criminal cases not covered under paragraphs 3 to 6 above;
3. Habeas Corpus petitions;
4. All cases under Republic Act No. 9262 (Violence against Women and Children); and
5. Cases with pending application for Restraining Orders/Preliminary Injunctions.

(4) However, in cases covered under 1, 4 and 5 where the parties inform the court that they have agreed to undergo mediation on some aspects thereof, e.g., custody of minor children, separation of property, or support *pendente lite,* the court shall refer them to mediation.

Procedure:

Judicial proceedings shall be divided into two stages:

(1) From the filing of a complaint to the conduct of CAM and JDR during the pre-trial stage, and

(2) pre-trial proper to trial and judgment. The judge to whom the case has been originally raffled, who shall be called the JDR Judge, shall preside over the first stage. The judge, who shall be called the trial judge, shall preside over the second stage.

At the initial stage of the pre-trial conference, the JDR judge briefs the parties and counsels of the CAM and JDR processes. Thereafter, he issues an Order of Referral of the case to CAM and directs the parties and their counsels to proceed to the PMCU bringing with them a copy of the Order of Referral. The JDR judge shall include in said Order, or in another Order, the pre-setting of the case for JDR not earlier than forty-five (45) days from the time the parties first personally appear at the PMCU so that JDR will be conducted immediately if the parties do not settle at CAM.

All incidents or motions filed during the first stage shall be dealt with by the JDR judge. If JDR is not conducted because of the failure of the parties to appear, the JDR judge may impose the appropriate sanctions and shall continue with the proceedings of the case.

If the parties do not settle their dispute at CAM, the parties and their counsels shall appear at the preset date before the JDR judge, who will then conduct the JDR process as mediator, neutral evaluator and/or conciliator in order to actively assist and facilitate negotiations among the parties for them to settle their dispute. As mediator and conciliator, the judge facilitates the settlement discussions between the parties and tries to reconcile their differences. As a neutral evaluator, the judge assesses the relative strengths and weaknesses of each party's case and makes a non-binding and impartial evaluation of the chances of each party's success in the case. On the basis of such neutral evaluation, the judge persuades the parties to a fair and mutually acceptable settlement of their dispute.

The JDR judge shall not preside over the trial of the case when the parties did not settle their dispute at JDR.

CRIMINAL CASES:

If settlement is reached on the civil aspect of the criminal case, the parties, assisted by their respective counsels, shall draft the compromise agreement which shall be submitted to the court for appropriate action.

Action on the criminal aspect of the case will be determined by the Public Prosecutor, subject to the appropriate action of the court.

If settlement is not reached by the parties on the civil aspect of the criminal case, the JDR judge shall proceed to conduct the trial on the merits of the case should the parties file a joint written motion for him to do so, despite confidential information that may have been divulged during the JDR proceedings. Otherwise, the JDR Judge shall turn over the case to a new judge by re-raffle in multiple sala courts or to the originating court in single sala courts, for the conduct of pretrial proper and trial.

Pre-trial Proper:

Where no settlement or only a partial settlement was reached, and there being no joint written motion submitted by the parties, as stated in the last preceding paragraphs, the JDR judge shall turn over the case to the trial judge, determined by re-raffle in multiple sala courts or to the originating court in single sala courts, as the case may be, to conduct pre-trial proper, as mandated by Rules 18 and 118 of the Rules of Court.

J. TRIAL *(Rule119)*

(1) Continuous trial is one where the courts are called upon to conduct the trial with utmost dispatch, with judicial exercise of the court's power to control the trial to avoid delay and for each party to complete the presentation of evidence with the trial dates assigned to him *(Admin. Cir. 4, 09/22/1988).*

Instances when presence of accused is required by law

(1) The only instances when the presence of the accused is required by law and when the law may forfeit the bond if he fails to appear are:
   (a) On arraignment;
   (b) On promulgation of judgment except for light offenses;
   (c) For identification purposes;
   (d) When the court with due notice requires so *(Marcos vs. Ruiz, 09/01/1992).*

Requisite before trial can be suspended on account of absence of witness

(1) The following periods of delay shall be excluded in computing the time within which trial must commence: Any period of delay resulting from the absence or unavailability of an essential witness *(Sec. 3[b]).*
(2) To warrant postponement due to absence of a witness, it must appear:
   (a) That the witness is really material and appears to the court to be so;
   (b) That the party who applies for postponement has not been guilty of neglect;
   (c) That the witness can be had at the time to which the trial has been deferred; and
   (d) That no similar evidence could be obtained *(US vs. Ramirez, 39 (Phil. 738).*
(3) The non-appearance of the prosecution at the trial, despite due notice, justifies a provisional dismissal *(Jaca vs. Blanco, 86 Phil. 452),* or an absolute dismissal *(People vs. Robles, 105 Phil. 1016),* depending on the circumstances. Sec. 3, Rule 22 does not apply to criminal cases.

Trial in *Absentia*

(1) The Constitution permits trial *in absentia* of an accused after his arraignment who unjustifiably fails to appear during the trial notwithstanding due notice. The purpose of trial *in absentia* is to speed up the disposition of criminal cases. The requisites of trial *in absentia* are:
   (a) The accused has been arraigned;
   (b) He has been duly notified of the trial; and
   (c) His failure to appear is justified *(People vs. Agbulos, 222 SCRA 196).*
(2) The waiver of the accused of appearance or trial *in absentia* does not mean that the prosecution is thereby deprived of its right to require the presence of the accused for purposes of identification by the witnesses which is vital for conviction of the accused, except where he unqualifiedly admits in open court after his arraignment that he is the person named as defendant in the case on trial. Such waiver does not mean a release of the accused from his obligation under the bond to appear in court whenever required. The accused may waive his right but he cannot disregard his duty or obligation to the court.

He can still be subpoenaed to appear for identification purposes, without violating his right against self-incrimination as he will not take the stand to testify but merely to be present in court, where the prosecution witness may, while in the witness stand, point to him as the accused *(Carredo vs. People, 183 SCRA 273)*.

Remedy when accused is not brought to trial within the prescribed period

(1) If the accused is not brought to trial within the time limit required by Section 1(g), Rule 116 and Section 1, as extended by Section 6 of this rule, the information may be dismissed on motion of the accused on the ground of denial of his right to speedy trial. The accused shall have the burden of proving the motion but the prosecution shall have the burden of going forward with the evidence to establish the exclusion of time under section 3 of this rule. The dismissal shall be subject to the rules on double jeopardy.

Failure of the accused to move for dismissal prior to trial shall constitute a waiver of the right to dismiss under this section *(Sec. 9)*.

(2) Unless a shorter period is provided by special law or Supreme Court circular, the arraignment shall be held within thirty (30) days from the date the court acquires jurisdiction over the person of the accused. The time of the pendency of a motion to quash or for a bill of particulars or other causes justifying suspension of the arraignment shall be excluded in computing the period *(Sec. 1[g], Rule 116)*.

Requisites for discharge of accused to become a state witness

(1) When two or more persons are jointly charged with the commission of any offense, upon motion of the prosecution before resting its case, the court may direct one or more of the accused to be discharged with their consent so that they may be witnesses for the state when, after requiring the prosecution to present evidence and the sworn statement of each proposed state witness at a hearing in support of the discharge, the court is satisfied that:

(a) There is absolute necessity for the testimony of the accused whose discharge is requested;

(b) There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused;

(c) The testimony of said accused can be substantially corroborated in its material points;

(d) Said accused does not appear to be the most guilty; and

(e) Said accused has not at any time been convicted of any offense involving moral turpitude.

Evidence adduced in support of the discharge shall automatically form part of the trial. If the court denies the motion for discharge of the accused as state witness, his sworn statement shall be inadmissible in evidence *(Sec. 17)*.

(2) Any person who has participated in the commission of a crime and desires to be a witness for the State, can apply and, if qualified as determined in this Act and by the Department, shall be admitted into the program (to be a state witness) whenever the following circumstances are present:

(a) The offense in which his testimony will be used is a grave felony as defined under the Revised Penal Code or its equivalent under special laws;

(b) There is absolute necessity for his testimony;

(c) There is no other direct evidence available for the proper prosecution of the offense committed;
(d) His testimony can be substantially corroborated on its material points;
(e) He does not appear to be most guilty; and
(f) He has not at any time been convicted of any crime involving moral turpitude *(Sec. 10, RA 6981, the Witness Protection Law)*.

(3) **2006 Bar**: As counsel of an accused charged with homicide, you are convinced that he can be utilized as a state witness. What procedure will you take?

Answer: As counsel of an accused charged with homicide, I would ask the prosecutor to recommend that the accused be made a state witness. It is the prosecutor who must recommend and move for the acceptance of the accused as a state witness. The accused may also apply under the Witness Protection Program.

(4) **2015 Bar**: The Ombudsman found probable cause to charge with plunder the provincial governor, vice governor, treasurer, budget officer, and accountant. An Information for plunder was filed with the Sandiganbayan against the provincial officials except for the treasurer who was granted immunity when he agreed to cooperate with the Ombudsman in the prosecution of the case. Immediately, the governor filed with the Sandiganbayan a petition for certiorari against the Ombudsman claiming there was grave abuse of discretion in excluding the treasurer from the Information.

(C) Can the Special Prosecutor move for the discharge of the budget officer to corroborate the testimony of the treasurer in the course of presenting its evidence? (2%)

Answer: No. The Special Prosecutor cannot move for the discharge of the budget officer to become a State witness since his testimony is only corroborative to the testimony of the treasurer.

Under Section 17, Rule 119, the Court upon motion of the prosecution before resting its case, may direct one or more of the accused to be discharged with their consent so that they may be witnesses for the State, provided the following requisites are satisfied: (a) there is absolute necessity for the testimony of the accused whose discharge is requested; (b) there is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of the said accused; (c) the testimony of said accused does not appear to be the most guilty; and (e) said accused has not at any time been convicted of any offense involving moral turpitude.

Absolute necessity exists for the testimony of an accused sought to be discharged when he or she alone has knowledge of the crime. In more concrete terms, necessity is not present when the testimony would simply corroborate or otherwise strengthen the prosecution's evidence. The requirement of absolute necessity for the testimony of a state witness depends on the circumstances of each case regardless of the number of the participating conspirators *(Jimenez, Jr. vs. People, GR No. 209195, 09/17/2014)*.

Effects of Discharge of accused as state witness

(1) The order indicated in the preceding section shall amount to an acquittal of the discharged accused and shall be a bar to future prosecution for the same offense, unless:
(a) The accused fails or refuses to testify against his co-accused in accordance with his sworn statement constituting the basis for his discharge *(Sec. 18)*;
(b) If he was granted immunity and fails to keep his part of the agreement, his confession of his participation in the commission of the offense is admissible in evidence against him *(People vs. Berberino, 79 SCRA 694)*.

(2) The court shall order the discharge and exclusion of the said accused from the information. Admission into such Program shall entitle such State Witness to immunity

from criminal prosecution for the offense or offenses in which his testimony will be given or used *(Sec. 12, RA 6981)*.

(3) When an accused did not have any direct participation with the killing of the victim, he may be discharged as a state witness. The basis of the phrase "not most guilty" is the participation of the person in the commission of the crime and not the penalty imposed such that a person with direct participation shall be considered as the mostguilty *(Jimenez, Jr. vs. People, GR No. 209195, 09/17/2014)*.

Demurrer to Evidence *(Rule 118, Section 23)*

Demurrer to Evidence *(Rule 33)*	Demurrer to Evidence *(Sec. 23, Rule 119)*
Litigated motion	Litigated motion
Founded on the ground that the plaintiff has shown no right to relief	Founded on the ground of insufficiency of evidence
Filed after the plaintiff has completed the presentation of evidence	Filed after the prosecution rests its case
Quantum of evidence is preponderance of evidence	Quantum of evidence is proof beyond reasonable doubt
Once granted, the final order is appealable	Once granted, the accused is acquitted; demurrer is not appealable
If denied, the defendant may present evidence	If denied: with leave of court, accused is allowed to present evidence; without leave of court, accused loses the right to present evidence
If reversed on appeal, defendant loses the right to present evidence	(no appeal since appeal would violate the accused's right againt double jeopardy)
No period requirement	Non-extendible periods of 5 days (motion for leave to file, and opposition) and 10 days (filing, and opposition)

(1) After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court.

If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution. (15a)

The motion for leave of court to file demurrer to evidence shall specifically state its grounds and shall be filed within a non-extendible period of five (5) days after the prosecution rests its case. The prosecution may oppose the motion within a non-extendible period of five (5) days from its receipt.

If leave of court is granted, the accused shall file the demurrer to evidence within a non-extendible period of ten (10) days from notice. The prosecution may oppose the demurrer to evidence within a similar period from its receipt.

The order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or by certiorari before judgment *(Sec. 23)*.

(2) Respondents were charged with a criminal complaint for estafa through falsification of documents. After the prosecution presented its evidence, the respondents filed a motion for leave to file demurer to evidence alleging that the prosecution failed to prove by evidence that the crime was committed by the respondents. The prosecution contends that the trial court gravely abused its discretion when it granted the motion for demurer to evidence filed by the respondents.

The power of courts to grant demurrer in criminal cases should be exercised with great caution, because not only the rights of the accused - but those of the offended party and the public interest as well - are involved. Once granted, the accused is acquitted and the offended party may be left with no recourse. Thus, in the resolution of demurrers, judges must act with utmost circumspection and must engage in intelligent deliberation and reflection, drawing on their experience, the law and jurisprudence, and delicately evaluating the evidence on hand *(People v. Go, GR No. 191015, 08/06/2014)*.

(3) Accused's Demurrer to Evidence, the ruling is an adjudication on the merits of the case which is tantamount to an acquittal and may no longer be appealed. The current scenario, however, is an exception to the general rule. The demurrer to evidence was premature because it was filed before the prosecution rested its case. The RTC had not yet ruled on the admissibility of the formal offer of evidence of the prosecution when Magleo filed her demurrer to evidence. Hence, Judge Quinagoran had legal basis to overturn the order granting the demurrer to evidence as there was no proper acquittal *(Magleo vs. Judge De Juan-Quinagoran, Br. 166 of RTC Pasig City, A.M. No. RTJ-12-2336, 11/12/2014)*,

(4) **2004 Bar**: AX, a Makati-bound paying passenger of PBU, a public utility bus, died on board the bus on account of the fatal head wounds he sustained as a result of the strong impact of the collision between the bus and a dump truck that happened while the bus was still travelling on EDSA towards Makati. The foregoing facts, among others, were duly established on evidence-in-chief by the plaintiff TY, sole heir of AX, in TY's action against the subject common carrier for breach of contract of carriage. After TY had rested his case, the common carrier filed a demurrer to evidence, contending that plaintiff's evidence is insufficient because it did not show (1) that defendant was negligent and (2) that such negligence was the proximate cause of the collision.

Should the court grant or deny defendant's demurrer to evidence? Reason briefly. (5%)

Answer: No. The court should not grant defendant's demurrer to evidence because the case is for breach of contract of carriage. Proof that the defendant was negligent and that such negligence was the proximate cause of the collision is not required *(Articles 1170 and 2201, Civil Code; Batangas Transportation Co. vs. Caguimbal, 22 SCRA 171 [1968]0; Aboitiz vs. Court of Appeals, 129 SCRA 95 [1984])*.

(5) **2003 Bar**: Compare the effects of a denial of demurrer to evidence in a civil case with those of a denial of demurrer to evidence in a criminal case. (4%)

Answer: In a civil case, the defendant has the right to file a demurrer to evidence without leave of court. If his demurrer is denied, he has the right to present evidence. If his demurrer is granted and on appeal by the plaintiff, the appellate court reverses the order and renders judgment for the plaintiff, the defendant loses his right to present evidence *(Rule 33)*.

In a criminal case, the accused has to obtain leave of court to file a demurrer to evidence. If he obtains leave of court and his demurrer to evidence is denied, he has the right to present evidence in his defense. If his demurrer to evidence is granted, he is acquitted and the prosecution cannot appeal.

If the accused does not obtain leave of court and his demurrer to evidence is denied, he waives his right to present evidence and the case is decided on the basis of the evidence for the prosecution.

The court may also dismiss the action on the ground of insufficiency of evidence on its own initiative after giving the prosecution the opportunity to be heard *(Sec. 23, Rule 119).*

(6) **2004 Bar**: AX was charged before the YY Regional Trial Court with theft of jewelry valued at P20,000, punishable with imprisonment of up to 10 years of prision mayor under the Revised Penal Code. After trial, he was convicted of the offense charged, not withstanding that the material facts duly established during the trial showed that the offense committed was estafa, punishable by imprisonment of up to 8 years of prision mayor under the said Code. No appeal having been taken therefrom, said judgment of conviction became final.

Is the judgment of conviction valid? Is said judgment reviewable thru a special civil action for certiorari? Reason. (5%)

Answer: Yes, the judgment of conviction for theft upon an information for theft is valid because the court had jurisdiction to render judgment. However, the judgment was grossly and blatantly erroneous. The variance between the evidence and the judgment of conviction is substantial since the evidence is one for estafa while the judgment is one for theft. The elements of the two crimes are not the same. One offense does not necessarily include or is it included in the other *(Sec. 5, Rule 120; Lauro Santos v. People, 181 SCRA 487).*

The judgment of conviction is reviewable by certiorari even if no appeal had been taken, because the judge committed grave abuse of discretion tantamount to lace or excess of his jurisdiction in convicting the accused of theft and in violating due process and his right to be informed of the nature of the accusation against him, which make the judgment void. With the mistake in charging the proper offense, the judge should have directed the filing of the proper information and thereafter dismissed the original information *(Sec. 19, Rule 119).*

(7) **2003 Bar**: In an action for violation of Batas Pambansa Blg. 22, the court granted the accused's demurrer to evidence which he filed without leave of court. Although he was acquitted of the crime charged, he however was required by the court to pay the private complainant the face value of the check. The accused filed a Motion for Reconsideration regarding the order to pay the face value of the check on the following ground: The demurrer to evidence applied only to the criminal aspect of the case. Resolve the motion for reconsideration. (6%)

Answer: The Motion for Reconsideration should be denied. The ground that the demurrer to evidence applied only to the criminal aspect of the case was not correct because the criminal action for violation of BP 22 included the corresponding civil action *(Sec. 1[b], Rule 111.*

(8) **2004 Bar**: The information for the illegal possession of firearm filed against the accused specifically alleged that he had no license or permit to possess the caliber .45 pistol mentioned therein. In its evidence-in-chief, the prosecution established the fact the subject firearm was lawfully seized by the police from the possession of the accused, that is, while the pistol was tucked at his waist in plain view, without the accused being able to present any license or permit to possess the firearm. The prosecution of such evidence rested his case and within the period of five days therefrom, the accused filed a demurrer to evidence, in sum contending that the prosecution evidence has not established the guilt of the accused beyond reasonable doubt, and so prayed that he be acquitted of the offense charged.

The trial court denied the demurrer to evidence and deemed the accused as having waived his right to present evidence and submitted the case for judgment on the basis of

the prosecution evidence. In due time, the court rendered judgment finding the accused guilty of the offense charged beyond reasonable doubt and accordingly imposing on him the penalty described therefor.

Is the judgment of the trial court valid and proper? Reason. *(5%)*

Answer: Yes, the judgment of the trial court is valid. The accused did not ask for leave to file the demurrer to evidence. He is deemed to have waived his right to present evidence *(Sec. 23, Rule 119).* However, the judgment is not proper or is erroneious because there was no showing from the proper office like the Firearms and Explosive Unit of the Philippine National Police that the accused has a permit to own or possess the firearm, which is fatal to the conviction of the accused *(People v. Flores, 269 SCRA 62 [1997]).*

(9) **2007 Bar**: Distinguish the effect of filing of a demurrer to evidence in a criminal case and its filing in a civil case. *(5%)*

(10) **2007 Bar**: What is reverse trial and when may it be resorted to? Explain briefly. *(5%)*

Answer: A reverse trial is a trial where the accused presents his evidence first before the prosecution submits its evidence. It may be resorted to when the accused admits the act or omission charged in the complaint or information but interposes a lawful or affirmative defense *(Sec. 11[e], Rule 119).* In civil cases, reverse trial may be resorted to by agreement of the parties or when the defendant sets up an affirmative defense.

NOTES:

K. JUDGMENT *(Rule 120)*

(1) Judgment means the adjudication by the court that the accused is guilty or is not guilty of the offense charged, and the imposition of the proper penalty and civil liability provided for by law on the accused *(Sec. 1)*.

(2) Memorandum decision is one in which the appellate court may adopt by reference, the findings of facts and conclusions of law contained in the decision appealed from *(Sec. 24, Interim Rules and Guidelines)*.

(3) **2003 Bar**: When a criminal case is dismissed on ***nolle prosequi***, can it later be refilled? *(4%)*

Answer: As a general rule, when a criminal case is dismissed on *nolle prosequi* before the accused is placed on trial and before he is called on to plead, this is not equivalent to an acquittal and does not bar a subsequent prosecution for the same offense *(Galves v. Court of Appeals, 237 SCRA 686 [1994])*.

Requisites of a judgment

(1) It must be written in the official language, personally and directly prepared by the judge and signed by him and shall contain clearly and distinctly a statement of the facts and the law upon which it is based *(Sec. 1)*.

Contents of Judgment

(1) If the judgment is of conviction, it shall state (1) the legal qualification of the offense constituted by the acts committed by the accused and the aggravating or mitigating circumstances which attended its commission; (2) the participation of the accused in the offense, whether as principal, accomplice, or accessory after the fact; (3) the penalty imposed upon the accused; and (4) the civil liability or damages caused by his wrongful act or omission to be recovered from the accused by the offended party, if there is any, unless the enforcement of the civil liability by a separate civil action has been reserved or waived.

In case the judgment is of acquittal, it shall state whether the evidence of the prosecution absolutely failed to prove the guilt of the accused or merely failed to prove his guilt beyond reasonable doubt. In either case, the judgment shall determine if the act or omission from which the civil liability might arise did not exist *(Sec. 2)*.

Promulgation of judgment; instances of promulgation of judgment in *absentia*

(1) The judgment is promulgated by reading it in the presence of the accused and any judge of the court in which it was rendered. However, if the conviction is for a light offense, the judgment may be pronounced in the presence of his counsel or representative. When the judge is absent or outside the province or city, the judgment may be promulgated by the clerk of court.

If the accused is confined or detained in another province or city, the judgment may be promulgated by the executive judge of the Regional Trial Court having jurisdiction over the place of confinement or detention upon request of the court which rendered the

judgment. The court promulgating the judgment shall have authority to accept the notice of appeal and to approve the bail bond pending appeal; provided, that if the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable, the application for bail can only be filed and resolved by the appellate court.

The proper clerk of court shall give notice to the accused personally or through his bondsman or warden and counsel, requiring him to be present at the promulgation of the decision. If the accused was tried in absentia because he jumped bail or escaped from prison, the notice to him shall be served at his last known address.

(2) In case the accused fails to appear at the scheduled date of promulgation of judgment despite notice, the promulgation shall be made by recording the judgment in the criminal docket and serving him a copy thereof at his last known address or thru his counsel.

If the judgment is for conviction and the failure of the accused to appear was without justifiable cause, he shall lose the remedies available in these rules against the judgment and the court shall order his arrest. Within fifteen (15) days from promulgation of judgment, however, the accused may surrender and file a motion for leave of court to avail of these remedies. He shall state the reasons for his absence at the scheduled promulgation and if he proves that his absence was for a justifiable cause, he shall be allowed to avail of said remedies within fifteen (15) days from notice *(Sec. 6).*

(3) Section 6, Rule 120, of the Rules of Court provides that it is incumbent upon the accused to appear on the scheduled date of promulgation, because it determines the availability of their possible remedies against the judgment of conviction. When the accused fail to present themselves at the promulgation of the judgment of conviction, they lose the remedies of filing a motion for a new trial or reconsideration *(Rule 121)* and an appeal from the judgment of conviction *(Rule 122).* It is among the rules of procedure which the Supreme Court is competent to adopt pursuant to its rule-making power under Article VIII, Section 5(5) of the Constitution. As such, said rules do not take away, repeal or alter the right to file a motion for reconsideration as said right still exists. The Supreme Court merely laid down the rules on promulgation of a judgment of conviction done in absentia in cases when the accused fails to surrender and explain his absence within 15 days from promulgation. Clearly, the said provision does not take away substantive rights; it merely provides the manner through which an existing right may be implemented. Hence, it does not take away per se the right of the convicted accused to avail of the remedies under the Rules. It is the failure of the accused to appear without justifiable cause on the scheduled date of promulgation of the judgment of conviction that forfeits their right to avail themselves of the remedies against the judgment. Moreover, it also provides the remedy by which the accused who were absent during the promulgation may reverse the forfeiture of the remedies available to them against the judgment of conviction *(Jaylo v. Sandiganbayan First Division, GR Nos. 183152-54, 01/21/2015).*

(4) Section 6, Rule 120 of the Revised Rules of Criminal Procedure allows a court to promulgate a judgment *in absentia* and gives the accused the opportunity to file an appeal within a period of fifteen (15) days from notice to the latter or the latter's counsel; otherwise, the decision becomes final *(Javier vs. Gonzales , GR No. 193150, 01/23/2017).*

(5) During the promulgation of judgment on 15 December 2005, when respondent did not appear despite notice, and without offering any justification for his absence, the trial court should have immediately promulgated its Dccision. The promulgation of judgment *in absentia is* mandatory pursuant to the fourth paragraph of Section 6, Rule 120 of the Rules of Court:

SEC. 6. *Promulgation of judgment.* - xx xx In case the, accused fails to appear at the scheduled date of promulgation of judgment despite notice, the promulgation *shall* be made by recording the judgment in the criminal docket and serving him a copy thereof at his last known address or thru his counsel. (Emphasis supplied)

If the accused has been notified of the date of promulgation, but does not appear, the promulgation of judgment *in absentia* is warranted. This rule is intended to obviate a repetition of the situation in the past when the judicial process could be subverted by the accused by jumping bail to frustrate the promulgation of judgment. The only essential elements for its validity are as follows: (a) the judgment was recorded in the criminal docket; and (b) a copy thereof was served upon the accused or counsel *(Javier vs. Gonzales, GR No. 193150, 01/23/2017)*.

(6) **2014** Bar: *Ludong*, *Balatong*, and *Labong* were charged with murder. After trial, the court announced that the case was considered submitted for decision. On promulgation day, *Ludong* and his lawyer appeared. The lawyers of *Balatong* and *Labong* appeared but without their clients and failed to satisfactorily explain their absence when queried by the court. Thus, the judge ordered the Clerk of Court to proceed with the reading of the judgment convicting all the accused. With respect to *Balatong* and *Labong*, the judge ordered that the judgment be entered in the criminal docket and copies be furnished their lawyers. The lawyers of *Ludong*, *Balatong*, and *Labong* filed within the reglementary period a Joint Motion for Reconsideration. The court favorably granted the motion of *Ludong* downgrading his conviction from murder to homicide but denied the motion as regards *Balatong* and *Labong*. (4%)

(A) Was the court correct in taking cognizance of the Joint Motion for Reconsideration?

(B) Can *Balatong* and *Labong* appeal their conviction in case *Ludong* accepts his conviction for homicide?

Answer:

(A) The Court is not correct in taking cognizance of the Joint Motion for Reconsideration.

Section 6, Rule 120 provides that if the judgment is for conviction and the failure of the accused to appear was without justifiable cause, he shall lose the remedies available against the judgment and the court shall order his arrest.

Hence, the Court erred when it entertained the Joint Motion for Reconsideration with respect to accused Balatong and Labong who were not present during the promulgation of the judgment. The Court should have merely considered the joint motion as a motion for reconsideration that was solely filed by Ludong *(People vs. De Grano, GR No. 167710, 06/05/2009)*.

(B) No. Balatong and Ludong cannot appeal their conviction because they lost their right to appeal from the judgment when they failed to appear during the promulgation of judgment.

Be that as it may, if they surrendered and filed a Motion for Leave to avail of their post judgment remedies within ffitteen (15) days frompromulgation of judgment, and they have proven that their abnsence at the scheduled promulgation was for a justifiable cause, they may be allowed to avail of said remedies within fifteen (15) days from notice thereof *(People vs. De Grano, GR No. 167710, 06/05/2009)*.

When does judgment become final (four instances)

(1) Except where the death penalty is imposed, a judgment becomes final:
- (a) After the lapse of the period for perfecting an appeal;
- (b) When the sentence has been partially or totally satisfied or served;
- (c) When the accused has waived in writing his right to appeal; or
- (d) Has applied for probation *(Sec. 7)*.

*** POST-JUDGMENT REMEDIES IN CRIMINAL CASES

Remedies in Civil Cases	Remedies in Criminal Cases
Before judgment becomes final: 1. Motion for Reconsideration *(Rules 37 and 52)* 2. Motion for New Trial *(Rules 37 and 53)* 3. Appeal *(Rules 40 - 45)*	Before judgment becomes final: 1. Motion for Reconsideration *(Rule 121)* 2. Motion for New Trial *(Rule 121)* 3. Appeal *(Rules 40 - 45)*
After judgment becomes final: 1. Petition for Relief *(Rule 38)* 2. Action to Annul Judgment *(Rule 47)* 3. Petition for *Certiorari* *(Rule 65)*	After judgment becomes final: 1. Petition for *Certiorari* *(Rule 65)* 2. Motion to Reopen Proceedings *(Rule 119, Sec. 24)* 3. Motion to Modify Judgment *(Rule 120, Sec. 7)* 4. Petition for *Habeas Corpus* *(Rule 102)*

L. NEW TRIAL OR RECONSIDERATION *(Rule 121)*

MNT or MR in Criminal Cases *(Rule 121)*	MNT or MR in Civil Cases *(Rule 37)*
Either on motion of accused, or the court *motu proprio* with consent of the accused	Must be upon motion of a party, not *motu proprio*
Grounds for MNT: Errors of law or irregularities prejudicial to the substantial rights of the accused committed during the trial, or newly discovered evidence	Grounds for MNT: Extrinsic fraud, accident, mistake of fact, or excusable negligence which ordinary prudence could not have guarded against; or newly discovered evidence
Ground for MR: error of law or of fact	Grounds for MR: Excessive damages, insufficient evidence, or decision is contrary to law
Filed any time before judgment of conviction becomes final	Filed within the period for taking an appeal
	Should include all the grounds then available and those not so included shall be deemed waived.
When granted, the original judgment is always set aside or vacated and a new judgment rendered	There may be partial grant

Grounds for New Trial

(1) The court shall grant a new trial on any of the following grounds:

(a) That errors of law or irregularities prejudicial to the substantial rights of the accused have been committed during the trial;

(b) That new and material evidence has been discovered which the accused could not with reasonable diligence have discovered and produced at the trial and which if introduced and admitted would probably change the judgment *(Sec. 2)*.

(2) **2015 Bar**: The Ombudsman found probable cause to charge with plunder the provincial governor, vice governor, treasurer, budget officer, and accountant. An Information for plunder was filed with the Sandiganbayan against the provincial officials except for the treasurer who was granted immunity when he agreed to cooperate with the Ombudsman in the prosecution of the case. Immediately, the governor filed with the Sandiganbayan a petition for certiorari against the Ombudsman claiming there was grave abuse of discretion in excluding the treasurer from the Information.

(A) Was the remedy taken by the governor correct? (2%)

Answer: No. The remedy taken by the Governor is not correct. The petition for certiorari is a remedy that is only available when there is no plain, speedy, and adequate remedy under the ordinary course of law; hence, the Governor should have filed a Motion for Reconsideration.

Besides, there is no showing that the Ombudsman committed grave abuse of discretion in granting immunity to the treasurer who agreed to cooperate in the prosecution in the prosecution of the case.

(3) Jaime was convicted for murder by the Regional Trial Court of Davao City in a decision promulgated on September 30, 2015. On October 5, 2015, Jaime filed a Motion for New Trial on the ground that errors of law and irregularities prejudicial to his rights were committed during his trial. On October 7, 2015, the private prosecutor, with the conformity of the public prosecutor, filed an Opposition to Jaime's motion. On October 12, 2015, the public prosecutor filed a motion for reconsideration. The court issued an Order dated October 16, 2015 denying the public prosecutor's motion for reconsideration. The public prosecutor received his copy of the order of denial on October 20, 2015 while the private prosecutor received his copy on October 26, 2015.

(A) What is the remedy available to the prosecution from the court's order granting Jaime's motion for new trial? (3%)

(B) In what court and within what period should a remedy be availed of? (1%)

(C) Who should pursue the remedy? (2%)

Answer:

(A) The remedy of the prosecution is to file a petition for certiorari under Rule 65, because the denial for a motion for reconsideration is merely an interlocutory order and there is no plain, speedy, and adequate remedy under the course of law.

It may be argued that appeal us tge appropriate remedy from an order denying a motion for reconsideration of an order granting a motion for new trial because an order denying a motion for reconsideration was already removed in the enumeration of matters that cannot be a subject of an appeal under Section 1, Rule 41 of the Rules of Court.

(B) Following the principle of judicial hierarchy, the petition for certiorari should be filed before the Court of Appeals within sixty (60) days from receipt of the copy of the order of denial of the public prosecutor's motion for reconsideration, or on October 20, 2015.

(C) The Office of the Solicitor General should pursue the remedy.

In criminal proceedings on appeal in the Court of Appeals or in the Supreme Court, the authority to represent the people is vested solely in the Solicitor General. Under Presidential Decree No. 478, among the specific powers and functions of the OSG is to represent the government in the Supreme Court and the Court of Appeals in all criminal proceedings. This provision has been carried over to the Revised

Administrative Code *(Book IV, Title III, Chapter 12)*. Without doubt, the OSG is appellate counsel of the People of the Philippines in all criminal cases *(Cariño vs. De Castro, GR No. 176084, 04/30/2008)*.

Grounds for Reconsideration

(1) The court shall grant reconsideration on the ground of errors of law or fact in the judgment, which requires no further proceedings *(Sec. 3)*.

Requisites before a new trial may be granted on ground of newly discovered evidence

(1) They are the following:
   (a) The evidence was discovered after trial;
   (b) The evidence could not have been discovered and produced at the trial even with exercise of reasonable diligence;
   (c) The evidence is material, not merely cumulative, corroborative or impeaching;
   (d) It must go to the merits as it would produce a different result if admitted *(Jose vs. CA, 70 SCRA 257)*.

(2) Rule 121 of the Rules of Court allows the conduct of a new trial before a judgment of conviction becomes final when new and material evidence has been discovered which the accused could not with reasonable diligence have discovered and produced at the trial and which if introduced and admitted would probably change the judgment.

In this case, although the documents offered by petitioners are strictly not newly discovered, it appeared to the Supreme Court that petitioners were mistaken in their belief that its production during trial was unnecessary. In their Supplmental Motion and/or Motion for New Trial, they stressed that they no longer presented the evidence of payment of RATA because Balabaran testified that the subject of the charge was the nonpayment of benefits under the 1999 budget, without mention of the RATA nor the 1998 reenacted budget. It seems that they were misled during trial. They were precluded from presenting pieces of evidence was confined to alleged nonpayment of rata under the 1999 budget. Under the foregoing circumstances, the Court was thus inclined to give a more lenient interpretation of Rule 121, Sec. 2 on new trial in view of the special circumstances sufficient to cast doubt as to the truth of the charges against petitioners. The situation of the petitioners is peculiar, since they were precluded from presenting exculpatory evidence during trial upon the honest belief that they were being tried for nonpayment of RATA under the 1999 budget. This belief was based on no less than the testimony of the prosecution's lone witness, COA Auditor Balabaran.

Hence, petitioners should be allowed to prove the authenticity of the vouchers they submitted and other documents that may absolve them *(Estino vs. People, GR No. 163957-58, 04/07/2009)*.

(3) The appeal is without merit.

The *res gestae* statement of Licup did not constitute newly-discovered evidence that created a reasonable doubt as to the petitioner's guilt. We point out that the concept of newly-dscovered evidence is applicable only when the litigant seeks a new trial or the re-opening of the case in the trial court. Seldom is the concept appropriate on appeal, particularly one before the Court. The absence of a specific rule on the introduction of newly-dscovered evidence at this late stage of the proceedings is not without reason. The Court would be compelled, despited its not being a trier of facts, ti receive and consider the evidence for purposes of its appellate adjudication.

Xxx The first guideline is to restrict the concept of newly-dscovered evidence to only such evidence that can satisfy the following requisites, namely: (1) the evidence was discovered after trial; (2) such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; (3) the evidence is material, not merely cumulative, corroborative, or impeaching; and (4) the evidence is of such weight that it would probably change the judgment if admitted *(Ladines vs. People, GR No. 167333, 01/11/2016).*

Effects of granting a new trial or reconsideration

(1) The effects of granting a new trial or reconsideration are the following:

(a) When a new trial is granted on the ground of errors of law or irregularities committed during the trial, all the proceedings and evidence affected thereby shall be set aside and taken anew. The court may, in the interest of justice, allow the introduction of additional evidence.

(b) When a new trial is granted on the ground of newly-discovered evidence, the evidence already adduced shall stand and the newly-discovered and such other evidence as the court may, in the interest of justice, allow to be introduced shall be taken and considered together with the evidence already in the record.

(c) In all cases, when the court grants new trial or reconsideration, the original judgment shall be set aside or vacated and a new judgment rendered accordingly *(Sec. 6).*

Effects of denying a new trial or reconsideration

(1) **2015 Bar:** Jaime was convicted for murder by the Regional Trial Court of Davao City in a decision promulgated on September 30, 2015. On October 5, 2015, Jaime filed a Motion for New Trial on the ground that errors of law and irregularities prejudicial to his rights were committed during his trial. On October 7, 2015, the private prosecutor, with the conformity of the public prosecutor, filed an Opposition to Jaime's motion. On October 12, 2015, the public prosecutor filed a motion for reconsideration. The court issued an Order dated October 16, 2015 denying the public prosecutor's motion for reconsideration. The public prosecutor received his copy of the order of denial on October 20, 2015 while the private prosecutor received his copy on October 26, 2015.

(A) What is the remedy available to the prosecution from the court's order granting Jaime's motion for new trial? (3%)

(B) In what court and within what period should a remedy be availed of? (1%)

(C) Who should pursue the remedy? (2%)

Answer:

(A) The remedy of the prosecution is to file a petition for certiorari under Rule 65, because the denial of a motion for reconsideration is merely an interlocutory order and there is no plain, speedy and adequate remedy under the course of law.

Appeal is the right remedy from an order denying a motion for reconsideration was already removed in the enumeration of matters that cannot be a ubject of an appeal under Section 1, Rule 41.

(B) Following the principle of judicial hierarchy, the petition for certiorari should be filed before the Court of Appeals within sixty (60) days from receipt of the copy of the order of denial of the oublic prosecutor's motion for reconsideration, or on October 20, 2015.

(C) The office of the Solicitor General should pursue the remedy.

In criminal proceedings on appeal in the Cour of Appeals or in the Supreme Court, the authority to represent the people is vested solely in the Solicitor General. Under Presidential Decree No. 478, among the specific powers and functions of the OSG is to represent the government in the Supre Court and the Court of Appeals in all criminal proceedings. This provision has been carried over to the Revised Administrative Code particularly in Book IV, Title III, Chapter 12 *(Cariño vs. de Casto, GR No. 176084, 04/30/2008).*

Application of *Neypes* Doctrine in Criminal Cases

(1) If the motion is denied, the movants have a fresh period of 15 days from receipt or notice of the order denying or dismissing the motion for reconsideration within which to file a notice to appeal. This new period becomes significant if either a motion for reconsideration or a motion for new trial has been filed but was denied or dismissed. This fresh period rule applies only to Rule 41 governing appeals from the RTC but also to Rule 40 governing appeals from MTC to RTC, Rule 42 on petitions for review from the RTC to the CA, Rule 43 on appeal from quasi-judicial agencies to the CA, and Rule 45 governing appeals by certiorari to the SC. Accordingly, this rule was adopted to standardize the appeal periods provided in the Rules to afford fair opportunity to review the case and, in the process, minimize errors of judgment. Obviously, the new 15 day period may be availed of only if either motion is filed; otherwise, the decision becomes final and executory after the lapse of the original appeal period provided in Rule 41 *(Neypes vs. CA, GR 141524, 09/14/2005).* The *Neypes* ruling shall not be applied where no motion for new trial or motion for reconsideration has been filed in which case the 15-day period shall run from notice of the judgment.

(2) The fresh period rule does not refer to the period within which to appeal from the order denying the motion for new trial because the order is not appealable under Sec. 9, Rule 37. The non-appealability of the order of denial is also confirmed by Sec. 1(a), Rule 41, which provides that no appeal may be taken from an order denying a motion for new trial or a motion for reconsideration

NOTES:

M. APPEAL *(Rule 122)*

(1) An appeal opens the whole case for review and this includes the review of the penalty, indemnity and the damages involved *(Quemuel vs. CA, 22 SCRA 44).*

(2) A petition for review on certiorari under Rule 45 must be differentiated from appeal under Rule 124, Sec. 13 involving cases where the lower court imposed on the accused the penalty of *reclusion perpetua*, life imprisonment or, previously, death *(Dela Cruz vs. People, GR No. 209387, 01/11/2016)*.

Effect of an Appeal

(1) Upon perfection of the appeal, the execution of the judgment or order appealed from is stayed as to the appealing party *(Sec. 11[c]).* The civil appeal of the offended party does not affect the criminal aspect of the judgment or order appealed from.

(2) Upon perfection of the appeal, the trial court loses jurisdiction over the case *(Syquia vs. Concepcion, 60 Phil. 186)*, except:
   (a) To issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal;
   (b) To approve compromises offered by the parties prior to the transmission of the records on appeal to the appellate court *(Sec. 9, Rule 41).*

(3) The right to prosecute criminal cases pertains exclusively to the People, which is therefore the proper party to bring the appeal through the representation of the OSG. Hence, being mere private complainants, they lacked the legal personality to appeal the dismissal of such criminal case. It must, however, be clarifiedthat it is without prejudice to their filing of the appropriate action to preserve their interests but only with respect to the civil aspect *(People vs. Malayan Insurance Company, and Dee vs. Piccio, GR No. 193681, 08/06/2014),*

(4) An appeal in a criminal case opens the entire case for review on any question including one not raised by the parties, and the accused waives the constitutional safeguard against double jeopardy and throws the whole case open to the review of the appellate court, which is then called upon to render such judgment as law and justice dictate. Thus, when petitioners appealed the trial court's judgment of conviction for Less Serious Physical Injuries, they are deemed to have abandoned their right to invoke the prohibition on double jeopardy since it becomes the duty of the appellate court to correct errors as may be found in the assailed judgment. Petitioners could not have been placed twice in jeopardy when the CA set aside the ruling of the RTC by finding them guilty of Violation of Domicile as charged in the Information instead of Less Serious Physical Injuries. *(Geroche vs. People, GR No. 179080, 11/26/2014).*

(5) The Regional Trial Court (RTC) dismissed the appeal by the accused on the ground of his failure to submit his memorandum on appeal. The failure to file the memorandum on appeal is a ground for the RTC to dismiss the appeal only in civil cases. The same rule does not apply in criminal cases, because Section 9(c), supra, imposes on the RTC the duty to decide the appeal "on the basis of the entire record of the case and of such memoranda or briefs as may have been filed" upon the submission of the appellate memoranda or briefs, or upon the expiration of the period to file the same *(Sanico v. People, GR No. 198753, 03/25/2015).*

Where to appeal

(1) The appeal may be taken as follows:

(a) To the Regional Trial Court, in cases decided by the Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court, or Municipal Circuit Trial Court;

(b) To the Court of Appeals or to the Supreme Court in the proper cases provided by law, in cases decided by the Regional Trial Court; and

(c) To the Supreme Court, in cases decided by the Court of Appeals *(Sec. 2)*.

How appeal is taken

(1) under Sec. 3, Rule 122:

(a) The appeal to the Regional Trial Court, or 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 by serving a copy thereof upon the adverse party.

(b) 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 under Rule 42.

(c) The appeal to the Supreme Court in cases where the penalty imposed by the Regional Trial Court is reclusion perpetua, or life imprisonment, or where a lesser penalty is imposed but for offenses committed on the same occasion or which arose out of the same occurrence that gave rise to the more serious offense for which the penalty of death, reclusion perpetua, or life imprisonment is imposed, shall be by filing a notice of appeal in accordance with paragraph (a) of this section.

(d) No notice of appeal is necessary in cases where the death penalty is imposed by the Regional Trial Court. The same shall be automatically reviewed by the Supreme Court as provided in section 10 of this Rule.

Except as provided in the last paragraph of section 13, Rule 124, all other appeals to the Supreme Court shall be by petition for review on certiorari under Rule 45.

Effect of appeal by any of several accused

(1) under Sec. 11, Rule 122:

(a) An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter.

(b) The appeal of the offended party from the civil aspect shall not affect the criminal aspect of the judgment or order appealed from.

(c) Upon perfection of the appeal, the execution of the judgment or final order appealed from shall be stayed as to the appealing party.

Grounds for dismissal of appeal

(1) The court, however, may dismiss the petition if it finds the same to be:

(a) Patently without merit;

(b) Prosecuted manifestly for delay; or

(c) The questions raised therein are too unsubstantial to require consideration *(Sec. 8, Rule 65)*.

(2) It is axiomatic that issues raised for the first time on appeal will not be entertained because to do so would be anathema to the rudiments of fairness and due process. Nonetheless, there are also exceptions to the said rule. In *Del Rosario v. Bonga (402 Phil. 949 [2001]),* the Court explained that there are instances that issues raised for the first time on appeal may be entertained, viz:

> Indeed, there are exceptions to the aforecited rule that no question may be raised for the first time on appeal. Though not raised below, the issue of lack of jurisdiction over the subject matter may be considered by the reviewing court, as it may be raised at any stage. The said court may also consider an issue not properly raised during trial when there is plain error. Likewise, it may entertain such arguments when there are jurisprudential developments affecting the issues, or when the issues raised present a matter of public policy.

Further, the matters raised in the present petition warrant the relaxation of the rules concerning issues raised for the first time on appeal especially considering the jurisprudential developments since the RTC decision and the needs for substantial justice. In liberally applying the rules in the case at bar, the Court does not wish to brush aside its importance; rather, it emphasizes the nature of the said rules as tools to facilitate the attainment of substantial justice *(Punongbayan-Visitacion vs. People, GR No. 194214, 01/10/2018)*.

N. SEARCH AND SEIZURE *(Rule 126)*

Nature of search warrant

(1) The constitutional right against unreasonable search and seizure refers to the immunity of one's person, whether a citizen or alien, from interference by government, included in which is his residence, his papers and other possession *(Villanueva vs. Querubin, 48 SCRA 345)*. The overriding function of the constitutional guarantee is to protect personal privacy and human dignity against unwarranted intrusion by the State. It is deference to one's personality that lies at the core of his right, but it could also be looked upon as a recognition of a constitutionally protected area primarily one's house, but not necessarily thereto confined. What is sought to be guarded is a man's prerogative to choose who is allowed entry to his residence. In that haven of refuge, his individuality can assert itself not only in the choice of who shall be welcome but likewise in the kind of objects he wants around him. Thus is outlawed any unwarranted intrusion by government, which is called upon to refrain from any intrusion of his dwelling and to respect the privacies of his life *(Schmerber vs. California, 384 US 757)*.

(2) The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized *(Sec. 2, Art. III, Constitution)*.

(3) Section 12, Chapter V of A.M. No. 03-8-02-SC allows the Manila and Quezon City RTCs to issue warrants to be served in places outside their territorial jurisdiction for as long as the parameters under the said section have been complied with, as in this case. As in ordinary search warrant applications, they "shall particularly describe therein the places to be searched and/or the property or things to be seized as prescribed in the Rules of Court." "The Executive Judges of these RTCs and, whenever they are on official leave of absence or are not physically present in the station, the Vice-Executive Judges" are authorized to act on such applications and "shall issue the warrants, if justified, which may be served in places outside the territorial jurisdiction of the said courts." The Court observes that all the above-stated requirements were complied with in this case. As the records would show, the search warrant application was filed before the Manila-RTC by the PNP and was endorsed by its head, PNP Chief Jesus Ame Versosa, particularly describing the place to be searched and the things to be seized in connection with the heinous crime of Murder. Finding probable cause therefor, Judge Peralta, in his capacity as 2nd Vice-Executive Judge, issued Search Warrant which, as the rules state, may be served in places outside the territorial jurisdiction of the said RTC *(Laud vs. People, GR No. 199032, 11/19/2014, En Banc)*.

(4) An application for a search warrant is a "special criminal process," rather than a criminal action. Proceedings for applications of search warrants are not criminal in nature and thus, the rule that venue is jurisdictional does not apply thereto. Evidently, the issue of whether the application should have been filed in RTC-Iriga City or RTC-Naga, is not one involving jurisdiction because, the power to issue a special criminal process is inherent in all courts. *(Pilipinas Shell Petroleum Corp. vs. Romars International Gases Corp., GR No. 189669, 02/16/2015)*.

(5) If the search warrant is made upon the request of law enforcers, a warrant must generally be first secured if it is to pass the test of constitutionality. However, if the search is made at the bejest or initiative of the proprietor of a private establishment for its own and private

purposes, as in the case at bar, and without the intervention of police authorities, the right against unreasonable search and seizure cannot be invoked for only the act of private individual, not the law enforcers, is involved. In sum, the protection against unreasonable searches and seizures cannot be extended to acts committed by private individuals so as to bring it within the ambit of alleged unlawful intusion by the government *(Libo-on Dela Cruz vs. People, GR No. 209387, 01/11/2016)*.

Distinguish from warrant of arrest

Search Warrant (Rule 126)	Warrant of Arrest (Rule 113)
A search warrant is an order in writing issued in the name of the People of the Philippines, signed by a judge and directed to a peace officer, commanding him to search for personal property described therein and bring it before the court *(Sec. 1, Rule 126)*.	Arrest is the taking of a person into custody in order that he may be bound to answer for the commission of an offense *(Sec. 1, Rule 113)*.
Requisites: A search warrant shall not issue except upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witness he may produce, and particularly describing the place to be searched and the things to be seized which may be anywhere in the Philippines *(Sec. 4, Rule 126)*.	Requisites for arrest warrant issued by RTC judge under Sec. 5, Rule 112: (a) Within 10 days from the filing of the complaint or information (b) The judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. (c) If he finds probable cause, he shall issue a warrant of arrest (d) In case of doubt on the existence of probable cause 1) The judge may order the prosecutor to present additional evidence within 5 days from notice; and 2) The issue must be resolved by the court within 30 days from the filing of the complaint or information
Search or seizure without warrant, when lawful: (a) Consented search; (b) As an incident to a lawful arrest; (c) Searches of vessels and aircrafts for violation of immigration, customs and drug laws; (d) Searches of moving vehicles; (e) Searches of automobiles at borders or constructive borders; (f) Where the prohibited articles are in plain view; (g) Searches of buildings and premises to enforce fire, sanitary and building regulations; (h) "Stop and frisk" operations;	Arrest without warrant, when lawful: (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense; (b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred

(i) Exigent and emergency circumstances (in times of war and within the area of military operation)	from one confinement to another *(Sec. 5, Rule 113).*

Application for search warrant, where filed

(1) An application for search warrant shall be filed with the following:

(a) Any court within whose territorial jurisdiction a crime was committed.

(b) For compelling reasons stated in the application, any court within the judicial region where the crime was committed if the place of the commission of the crime is known, or any court within the judicial region where the warrant shall be enforced.

However, if the criminal action has already been filed, the application shall only be made in the court where the criminal action is pending *(Sec, 2).*

(2) The respondent RTC judge, in this case, quashed the search warrant and eventually dismissed the case based merely on the fact that the search warrant was issued by the MTC of Gattaran, Cagayan proceeding from a suspected violation of R.A. 9165 or *The Dangerous Drugs Act,* an offense which is beyond the jurisdiction of the latter court. It is therefore safe to presume that the other grounds raised by the private respondent in his motion to quash are devoid of any merit. By that alone, the respondent judge gravely abused his discretion in quashing the search warrant on a basis other than the accepted grounds. It must be remembered that a search warrant is valid for as long as it has all the requisites set forth by the Constitution and must only be quashed when any of its elements are found to be wanting.

This Court has provided rules to be followed in the application for a search warrant. Rule 126 of the Rules of Criminal Procedure provides:

> Sec. 2. Court where application for search warrant shall be filed. - An application for search warrant shall be filed with the following:
>
> (a) Any court within whose territorial jurisdiction a crime was committed.
>
> (b) For compelling reasons stated in the application, any court within the judicial region where the crime was committed if the place of the commission of the crime is known, or any court within the judicial region where the warrant shall be enforced.
>
> However, if the criminal action has already been filed, the application shall only be made in the court where the criminal action is pending.

Apparently, in this case, the application for a search warrant was filed within the same judicial region where the crime was allegedly committed. For compelling reasons, the Municipal Trial Court of Gattaran, Cagayan has the authority to issue a search warrant to search and seize the dangerous drugs stated in the application thereof in Aparri, Cagayan, a place that is within the same judicial region. The fact that the search warrant was issued means that the MTC judge found probable cause to grant the said application after the latter was found by the same judge to have been filed for compelling reasons. Therefore, Sec. 2, Rule 126 of the Rules of Court was duly complied with.

xxx What controls here is that a search warrant is merely a process, generally issued by a court in the exercise of its ancillary jurisdiction, and not a criminal action to be entertained by a court pursuant to its original jurisdiction. Thus, in certain cases when no criminal action has yet been filed, any court may issue a search warrant even though it has no jurisdiction over the offense allegedly committed, provided that all the

requirements for the issuance of such warrant are present *(People vs. Judge Castillo, Sr., GR No. 204419, 11/07/2016).*

Probable Cause

(1) Probable cause is defined as such facts and circumstances which could lead a reasonably discreet and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense are in the place sought to be searched *(20th Century Fox Film Corp. vs. CA, GR 76649-51, 08/19/1988).* Although probable cause eludes exact and concrete definition, it generally signifies a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man to believe that a person accused is guilty of the offense with which he is charged *(People vs. Aruta, 288 SCRA 626).*

(2) ***Requisites for issuing search warrant.*** - A search warrant shall not issue except upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witness he may produce, and particularly describing the place to be searched and the things to be seized which may be anywhere in the Philippines *(Sec. 4).*

(3) ***Issuance and form of search warrant.*** - If the judge is satisfied of the existence of facts upon which the application is based or that there is probable cause to believe that they exist, he shall issue the warrant, which must be substantially in the form prescribed by these Rules *(Sec. 6).*

(4) Section 4, Rule 126 of the Rules of court states that a search warrant shall not be issued except upon probable cause in connection with one specific offense. Probable cause for a search warrant is defined s such facts and circumstances which would lead a reasonably discrete and prudent man to believe that an offense has been committed and that the objects sought in connection with offense are in the place sought to be searched. A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused *(Laud vs. People, GR No. 199032, 11/19/2014, En Banc).*

(5) It must be emphasized anew that the core requisite before a warrant shall validly issue is the existence of a probable cause, meaning *"the existence of such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense are in the place to be searched."* And when the law speaks of facts, the reference is to facts, data or information personally known to the applicant and the witnesses he may present. Absent the element of personal knowledge by the applicant or his witnesses of the facts upon which the issuance of a search warrant may be justified, the warrant is deemed not based on probable cause and is a nullity, its issuance being, in legal contemplation, arbitrary.

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As a general rule, the finding of probable cause for the issuance of a search warrant by a trial judge is accorded respect by the reviewing courts. However, when in issuing the search warrant, the issuing judge failed to comply with the requirements set by the Constitution and the Rules of Court, the resulting search warrants must be struck down as it was issued with grave abuse of discretion which is tantamount to in excess or · lack of jurisdiction.

Settled is the rule that where entry into the premises to be searched was gained by virtue of a void search warrant, prohibited articles seized in the course of the search are inadmissible against the accused. In ruling against the admissibility of the items seized,

the Court: held that prohibited articles may be seized but only as long as the search is valid. In this case, it was not because: (1) there was no valid search warrants; and (2) absent such a warrant, the right thereto was not validly waived by Maderazo. In short, the police officers who entered petitioner's premises had no right to search the premises and, therefore, had no right either to seize the prohibited drugs and articles and firearms. It is as if they entered Maderazo's house without a warrant, making their entry therein illegal, and the items seized, inadmissible *(People vs. Maderazo, GR No. 235348, 12/10/2018)*.

Personal examination by judge of the applicant and witnesses

(1) The judge must, before issuing the warrant, personally examine in the form of searching questions and answers, in writing and under oath, the complainant and the witnesses he may produce on facts personally known to them and attach to the record their sworn statements, together with the affidavits submitted *(Sec. 5)*.

(2) To paraphrase this rule, a search warrant may be issued only if there is probable cause in connection with a specific offonse alleged in an application based on the personal knowledge of the applicant and his witnesses. This is the substantive requirement for the issuance of a search warrant. Procedurally, the determination of probable cause is a personal task of the judge before whom the application for search warrant is filed, as he has to examine the applicant and his or her witnesses in the form of "searching questions and answers" in writing and under oath.

Thus, in *Oebanda, et al. v. People,* the Court held that, in determining the existence of probable cause in an application for search warrant, the mandate of the judge is for him to conduct a full and searching examination of the complainant and the witnesses he may produce. The searching questions propounded to the applicant and the witnesses must depend on a large extent upon the discretion of the judge. ***Although there is no hard-and-fast rule as to how a judge may conduct his examination, it is axiomatic that the said examination must be probing and exhaustive and not merely routinary, general, peripheral or perfunctory. He must make his own inquiry on the intent and factual and legal justifications for a search warrant. The questions should not merely be repetitious of the averments stated in the affidavits/deposition of the applicant and the witnesses.*** [Emphasis in the original]

Following the foregoing principles, the Court agrees with the CA in ruling that the trial judge failed to conduct the probing and exhaustive inquiry as mandated by the Constitution *(People vs. Maderazo, GR No. 235348, 12/10/2018)*.

Particularity of place to be searched and things to be seized

(1) The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized *(Sec. 2, Art. III, Constitution)*.

(2) The place specified in the search warrant, and not the place the police officers who applied for the search warrant had in mind, controls. For the police officers cannot amplify nor modify the place stated in the search warrant *(People vs. CA, 291 SCRA 400)*. The rule is that a description of the place to be searched is sufficient if the officer with the warrant can, with reasonable effort, ascertain and identify the place intended to be searched.

Where there are several apartments in the place to be searched, a description of the specific place can be determined by reference to the affidavits supporting the warrant that the apartment to be searched is the one occupied by the accused. The searching party cannot go from one apartment to the other as the warrant will then become a general warrant *(People vs. Salanguit, 356 SCRA 683)*.

Personal property to be seized

(1) *Personal property to be seized.* - A search warrant may be issued for the search and seizure of personal property:
(a) Subject of the offense;
(b) Stolen or embezzled and other proceeds, or fruits of the offense; or
(c) Used or intended to be used as the means of committing an offense *(Sec. 3)*.

(2) It is not necessary that the property to be searched or seized should be owned by the person against whom the search is issued; it is sufficient that the property is under his control or possession *(People vs. Dichoso, 223 SCRA 174)*.

(3) **2003 Bar**: In a buy-bust operation, the police operatives arrested the accused and seized from him a sachet of shabu and an unlicensed firarm. The accused was charged in two informations, one for violation of the Dangerous Drugs Act, as amended, and another for illegal possession of firearms.

The accused filed an action for recovery of the firearm in another court against the police officers with an application for the issuance of a writ of replevin. He alleged in his Complaint that he was a military informer who had been issued a written authority to carry said firearm. The police officers moved to dismiss the complaint on the ground that the subject firearm was in *custodia legis*. The court denied the motion and instead issued the writ of replevin.

(a) Was seizure of the firearm valid?

(b) Was the denial of the motion to dismiss proper?

Answer: (a) Yes, the seizure of the firearm was valid because it was seized in the course of a valid arrest in a buy-bust operation *(Sec. 12 and 13, Rule 126)*. A search warrant was not necessary.

(b) The denial of the motion to dismiss was not proper. The court had no authority to issue the writ of replevin whether the firearm was in *custodia legis* or not. The motion to recover the firearm should be filed with the court where the action is pending.

Exceptions to search warrant requirement

(1) In a case *(People vs. Abriol, 367 SCRA 327)*, the Court added other exceptions to the prohibition against warrantless search, thus:
(a) Consented search;
(b) As an incident to a lawful arrest;
(c) Searches of vessels and aircrafts for violation of immigration, customs and drug laws;
(d) Searches of moving vehicles;
(e) Searches of automobiles at borders or constructive borders;
(f) Where the prohibited articles are in plain view;
(g) Searches of buildings and premises to enforce fire, sanitary and building regulations;
(h) "Stop and frisk" operations;
(i) Exigent and emergency circumstances *(People vs. Valez, 304 SCRA 140)*.

(2) A warrantless search is presumed to be unreasonable. However, this court lays down the exceptions where warrantless searches are deemed legitimate: (1) warrantless search incidental to a lawful arrest; (2) seizure "in plain view"; (3) search of a moving vehicle; (4) consented warrantless search; (5) customs search; (6) stop and frisk; and (7) exigent and emergency circumstances.

In case of consented searches or waiver of the constitutional guarantee against obstrusive searches, it is fundamental that to constitute a waiver, it must first appear that (1) the right exists; (2) that the person involved had knowledge, either actual or constructive, of the existence of such right; and (3) that said person had an actual intention to relinquish the right.

Xxx Customs searches, as exception to the requirement of a valid search warrant, are allowed when "persons exercising police authority under the customs law effect search and seizure in the enforcement of customs laws." Xxx

Hence, to be a valid customs search, the requirements are: (1) the person/s conducting the search was/were exercising police authority under customs law; (2) the search was for the enforecement of customs laws; and (3) the place searched is not a dwelling place or house. Here, the facts revealed that the search was part of routine port security measures. The search was not conducted by persons authorized under customs law. It was also not motivated by the provisions of the Tariff and Customs code or other customs laws. Although customs searches usually occur within ports or terminals, it is important that the search must be for the enforcement of customs laws *(Libo-on Dela Cruz vs. People, GR No. 209387, 01/11/2016).*

Search incidental to lawful arrest	A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant *(Sec. 13, Rule 126).* The law requires that there first be a lawful arrest before a search can be made. The process cannot be reversed *(People vs. Malmstedt, 198 SCRA 40).* Thus, in a buy-bust operation conducted to entrap a drug pusher, the law enforcement agents may seize the marked money found on the person of the pusher immediately after the arrest even without arrest and search warrants *(People vs. Paco, 170 SCRA 681).* The better and established rule is a strict application of the exception provided in Sec. 12, Rule 126, and that is to absolutely limit a warrantless search of a person who is lawfully arrested to his or her person at the time of and incident to his or her arrest and to dangerous weapons or anything which may be used as proof of the commission of the offense. Such warrantless search obviously cannot be made in any other than the place of arrest *(Nolasco vs. Paño, 147 SCRA 500).* It is important to note that the presumption that official duty has been regularly performed, and the corresponding testimony of the arresting officers on the buy-bust transaction, can only be overcome through clear and convincing evidence showing either of two things: (1) that they were not properly performing their duty, or (2) that they were inspired by any improper motive *(People v. Tancinco, GR No. 200598, 06/18/2014).* The accused cannot claim that the evidence obtained from a search conducted incident to an arrest is inadmissible because it is violative of the plain view doctrine. The plain view doctrine only applies to cases where the arresting officer is not searching for evidence against the accused, but nonetheless inadvertently comes across an incriminating object *(People vs. Calantiao, GR No. 203984, 06/18/2014).*

Consented Search	Rights may be waived, unless the waiver is contrary to law, public order, morals, or good customs, or prejudicial to a third person with a right recognized by law *(Art. 6, Civil Code)*. To constitute a valid waiver of a constitutional right, it must appear: (1) that the right exists, (2) the person involved had knowledge either actual or constructive, of the existence of such right, and (3) said person has an actual intention to relinquish the right *(People vs. Salangga, GR 100910, 07/25/1994)*. As the constitutional guarantee is not dependent upon any affirmative act of the citizen, the courts do not place the citizen in the position of either contesting an officer's authority by force, or waiving his constitutional rights, but instead they hold that a peaceful submission and silence of the accused in a search or seizure is not a consent or an invitation thereto, but is merely a demonstration of regard to the supremacy of the law *(People vs. Barros, 231 SCRA 557)*.
Search of moving vehicle	This is justified on the ground that the mobility of motor vehicles makes it possible for the vehicles to move out of the locality or jurisdiction in which the warrant must be sought. This, however, does not give the police officers unlimited discretion to conduct warrantless searches of automobiles in the absence of probable cause *(People vs. Bagista, 214 SCRA 63)*. In carrying out warrantless searches of moving vehicles, peace officers are limited to routine checks, that is, the vehicles are neither really searched nor their occupants subjected to physical or body searches, the examination of the vehicles being limited to visual inspection *(People vs. Barros, 231 SCRA 557)*. Warrantless search of moving vehicle is justified on the ground that it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought *(People vs. Lo Ho Wong, 193 SCRA 122)*.
Check points; body checks in airport	In *Aniag, Jr. vs. COMELEC, 237 SCRA 424*, a warrantless search conducted at police or military checkpoints has been upheld for as long as the vehicle is neither searched nor its occupants subjected to body search, and the inspection of the vehicle is merely limited to visual search. Routine inspections are not regarded as violative of an individual's right against unreasonable search. The search which is normally permissible in this instance is limited to the following instances: (1) where the officer merely draws aside the curtain of a vacant vehicle which is parked on the public fair grounds; (2) simply looks into a vehicle; (3) flashes a light therein without opening the car's doors; (4) where the occupants are not subjected to a physical or body search; (5) where the inspection of the vehicles is limited to a visual search or visual inspection; and (6) where the routine check is conducted in a fixed area *(Caballes vs. CA, GR 136292, 01/15/02)*.
Plain view situation	The plain view doctrine recognizes that objects inadvertently falling in plain view of an officer who has the right to be in the position to have that view, are subject to seizure without warrant *(Harris vs. US, 390 US 324)*. It may not, however, be used to launch unbridled searches and indiscriminate seizures, nor to extend a general exploratory search made solely to find evidence of a defendant's guilt. It is usually applied where a police officer is not searching for evidence against the accused, but nonetheless inadvertently comes across an incriminating object *(Coolidge vs. New Hampshire, 403 US 443)*. It is also been suggested that even if an object is observed in plain view, the seizure of the subject will not be justified where the incriminating nature of the object is not apparent. Stated differently, it must

	be immediately apparent to the police that the items that they observe may be evidence of a crime, contraband or otherwise subject to seizure *(People vs. Musa, 217 SCRA 597).* The elements of "plain view" seizure are: (a) prior valid intrusion based on the valid warrantless arrest in which the police are legally present in the pursuit of their official duties; (b) the evidence was inadvertently discovered by the police who had the right to be where they are; (c) the evidence must be immediately apparent; and (d) "plain view" justified mere seizure of evidence without further search *(People vs. Aruta, 288 SCRA 626).*
Stop and Frisk situation	This is based on the conduct of the person, who acts suspiciously, and when searched, such search would yield unlawful items in connection with an offense, such as unlicensed firearms, and prohibited drugs. Thus, it has been held that a person who was carrying a bag and acting suspiciously could be searched by police officers and the unlicensed firearm seized inside the bag is admissible in evidence, being an incident of a lawful arrest. Similarly, a person roaming around in a place where drug addicts usually are found, whose eyes were red and who was wobbling like a drunk, could be legally searched of his person and the illegal drug seized from him is admissible in evidence against him *(Manalili vs. CA, 280 SCRA 400).* A stop and frisk serves a two-fold interest: (1) the general interest of effective criminal protection and detection which underlie the recognition that a police officer may, under appropriate circumstances and in an appropriate manner, approach a person for purposes of investigating possible criminal behavior even without probable cause; and (2) the more pressing interest of safety and self-preservation which permit the police officer to take steps to assure himself that the person with whom he deals is not armed with a deadly weapon that could unexpectedly and fatally be used against him *(Terry vs. Ohio, 392 US 1).*
Enforcement of Custom Laws	For the enforcement of the customs and tariff laws, person deputized by the Bureau of Customs can effect searches, seizures and arrests even without warrant of seizure or detention. They could lawfully open and examine any box, trunk, envelope or other container wherever found when there is reasonable cause to suspect the presence of dutiable articles introduced into the Philippines contrary to law. They can likewise stop, search and examine any vehicle, beast or person reasonably suspected of holding or conveying such articles *(Papa vs. Mago, 22 SCRA 857).* The intention behind the grant of such authority is to prevent smuggling and to secure the collection of the legal duties, taxes and other charges *(Sec. 2202, Tariff and Customs Code).* Under the Tariff and Customs Code, Customs officers are authorized to make arrest, search and seizure of any vessel, aircraft, cargo, articles, animals or other movable property when the same is subject to forfeiture or liable for any fine under the customs and tariff laws, rules and regulations *(Sec. 2205)* and may at any time enter, pass through or search any land or inclosure or any warehouse, store or other building without being a dwelling house *(Sec. 2208).* A dwelling house may be entered or searched only upon warrants issued by judge upon sworn application showing probable cause and particularly describing the place to be searched and person or things to be searched *(Sec. 220).*

Remedies from unlawful search and seizure

(1) A motion to quash a search warrant and/or to suppress evidence obtained thereby may be filed in and acted upon only by the court where the action has been instituted. If no criminal action has been instituted, the motion may be filed in and resolved by the court that issued search warrant. However, if such court failed to resolve the motion and a criminal case is subsequently filed in another court, the motion shall be resolved by the latter court *(Sec. 14)*.

(2) If a search warrant is issued and it is attacked, a motion to quash is the remedy or a motion to suppress the evidence seized pursuant to the search warrant would be available. Replevin may also be proper if the objects are legally possessed.

(3) Alternative remedies of the accused adversely affected by a search warrant are the following:
   (a) Motion to quash the search warrant with the issuing court; or
   (b) Motion to suppress evidence with the court trying the criminal case.

   The remedies are alternative, not cumulative. If the motion to quash is denied, a motion to suppress cannot be availed of subsequently.

O. PROVISIONAL REMEDIES *(Rule 127)*

Nature

(1) The provisional remedies in civil actions, insofar as they are applicable, may be availed of in connection with the civil action deemed instituted with the criminal action *(Sec. 1).*

(2) The requisites and procedure for availing of these provisional remedies shall be the same as those for civil cases. Consequently, an application for recovery of damages on the bond posted for purposes of said provisional remedies shall be made in the same action and, generally, cannot be the subject of a separate action *(Sec. 14, Rule 57; Sec. 8, Rule 58; Sec. 9, Rule 59; Sec. 10, Rule 60).* For this reason, the order of trial now specifically provides that the accused may present evidence, not only to prove his defense, but also such damages as he may have sustained and arising from the issuance of any provisional remedy in the case *(Sec. 11[b], Rule 119; Sec. 12, Rule 124).*

(3) The provisional remedies under this Rule are proper only where the civil action for the recovery of civil liability *ex delicto* has not been expressly waived or the right to institute such civil action separately is not reserved, in those cases where such reservation may be made. *A fortiori*, where the civil action has actually been instituted, whether such action has been suspended by the subsequent institution of the criminal action *(Sec. 2, Rule 111)* or may proceed independently of the criminal action but may be applied for in the separate civil action.

(4) The provisional remedies as not available when: (a) offended party has waived the civil claim; (b) offended party has reserved the civil claim; (c) offended part has already instituted a separate civil action; and (d) the criminal action carries with it no civil liability.

Kinds of provisional remedies

(1) *Attachment.* - When the civil action is properly instituted in the criminal action as provided in Rule 111, the offended party may have the property of the accused attached as security for the satisfaction of any judgment that may be recovered from the accused in the following cases:

(a) When the accused is about to abscond from the Philippines;
(b) When the criminal action is based on a claim for money or property embezzled or fraudulently misapplied or converted to the use of the accused who is a public officer, officer of a corporation, attorney, factor, broker, agent or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity, or for a willful violation of duty;
(c) When the accused has concealed, removed, or disposed of his property, or is about to do so; and
(d) When the accused resides outside the Philippines *(Sec. 2).*

(2) Rule 57 on preliminary attachment applies on the procedure to secure an attachment in the cases authorized under Rule 127.

Grounds upon which attachment may issue. -- At the commencement of the action or at any time before entry of judgment, a plaintiff or any proper party may have the property of the adverse party attached as security for the satisfaction of any judgment that may be recovered in the following cases:

(a) In an action for the recovery of a specified amount of money or damages, other than moral and exemplary, on a cause of action

arising from law, contract, quasi-contract, delict or quasi-delict against a party who is about to depart from the Philippines with intent to defraud his creditors;

(b) In an action for money or property embezzled or fraudulently misapplied or converted to his own use by a public officer, or an officer or a corporation, or an attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity, or for a willful violation of duty;

(c) In an action to recover the possession of property unjustly or fraudulently taken, detained or converted, when the property, or any part thereof, has been concealed, removed, or disposed of to prevent its being found or taken by the applicant or an authorized person;

(d) In an action against a party who has been guilty of a fraud in contracting the debt or incurring the obligation upon which the action is brought, or in the performance thereof;

(e) In an action against a party who has removed or disposed of his property, or is about to do so, with intent to defraud his creditors; or

(f) In an action against a party who does not reside and is not found in the Philippines, or on whom summons may be served by publication *(Sec. 2, Rule 57)*.

PART IV
RULES OF EVIDENCE
(Rules 128–134)

A. GENERAL PRINCIPLES *(Rule 128)*

Concept of Evidence

(1) Evidence is the means, sanctioned by the Rules of Court, of ascertaining in a judicial proceeding the truth respecting a matter of fact *(Sec. 1, Rule 128)*.

(2) Generally, the mode or manner of proving factual allegations in a complaint, information or petition is through witnesses who are placed in the witness stand to testify on what they personally know of the case and/or to identify relevant documents. They are presented voluntarily or through the coercive process of subpoena *duces tecum*. Evidence is also secured by resorting to modes of discoveries, such as:

(a) Taking of depositions of any person, oral or written *(Rule 23)*;
(b) Serving of interrogatories to parties *(Rule 25)*;
(c) Serving of requests for admission by the adverse party *(Rule 25)*;
(d) Production and inspection of documents *(Rule 27)*; and
(e) Examination of physical and mental conditions of persons *(Rule 28)*.

(3) A matter may also be proved by means of affidavit, such as in motions based on facts not appearing on record, in cased covered by the Rules on Summary Procedure, and those filed in administrative or quasi-judicial bodies.

(4) The basis of evidence is the adaptation to the successful development of the truth; and a rule of evidence at one time though necessary to the ascertainment of truth should yield to the experience of a succeeding generation whenever that experience has clearly demonstrated the fallacy or unwisdom of the old rule *(Funk vs. US, 391)*.

Evidence in Civil Cases vs. Evidence in Criminal Cases

Evidence in Civil Cases	Evidence in Criminal Cases
The party having the burden of proof must prove his claim by a preponderance of evidence *(Sec. 1, Rule 133)*.	The guilt of the accused has to be proven beyond reasonable doubt *(Sec. 2, Rule 133)*.
An offer of compromise is not an admission of any liability, and is not admissible in evidence against the offeror *(Sec. 27, Rule 130)*.	Except those involving quasi-offenses (criminal negligence) or those allowed by law to be compromised, an offer of compromise by the accused may be received in evidence as an implied admission of guilt *(Sec. 27, Rule 133)*.
Generally, there is no presumption for or against a party. Exception: in some civil cases such as in a contractual suit against the carrier, there exists a presumption against the defendant.	The accused enjoys the presumption of innocence.
These differences constitute exceptions to the rule that the rules of evidence shall be the same in all courts and in all proceedings *(Sec. 2, Rule 128)*.	

Scope of the Rules of Evidence

(1) As used in judicial proceedings, the rules of evidence shall be the same in all courts and in all trials and hearings, except as otherwise provided by law or the Rules of Court *(Sec. 2, Rule 128)*.

Proof versus Evidence

Evidence	Proof
Medium of proof; means to the end	Effect and result of evidence; end of result
The means or medium by which a fact is proved or disproved	The probative effect of evidence and is the conviction or persuasion of the mind from the consideration of the evidence

Factum Probans Versus Factum Probandum

Factum probandum	Factum Probans
Proposition to be established	Material evidencing the proposition
Conceived of as hypothetical; that which one party affirms and the other denies	Conceived of for practical purposes as existent, and is offered as such for the consideration of the court

Admissibility of Evidence

(1) Two axioms of admissibility *(Wigmore on Evidence, Secs. 9, 10)*:
   (a) None but facts having rational probative value are admissible. – It assumes no particular doctrine as to the kind of ratiocination implied–whether practical or scientific, coarse and ready or refined and systematic. It prescribes merely that whatever is presented as evidence shall be presented on the hypothesis that it is calculated, according to the prevailing standards of reasoning, to effect rational persuasion.
   (b) All facts having rational probative value are admissible. – This axioms expresses the truth that legal proof, though it has peculiar rules of its own, does not intend to vary without cause from what is generally accepted in the rational processes of life; and that of such variations some vindication may, in theory, always be demanded.

(2) **2002 Bar:** Acting on a tip by an informant, police officers stopped a car being driven by D and ordered him to open the trunk. The officers found a bag containing several kilos of cocaine. They seized the car and the cocaine as evidence. Without advising him of his right to remain silent and to have the assistance of an attorney, they questioned him regarding the cocaine. In reply, D said, "I don't know anything about it. It isn't even in my car." D was charged with illegal possession of cocaine, a prohibited drug. Upon motion of D, the court suppressed the use of cocaine as evidence and dismissed the charges against him. D commenced proceedings against the police for the recovery of his car. In his direct examination, D testified that he owned the car but had registered it in the name of his friend for convenience. On cross-examination, the attorney representing the police

asked, "After your arrest, did you not tell the arresting officers that it wasn't your car?" If you were D's atrtorney, would you object to the question? Why? (5%)

Answer: Yes, because his admission made when he was questioned after he was placed under arrest was in violation of his constitutional rights to be informed of his right to remain silent and to have a competent and independent counsel of his own choice. Hence, it is inadmissible in evidence *(Art. III, Sec. 12, 1987 Constitution; People vs. Mahinay, 302 SCREA 455).*

(3) A lie detector test is based on the theory that an individual will undergo physiological changes, capable of being monitored by sensors attached to his body, to detect when he is not telling the truth. The result of a lie detector test is not given faithful credit inasmuch as it has not been accepted by the scientific community as an accurate means of ascertaining truth or deception *(People vs. Carpo [2000]).*

(4) Photographs are admissible in evidence in motor vehicle accidents cases when they appear to have been accurately taken and are proved to be a faithful and clear representation of the subject, which cannot itself be produced. And are of such nature as to throw light upon a disputed point. Before a photograph may be admitted in evidence, however, its accurateness or correctness must be proved, and it must first be authenticated or verified *(Macalinao vs. Ong [2005]).*

Admissibility of evidence	Weight of evidence
Pertains to the ability of the evidence to be allowed and accepted subject to its relevancy and competence	Pertains to the effect of evidence admitted
Substantive essence or characteristic feature of evidence as would make it worthy of consideration by the court before its admission	The probative value of evidence which the court may give to admit after complying with the rules of relevancy and competency

(5) It is required that evidence, to be admissible, must be relevant and competent. But the admissibility of evidence should not be confused with its probative value. Admissibility refers to the question of whether certain pieces of evidence are to be considered at all, while probative value refers to the question of whether the evidence proves and issue. Thus, a particular item of evidence may be admissible, but its evidentiary weight depends on judicial evaluation within the guidelines provided by the rules of evidence *(Heirs of Lourdes Saez Sabanpan vs. Comorposa, cited in Tabuada vs. Tabuada, GR No. 196510, 09/12/2018).*

Requisites for admissibility of evidence

(1) In order that evidence may be admissible, two requisites must concur, namely:
   (a) That it is relevant to the issue; and
   (b) That it is competent, that is, that it does not belong to that class of evidence which is excluded by the law or the rules.

(2) Admissibility is determined, first, by relevancy—an affair of logic and not of law; second, but only indirectly, by the law of evidence which, in strictness, only declares whether matter which is logically probative is excluded *(Presumptions and the Law of Evidence, 3 Harv. L. Rev. 13-14).*

(3) Relevant evidence – evidence which has a relation to the fact in issue as to induce belief in its existence or non-existence; evidence which tends in any reasonable degree to establish the probability or improbability of the fact in issue.

Relevance of evidence and collateral matters

(1) Evidence must have such a relation to the fact in issue as to induce belief in its existence or non-existence. Evidence on collateral matters shall not be allowed, except when it tends in any reasonable degree to establish the probability or improbability of the fact in issue *(Sec. 4, Rule 128)*.

(2) Evidence is relevant when it has a relation to the fact in issue as to induce belief in its existence or non-existence. Relevant evidence is one which tends in any reasonable degree to establish the probability or improbability of the fact in issue.

(3) Tests of Relevancy:

(a) Every fact or circumstance tending to throw light on the issue is relevant;
(b) Evidence is relevant from which the fact in issue is logically inferable;
(c) Any circumstance is relevant which tends to make the proposition at issue more or less probable, or which is calculated to explain or establish facts pertinent to the inquiry;
(d) The test is whether the evidence conduces to the proof of a pertinent hypothesis, such hypothesis being one which, if sustained, would logically influence the issue;
(e) The facts are relevant if they fairly tend to prove the offense charged *(Underhill's Criminal Evidence, 5th Ed., Vol. I)*.

(4) Collateral matters are those other than the facts in issue and which are offered as basis for inference as to the existence or non-existence of the facts in issue *(1 Wigmore 432)*.

(a) Prospectant collateral matters – those preceding of the fact in issue but pointing forward to it, like moral character, motive, conspiracy;

(b) Concomitant collateral matters – those accompanying the fact in issue and pointing to it, like alibi, or opportunity and incompatibility;

(c) Retrospectant collateral matters – those succeeding the fact in issue but pointing backward to it, like flight and concealment, behavior of the accused upon being arrested, fingerprints or footprints, articles left at the scene of the crime which may identify the culprit *(1 Wigmore 442-43)*.

Multiple admissibility

(1) When a fact is offered for one purpose, and is admissible in so far as it satisfies all rules applicable to it when offered for that purpose, its failure to satisfy some other rule which would be applicable to it if offered for another purpose does not exclude it *(Wigmore's Code of Evidence, 3rd Ed., p. 18)*.

Conditional admissibility

(1) Where two or more evidentiary facts are so connected under the issues that the relevancy of one depends upon another not yet evidenced, and the party is unable to introduce them both at the same moment, the offering counsel may be required by the court, as a condition precedent (a) to state the supposed connecting facts; and (b) to promise to evidence them later. If a promise thus made is not fulfilled, the court may strike out the evidence thus conditionally admitted, if a motion is made by the opposite party. Thus, evidence of facts and declarations may not become material or admissible until shown to be those of an agent of the other party, and a copy of a writing may not become competent evidence until the original is proven to be lost or destroyed *(Wigmore on Evidence)*.

(2) Evidence which appears to be immaterial is admitted by the court subject to the condition that its connection with other facts subsequently to be proved will be established *(People vs. Yatco, 97 Phil. 940).*

Curative admissibility

(1) Where an inadmissible fact has been offered by one party and received without objection, and the opponents afterwards, for the purpose of negativing or examining or otherwise counteracting it, offers a fact similarly inadmissible, such fact is admissible if it serves to remove an unfair effect upon the court which might otherwise ensue from the original fact. If the opponent made a timely objection at the time the inadmissible evidence was offered, and his objection was erroneously overruled in the first instance, the claim to present similar inadmissible facts would be untenable since his objection would save him, on appeal, from any harm which may accrue *(McCormick on Evidence, p. 35).*

(2) Evidence, otherwise improper, is admitted to contradict improper evidence introduced by the other party *(1 Wigmore 304-309).*

Direct and circumstantial evidence

(1) Direct evidence is that which proves the fact in dispute without the aid of any inference or presumption.

(2) Circumstantial evidence is the proof of facts from which, taken collectively, the existence of the particular fact in dispute may be inferred as a necessary or probable consequence.

(3) "Circumstantial evidence is sufficient for conviction if: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt." In this case, it is beyond doubt that all the circumstances taken together point to the singular conclusion that appellant Solano, to the exclusion of all others, committed the crime. As found by the trial court and affirmed by the appellate court, the victim was last seen in the presence of the appellant Solano. Edwin Jr. saw appellant Solano chasing the victim. Nestor also saw appellant Solano dragging the motionless body of "AAA." The body of the victim was eventually found buried in the mud near the place where she was last seen with Solano. Solano admitted holding a grudge against the family of "AAA" because he believes that a relative of "AAA" had raped his sister. The autopsy report showed that "AAA" was raped and strangled. Likewise, Solano could not ascribe any ill-motive on the part of prosecution witnesses Edwin Jr., Edwin Sr. and Nestor whom he even considered as friends *(People vs. Solano, Jr., GR No. 199871, 06/02/2014).*

(4) Although based on the evidence adduced by both parties, no direct evidence points to Almojuela as the one who stabbed Quejong. A finding of guilt is still possible despite the absence of direct evidence. Conviction based on circumstantial evidence may result if sufficient circumstances, proven and taken together, create an unbroken chain leading to the reasonable conclusion that the accused, to the exclusion of all others, was the author of the crime *(Almojuela vs. People, GR No. 183202, 06/02/2014).*

(5) Under the Doctrine of Independently Relevant Statement, if the purpose of placing the statement on the record is merely to establish the fact that the statement, or the tenor of such statement, was made. Regardless of the truth or falsity of a statement, when what is relevant is the fact that such statement has been made, the hearsay rule does not apply and the statement may be shown. Thus, the statement of an NBI Agent that a witness confided to him that the latter heard the accused in a murder case tell the other suspect

that "ayoko nang abutin pa ng bukas yang si [victim]", while they were armed with firearms and boarding a car, is independently relevant and proves what the witness heard, and not the truthfulness or falsity of the statement.

Conviction based on circumstantial evidence can be upheld provided that the circumstances proven constitute an unbroken chain which leads to one fair and reasonable conclusion that points to the accused, to the exclusion of all others, as the guilty person. Thus, the court may convict the accused in a murder case on the basis of the (1) independently relevant statement of the NBI Agent that a witness heard the accused utter statements as to the killing of the victim, (2) the getaway vehicle was properly identified by the previous owner, (3) the statement of the medico-legal officer that high-powered firearms were used in the killing of the victim, and (4) the escape from detention of the accused *(Espineli vs. People, GR No. 179535, 06/09/2014).*

(6) Circumstantial evidence is sufficient to sustain a conviction if (i) there is more than one circumstance; (ii) the facts from which the inference is derived are proven; and (iii) the combination of all circumstances is such as to produce conviction beyond reasonable doubt. While no prosecution witness has actually seen the commission of the crime, it has been settled that direct evidence of the crime is not the only matrix from which a trial court may draw its conclusion and finding of guilt. The lack of direct evidence does not ipso facto bar the finding of guilt against the appellant. As long as the prosecution establishes accused's participation in the crime through credible and sufficient circumstantial evidence that leads to the inescapable conclusion that he committed the imputed crime, the latter should be convicted *(People v. Consorte, GR No. 194068, 07092014).*

(7) Circumstantial evidence is that evidence which proves a fact or series of facts from which the facts in issue may be established by inference. It consists of proof of collateral facts and circumstances from which the existence of the main fact may be inferred according to reason and common experience *(People v. Estonilo, GR No. 201565, 10/13/2014).*

(8) A driver who is in-charge for the delivery of diesel to a client shall be liable for qualified theft when he fails to return the vehicle to the office and the product itself was not delivered to the client. Circumstantial evidence, as an exception, may prove the guilt of the accused when there are multiple circumstances which were given *(Carpizo vs. People, GR No. 209386, 12/08/2014).*

(9) To sustain a conviction based on circumstantial evidence, it is essential that the circumstantial evidence presented must constitute an unbroken chain which leads one to a fair and reasonable conclusion pointing to the accused, to the exclusion of the others, as the guilty person. The circumstantial evidence must exclude the possibility that some other person has committed the crime. Unfortunately, in the case at bar, the Supreme Court finds that the prosecution failed to present sufficient circumstantial evidence to convict the Zabala of the offense charged. We find that the pieces of evidence presented before the trial court fail to provide a sufficient combination of circumstances, as to produce a conviction beyond reasonable doubt *(Zabala v. People, GR No. 210760, 01/26/2015).*

(10) The prosecution has the task of establishing the guilt of the accused, relying on the strength of its own evidence, and not banking on the weakness of the defense of an accused *(Macayan, Jr. vs. People, GR No. 175842, 03/18/2015),*

Positive and negative evidence

(1) Testimony is positive when the witness affirms that a fact did or did not exist; and it is negative when he says that he did not see or know of the factual occurrence *(Tanala vs. NLRC, 252 SCRA 314).* Positive evidence is entitled to greater weight, the reason being that he who denies a certain fact may not remember exactly the circumstances on which he bases his denial *(People vs. Mendoza, 236 SCRA 666).*

Competent and credible evidence

(1) Competent evidence is one that is not excluded by law or the rules. In the law of evidence, competency means the presence of those characteristics, or the absence of those disabilities, which render a witness legally fit and qualified to give testimony in a court of justice; which is applied, in the same sense, to documents or other written evidence *(Black's Law Dictionary)*. Exclusionary rule makes evidence illegally obtained as inadmissible in evidence, hence, not competent.

(2) A witness may be competent, and yet give incredible testimony; he may be incompetent, and yet his evidence, if received, be perfectly credible.

(3) Trial courts may allow a person to testify as a witness upon a given matter because he is competent, but may thereafter decide whether to believe or not to believe his testimony. Credibility depends on the appreciation of his testimony and arises from the brief conclusion of the court that said witness is telling the truth *(Gonzales vs. CA, 90 SCRA 183)*.

Competent evidence	Credible evidence
Competency is a question which arises before considering the evidence given by the witness;	Credibility concerns the degree of credit to be given to his testimony;
Denotes the personal qualification of the witness	Denotes the veracity of the testimony

Burden of Proof and Burden of Evidence

(1) Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law *(Sec. 1, Rule 131)*.

(2) The presumption of regularity obtains only when nothing in the records suggests that the law enforcers involved deviated from the standard conduct of official duty as provided for in the law. But where the official act in question is irregular on its face, an adverse presumption arises as a matter of course. Thus, when it is clear that the police officers were remiss in showing that they preserved the chain of custody when they failed to present the testimony of the inspector who had the only keys to the evidence locker where the sachet of shabu was kept, the presumption of regularity shall not apply *(People v. Abetong, GR No. 209785, 06/04/2014)*.

(3) It is a settled rule that, as in other civil cases, the burden of proof rests upon the party who, as determined by the pleadings or the nature of the case, asserts an affirmative issue. Contentions must be proved by competent evidence and reliance must be had on the strength of the party's own evidence and not upon the weakness of the opponent's defense. This principle holds true especially when the latter has had no opportunity to present evidence because of a default order, as in the present case. The petitioner is not automatically entitled to the relief prayed for. The pieces of documents presented by BDO are not only self-serving but are not supported by sufficient and credible evidence. BDO failed to meet its burden of proving its claims by preponderance of evidence *(Banco de Oro Unibank, Inc. v. Sps. Locsin, GR No. 190445, 07/23/2014)*.

(4) This Court stress that the presumption of regularity in the performance of official duty obtains only when there is no deviation from the regular performance of duty. Where the official act in question is irregular on its face, no presumption of regularity can arise. The presumption obtains only where nothing in the records is suggestive of the fact that the law enforcers involved deviated from the standard conduct of official duty as provided for

in the law. This Court also find it highly unusual that the police would allow a civilian walk-in informant like Armando to transact with Casabuena on his own *(People vs. Casabuena, GR No. 11/19/2014)*,

(5) By law, a notarial document is entitled to full faith and credit upon its face. It enjoys the presumption of regularity and is a prima facie evidence of the facts stated therein – which may only be overcome by evidence that is clear, convincing and more than merely preponderant. Without such evidence, the presumption must be upheld. Thus, if the validity of a notarized deed of sale is being assailed by the heirs of the seller on the ground that the seller's signature was forged, the testimony of one of the heirs to that effect, absent any clear and convincing evidence to corroborate the claim will not be enough to overcome the presumption of validity *(Heirs of Sps. Liwagon and Dumalgan vs. Heirs of Sps. Liwagon, GR No. 193117, 11/26/2014)*,

(6) As a rule, forgery cannot be presumed and must be proved by clear, positive and convincing evidence, the burden of proof lies on the party alleging forgery. One who alleges forgery has the burden to establish his case by a preponderance of evidence, or evidence which is of greater weight or more convincing than that which is offered in opposition to it. The fact of forgery can only be established by a comparison between the alleged forged signature and the authentic and genuine signature of the person whose signature is theorized to have been forged *(Gepulle-Garbo v. Sps. Garabato, GR No. 200013, 01/14/2015)*.

Burden of proof	Burden of evidence
Denotes the duty of establishing the truth of a given proposition or issue by such quantum of evidence as the law demands in the case in which the issue arises, whether civil or criminal.	Means the necessity of going forward with the evidence to meet the prima facie case created against him.
It remains with the party alleging facts and never shifts to the other party. He who alleges the affirmative of the issue has the burden of proof, and the same never parts.	It shifts from side to side as the trial of the case progresses and evidence is introduced by the respective parties.

Presumptions

(1) Presumptions are species of evidence which may prove certain issues in dispute. Presumptions are either conclusive or disputable.

(2) A conclusive presumption is an inference which the law makes so peremptory that it will not allow it to be overturned by a contrary proof however strong. It is an artificially compelling force which requires the trier of facts to find such fact as conclusively presumed and which renders evidence to the contrary inadmissible. It is sometimes referred to as irrebuttable presumption.

(3) A disputable presumption is an inference as to the existence of fact not actually known which arises from its usual connection with another fact is known, which may be overcome by contrary proof. Between a proven fact and a presumption *pro tanto*, the former stands and the latter falls *(Ledesma vs. Realubin, 8 SCRA 608)*.

(4) The presumption of regularity in the performance of official duty obtains only when there I no deviation from ther regular performance of duty. Where the official act in question is irregular on its face, no presumption of regularity can arise *(People vs. Casabueno, GR No. 17382 [2008])*.

(5) When thre is gross disregard of the procedural safeugards set forth in RA 9165, serious uncertainty is generated as to the identity of the seized items that the prosecution presented in evidence. Such doubt cannot be remedied by merely invoking the presumption of regularity in the performance of official duties *(People vs. Lagahit, GR No. 200877 [2014])*.

(6) There is a disputable presumption that things have happened according to the ordinary course of nature and the ordinary habits of life. All of the foregoing evidence, that a person with typical Filipino features is abandoned in Catholic Church in a municipality where the population of the Philippines is overwhelmingly Filipinos such that there would be more than a 99% chance that a child born in the province would be a Filipino, would indicate more than ample probability if not statistical certainty, that petitioner's parents are Filipinos. That probability and the evidence on which it is based are admissible under Rule 128, Section 4 of the Revised Rules on Evidence *(Poe-Llamanzares v. COMELEC, G.R. No. 221697 [2016])*.

(7) The legal concept of ***sub silencio*** finds basis in Rule 131, Section 3(o) of the Revised Rules of Court:

> Sec. 3. *Disputable presumptions*. - The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:
>
> xx xx
>
> (o) That all the matters within an issue raised in a case were laid before the court and passed upon by it; and in like manner that all matters within an issue raised in a dispute submitted for arbitration were laid before the arbitrators and passed upon by them[.]

So even if the ruling of the court is silent as to a particular matter, for as long as said matter is within an issue raised in the case, it can be presumed, subject to evidence to the contrary, that the matter in question was already laid before the court and passed upon by it. However, *sub silencio* does not apply to the issue of forum shopping in this case. Although Semirara Mining had repeatedly raised the issue of forum shopping at various stages of the case and before different courts, it was not directly addressed by any of the courts either because it was immaterial and irrelevant to the matter at hand or it was still premature to resolve without the parties presenting evidence on the same *(HGL Development Corporation vs. Judge Penuela, GR No. 181353, 06/06/2016)*.

(8) The presumption of regularity in the performance of official duties is an aid to the effective and unhampered administration of government functions. Without such benefit, every official action could be negated with minimal effort from litigants, irrespective of merit or sufficiency of evidence to support such challenge. To this end, our body of jurisprudence has been consistent in requiring nothing short of clear and convincing evidence to the contrary to overthrow such presumption *(Yap vs. Lagtapon, GR No. 196347, 01/23/2017)*.

(9) The presumption that a holder of a Torrens title is an innocent purchaser for value is disputable and may be overcome by contrary evidence. Once a *prima facie* case disputing this presumption is established, the adverse party cannot simply rely on the presumption of good faith and must put forward evidence that the property was acquired without notice of any defect in its title *(Sindophil, Inc. vs. Republic, GR No. 204594, 11/07/2018)*.

(10) The right of the accused to be presumed innocent until proven guilty is a constitutionally protected right. The burden lies with the prosecution to prove his guilt beyond reasonable doubt by establishing each and every element of the crime charged in the information as to warrant a finding of guilt for that crime or for any other crime necessarily included therein.

Here, reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the buy-bust team is fundamentally unsound because the lapses themselves are affirmative proofs of irregularity. The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused. Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.

In this case, the presumption of regularity cannot stand because of the buy-bust team's blatant disregard of the established procedures under Section 21 of RA 9165. What further militates against according the apprehending officers in this case the presumption of regularity is the fact that even the pertinent internal anti-drug operation procedures then in force were not followed.

The Court has ruled in *People v. Zheng Bai Hui48* that it will not presume to set an *a priori* basis on what detailed acts police authorities might credibly undertake and carry out in their entrapment operations.

However, given the police operational procedures and the fact that buy-bust is a planned operation, it strains credulity why the buy-bust team could not have ensured the presence of the required witnesses pursuant to Section 21 or at the very least marked, photographed and inventoried the seized items according to the procedures in its own operations manual.

A review of the facts of the case negates this presumption of regularity in the performance of official duties supposedly in favor of the arresting officers. The procedural lapses committed by the apprehending team resulted in glaring gaps in the chain of custody thereby casting doubt on whether the dangerous drugs allegedly seized from accused-appellant Christopher were the same drugs brought to the crime laboratory and eventually offered in court as evidence *(People vs. Ilagan, GR No. 227021, 12/05/2018)*.

Conclusive presumptions -- The following are instances of conclusive presumptions:

(a) Whenever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it:

(b) The tenant is not permitted to deny the title of his landlord at the time of the commencement of the relation of landlord and tenant between them *(Sec. 2, Rule 131)*.

Disputable presumptions ***(Juris tantum)*** -- The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence *(Sec. 3, Rule 131)*:

(a) That a person is innocent of crime or wrong;
(b) That an unlawful act was done with an unlawful intent;
(c) That a person intends the ordinary consequences of his voluntary act;
(d) That a person takes ordinary care of his concerns;
(e) That evidence willfully suppressed would be adverse if produced;
(f) That money paid by one to another was due to the latter;
(g) That a thing delivered by one to another belonged to the latter;
(h) That an obligation delivered up to the debtor has been paid;
(i) That prior rents or installments had been paid when a receipt for the later ones is produced;
(j) That a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act; otherwise, that things which a person possesses, or exercises acts of ownership over, are owned by him;

(k) That a person in possession of an order on himself for the payment of the money, or the delivery of anything, has paid the money or delivered the thing accordingly;
(1) That a person acting in a public office was regularly appointed or elected to it;
(m) That official duty has been regularly performed;
(n) That a court, or judge acting as such, whether in the Philippines or elsewhere, was acting in the lawful exercise of jurisdiction;
(o) That all the matters within an issue raised in a case were laid before the court and passed upon by it; and in like manner that all matters within an issue raised in a dispute submitted for arbitration were laid before the arbitrators and passed upon by them;
(p) That private transactions have been fair and regular;
(q) That the ordinary course of business has been followed;
(r) That there was a sufficient consideration for a contract;
(s) That a negotiable instrument was given or indorsed for a sufficient consideration;
(t) That an indorsement of a negotiable instrument was made before the instrument was overdue and at the place where the instrument is dated;
(u) That a writing is truly dated;
(v) That a letter duly directed and mailed was received in the regular course of the mail;
(w) That after an absence of seven years, it being unknown whether or not the absentee still lives, he is considered dead for all purposes, except for those of succession.

The absentee shall not be considered dead for the purpose of opening his succession till after an absence of ten years. If he disappeared after the age of seventy-five years, an absence of five years shall be sufficient in order that his succession may be opened.

The following shall be considered dead for all purposes including the division of the estate among the heirs:

(1) A person on board a vessel lost during a sea voyage, or an aircraft which is missing, who has not been heard of for four years since the loss of the vessel or aircraft;

(2) A member of the armed forces who has taken part in armed hostilities, and has been missing for four years;

(3) A person who has been in danger of death under other circumstances and whose existence has not been known for four years;

(4) If a married person has been absent for four consecutive years, the spouse present may contract a subsequent marriage if he or she has a well-founded belief that the absent spouse is already dead. In case of disappearance, where there is danger of death under the circumstances hereinabove provided, an absence of only two years shall be sufficient for the purpose of contracting a subsequent marriage. However, in any case, before marrying again, the spouse present must institute a summary proceeding as provided in the Family Code and in the rules for a declaration of presumptive death of the absentee, without prejudice to the effect of reappearance of the absent spouse.

(x) That acquiescence resulted from a belief that the thing acquiesced in was conformable to the law or fact;

(y) That things have happened according to the ordinary course of nature and the ordinary habits of life;

(z) That persons acting as copartners have entered into a contract of copartnership;

(aa) That a man and woman deporting themselves as husband and wife have entered into a lawful contract of marriage;

(bb) That property acquired by a man and a woman who are capacitated to marry each other and who live exclusively with each other as husband and wife without the benefit of marriage or under a void marriage, has been obtained by their joint efforts, work or industry.

(cc) That in cases of cohabitation by a man and a woman who are not capacitated to marry each other and who have acquired property through their actual joint contribution of money, property or industry, such contributions and their corresponding shares including joint deposits of money and evidences of credit are equal.

(dd) That if the marriage is terminated and the mother contracted another marriage within three hundred days after such termination of the former marriage, these rides shall govern in the absence of proof to the contrary:

(1) A child born before one hundred eighty days after the solemnization of the subsequent marriage is considered to have been conceived during the former marriage, provided it be born within three hundred days after the termination of the former marriage;

(2) A child born after one hundred eighty days following the celebration of the subsequent marriage is considered to have been conceived during such marriage, even though it be born within the three hundred days after the termination of the former marriage.

(ee) That a thing once proved to exist continues as long as is usual with things of that nature;

(ff) That the law has been obeyed;

(gg) That a printed or published book, purporting to be printed or published by public authority, was so printed or published;

(hh) That a printed or published book, purporting to contain reports of cases adjudged in tribunals of the country where the book is published, contains correct reports of such cases;

(ii) That a trustee or other person whose duty it was to convey real property to a particular person has actually conveyed it to him when such presumption is necessary to perfect the title of such person or his successor in interest;

(jj) That except for purposes of succession, when two persons perish in the same calamity, such as wreck, battle, or conflagration, and it is not shown who died first, and there are no particular circumstances from which it can be inferred, the survivorship is determined from the probabilities resulting from the strength and age of the sexes, according to the following rules:

1. If both were under the age of fifteen years, the older is deemed to have survived;
2. If both were above the age of sixty, the younger is deemed to have survived;
3. If one is under fifteen and the other above sixty, the former is deemed to have survived;
4. If both be over fifteen and under sixty, and the sex be different, the male is deemed to have survived; if the sex be the same, the older;
5. If one be under fifteen or over sixty, and the other between those ages, the latter is deemed to have survived.

(kk) That if there is a doubt, as between two or more persons who are called to succeed each other, as to which of them died first, whoever alleges the death of one prior to the other, shall prove the same; in the absence of proof, they shall be considered to have died at the same time.

Estoppel

(1) Estoppel is a doctrine that prevents a person from adopting an inconsistent position, attitude, or action if it will result iln injury to another. One who, by his acts, representations or admissions, or by his own silence when he ought to speak out, intentionally or through culpable negligence, induces another to believe certain facts to exist and such other rightfully relies and acts on such belief, can no longer deny the existence of such fact as it will prejudice the latter.31 The doctrine of estoppel is based upon the grounds of public policy, fair dealing, good faith and justice. It springs from equitable principles and the equities in the case. It is designed to aid the law in the administration of justice where, without its aid, injustice might result *(Sps. Loquellano vs. Hongkong and shanghai Banking corporation, GR No. 200553, 12/10/2018)*.

(2) As a rule, a party who deliberately adopts a certain theory upon which the case is tried and decided by the lower court will not be permitted to change said theory on appeal. It would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory, which it could have done had it been aware of it at the time of the hearing before the trial court. To permit Thelma to change her theory in this proceeding would not only be unfair to Ingrid, it would also offend the basic rules of fair play, justice, and due process. Thelma is thus estopped from arguing before the Court that Magdalena is not a recognized illegitimate child of Antonio after submitting before the trial court that she is one of Antonio's heirs *(Hilario vs. Miranda, GR No. 196499, 11/28/2018)*.

Liberal Construction of the Rules of Evidence

(1) Court litigations are primarily for the search of truth, and a liberal interpretation of the rules by which both parties are given the fullest opportunity to adduce proofs is the best way to ferret out the truth *(People vs. Ebias, 342 SCRA 675)*.

(2) Liberal interpretation means such equitable construction as will enlarge the letter of rule to accomplish its intended purpose, carry out its intent, or promote justice. It is that construction which expands the meaning of the rule to meet cases which are clearly within the spirit or reason thereof or which gives a rule its generally accepted meaning to the end that the most comprehensive application thereof may be accorded, without doing violence to any of its terms. In short, liberal construction means that the words should receive a fair and reasonable interpretation, so as to secure a just, speedy and inexpensive disposition of every action or proceeding *(Agpalo, Statutory Construction, p. 287 [1998])*.

(3) Fundamental is the rule that the provisions of the law and the rules concerning the manner and period of appeal are mandatory and jurisdictional requirements; hence, cannot simply be discounted under the guise of liberal construction. But even if we were to apply liberality as prayed for, it is not a magic word that once invoked will automatically be considered as a mitigating circumstance in favor of the party invoking it. There should be an effort on the part of the part invoking liberality to advance a reasonable or meritorious explanation for his/her failure to comply with the rules *(Zosa vs. Zosa, GR No. 196765, 09/19/2018)*.

(1) In the hierarchy of evidentiary values, the highest is proof beyond reasonable doubt, followed by clear and convincing evidence, preponderance of evidence, and substantial evidence, in that order *(Manalo vs. Roldan-Confessor, 215 SCRA 808; ERB vs. CA, 357 SCRA 30 [2001])*.

Proof beyond reasonable doubt – which is required for conviction of an accused in criminal case, means that which is the logical and inevitable result of the evidence on record, exclusive of any other consideration, of the moral certainty of the guilt of the accused or that degree of proof which produces conviction in an unprejudiced mind. Proof beyond reasonable doubt does not mean such degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required *(People vs. Bacalso, 191 SCRA 557 [1991])*.	**Preponderance of evidence** – which is the degree of evidence required in civil cases, means that which is of greater weight or more convincing than that which is offered in opposition to it. It is considered as synonymous with the terms "greater weight of evidence" or "greater weight of credible evidence." It means probably the truth. It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto *(Republic vs. CA, 204 SCRA 160 [1991])*.
Substantial evidence – is that which is required to reach a conclusion in administrative proceedings or to establish a fact before administrative e and quasi-judicial bodies. Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and its absence is not shown by stressing that there is contrary evidence on record, direct or circumstantial *(Velasquez vs. Nery, 211 SCRA 28 [1992])*. It means more than a scintilla but may be somewhat less than preponderance, even if other reasonable minds might conceivably opine otherwise *(Manalo vs. Roldan-Confessor, supra)*.	**Clear and convincing evidence** – refers to that measure or degree of proof which will produce in the mind of the trier of facts a firm belief or conviction as to the allegations sought to be established; it is more than preponderance but not to the extent of such moral certainty as is required beyond reasonable doubt as in criminal cases *(Black's Law Dictionary, 5th Ed., 1979)*. It is often said that to overcome a disputable presumption of law, clear and convincing evidence is required. For instance, to contradict the presumption of validity and regularity in favor of a notarial or public document, there must be evidence that is clear, convincing and more than preponderant *(Yturalde vs. Azurin, 28 SCRA 407 [1969])*. The presumption that law enforcers have regularly performed their duties requires that proof of frame-up, which can be made with ease, must be strong, clear and convincing *(People vs. Tranca, 235 SCRA 455 [1994])*. An accused who invokes self-defense must prove it by clear and convincing evidence *(People vs. Sazon, 189 SCRA 700 [1990])*.

(2) It has been held, time and again, that alibi, as a defense, is inherently weak and crumbles in light of positive identification by truthful witnesses. It should be noted that for alibi to prosper, it is not enough for the accused to prove that he was in another place when the

crime was committed. He must likewise prove that it was physically impossible for him to be present at the crime scene or its immediate vicinity at the time of its commission. As testified by Lujeco, he was at the public market of Don Carlos, Bukidnon. Undoubtedly, it was not impossible for him to be at the crime scene *(People vs. Lujeco, GR No. 198059, 04/07/2014).*

(3) In administrative proceedings, the quantum of proof required to establish a respondent's malfeasance is not proof beyond reasonable doubt but substantial evidence, i.e., that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion, is required. Faced with conflicting versions of complainant and respondent, the Court gives more weight to the allegations and testimony of the complainant and her witnesses who testified clearly and consistently before the Investigating Judge. In the instant case, the strongest corroborative evidence to support complainant Emilie's allegations was the exchange of text messages between her and respondent Pecaña regarding the dinner meeting. These text messages were admitted by respondent Pecaña *(Sison-Barias vs. Judge Rubia, AM No. RTJ-14-2388, 06/10/2014).*

(4) There is no reason to doubt Jerry and Mario's identification of the appellants considering that (1) Jerry was just six meters away from them; (2) the moon was bright and Jerry was familiar with all the accused as most of them are his relatives; and (3) Mario knows Jojo ever since he was small. Besides, time- tested is the rule that between the positive assertions of prosecution witnesses and the negative averments of the accused, the former undisputedly deserve more credence and are entitled to greater evidentiary weight. Anent the respective alibis interposed by appellants, suffice it to say that alibi cannot prevail over the positive identification of a credible witness *(People vs. Sumilhig, GR No. 178115, 07/28/2014),*

(5) In administrative cases against lawyers, the quantum of proof required is preponderance of evidence. When the complainant adduced preponderant evidence that his signature was indeed forged in an affidavit which the respondent notarized and submitted to the COMELEC, respondent should be held administratively liable for his action *(Sultan v. Atty. Macabanding, AC No. 7919, 10/08/2014).*

(6) The term "reasonable doubt" is not equivalent to the phrase "the act from which criminal responsibility may arise did not at all exist." Although both have the force of acquittal, the latter provides connotes that the accused have not committed the offense *(Daluraya v. Oliva, GR No. 210148, 12/08/2014).*

(7) Substantial evidence, which is more than a mere scintilla but is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, would suffice to hold one administratively liable. The standard of substantial evidence is satisfied when there is reasonable ground to believe that respondent is responsible for the misconduct complained of, even if such evidence might not be overwhelming or even preponderant. While substantial evidence does not necessarily import preponderance of evidence as is required in an ordinary civil case, or evidence beyond reasonable doubt as is required in criminal cases, it should be enough for a reasonable mind to support a conclusion *(Desierto vs. Epistola, GR No. 161425, 11/23/2016).*

(8) The preponderance of evidence, the rule that is applicable in civil cases, is also known as the *greater weight* of evidence. There is a preponderance of evidence when the trier of facts is led to find that the existence of the contested fact is more probable than its nonexistence. In short, the rule requires the consideration of all the facts and circumstances of the cases, regardless of whether they are object, documentary, or testimonial *(Tabuada vs. Tabuada, GR No. 196510, 09/12/2018).*

(9) **2003 Bar**: Distinguish preponderance of evidence from substantial evidence. (4%)
Answer: Preponderance of evidence means that the evidence as a whole adduced by one side is superior to that of the other. This is applicable in civil cases *(Sec. 1, Rule 133; Municipality of Moncada vs. Cajuigan, 21 Phil. 184 [1912]).*

Substantial evidence is that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. This is applicable in cases filed before administrative or quasi-judicial bodies *(Sec. 5, Rule 133)*.

B. JUDICIAL NOTICE AND JUDICIAL ADMISSIONS

What Need Not be Proved *(Rule 129)*

Matters of Judicial Notice	
Mandatory	Discretionary
A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of the legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions *(Sec. 1, Rule 129)*.	A court may take judicial notice of matters which are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions *(Sec. 2, Rule 129)*.
Judicial Admissions -- An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made *(Sec. 4, Rule 129)*. (1) Judicial admissions are those so made in the pleadings filed or in the progress of a trial *(Jones on Evidence, Sec. 894)*. (2) Judicial admissions are conclusive upon the party making them, while extrajudicial admissions or other admissions are, as a rule, and where the elements of estoppels are not present, disputable. (3) Judicial admissions may be verbal or those verbally made in the course of the trial or they may be written, such as those stated in a pleading. They may be express or implied, implied admissions by a defendant of material facts alleged in a complaint include (a) keeping silent on such material facts, (b) denying such material facts without setting forth the matters upon which he relies to support his denial, and (c) asserting lack of knowledge or information of the truth of the material allegations when the same is plainly and necessarily within the knowledge of defendant.	
Effect of judicial admissions - Under the Rules, a judicial admission cannot be contradicted unless previously shown to have been made thru palpable mistake or that no such admission was made. An admission in a pleading on which a party goes to trial is conclusive against him	**How judicial admissions may be contradicted** - Judicial admissions can be contradicted: (1) when it is shown that the admission was made through palpable mistake; or (2) when it is shown that no such admission was in fact made. These exceptions may negate the admission. But

unless the court in its reasonable discretion allows the pleader to withdraw, explain or modify it if it appears to have been made by improvidence or mistake or that no such admission was made.	before the court may allow a party to relieve him of the effects of admissions or to withdraw therefrom, he has to show, by proper motion, justifiable reason or palpable mistake *(Sun Brothers Appliances, Inc. vs. Caluntad, 16 SCRA 895).*

(1) Judicial notice is not judicial knowledge. The mere personal knowledge of the judge is not the judicial knowledge of the court, and he is not authorized to make his individual knowledge of a fact, not generally or professionally know, the basis of his action. Judicial cognizance is taken only of those matters which are "commonly" known *(State Prosecutors vs. Muro, AM No. RTJ-92-876 [1994])*.

(2) Municipal trial courts are required to take judicial notice of the ordinances of the municipality or city wherein they sit. Regional Trial courts must take judicial notice of such ordinance only:

(a) When required to do so by statute, e.g. in Manila as required by the city charter *(City of Manila vs. Garcia, GR No. L-26053 [1967])*;

(b) In a case on appeal before them and wherein the inferior court took judicial notice or an ordinance involved in said case *(US vs. Blanco, GR No. 12435 [1917]; US vs. Hernandez, 31 Phil. 342)*.

(3) Courts are not authorized to take judicial notice of the contents or records of other cases even if both cases may have been tried or are pending before the same judge *(People vs. Arroyo, GR No. L-17885 [1965])*.

Exceptions: In the absence of objection, and as a matter of convenience to all parties, a court may properly treat all or any part of the original record of a case filed in its archives as read into the record of a case pending before it, when:

(a) With the knowledge of the opposing party, reference is made to it for that purpose, by name and number or in some other manner by which it is sufficiently designated; or

(b) The original record of the former case or any part of it, is actually withdrawn from the archives by the court's direction, at the request or with the consent of the parties, and admitted as a part of the record of the case then pending *(US v Claveria, GR No. 9282 [915])*.

Courts may also take judicial notice of proceedings in other causes because of their:

(a) Close connection with the matter in controversy. Ex: In a separate civil action against the administrator of an estate arising from an appeal against the report of the committee on claims appointed in the administration proceedings of the said estate, the court took judicial notice of the record of the administration proceedings to determine whether or not the appeal was taken on time,

(b) To determine whether or not the case pending is a moot one or whether or not a previous ruling is applicable in the case under consideration.

(c) The other case had been decided by the same court, involving the same subject matter, with the same cause of action, and was between the same parties (which was not denied), and constituted *res judicata* on the current cause before the court *(Tiburcio vs. PHHC, G.R. No. L-13479, [1959])*.

(4) The Management Contract entered into by petitioner and the PPA is clearly not among the matters which the courts can take judicial notice of. It cannot be considered an official act of the executive department. The PPA was only performing a proprietary function when it entered into a Management Contract with petitioner. As such, judicial notice cannot be applied *(Asian Terminals v. Malayan Insurance, G.R. No. 171406 [2011])*.

(5) The RTC declared that the discrepancy arose from the fact that Barrio Catmon was previously part of Barrio Tinajeros. The RTC has authority to declare so because this is a

matter subject of mandatory judicial notice. Geographical divisions are among matters that courts should take judicial notice of *(BE San Diego, Inc. vs. CA, GR No. 159230 [2010])*.

(6) Courts cannot take judicial notice that vehicular accidents cause whiplash injuries *(Dela Llana vs. Blong, GR No. 182356 [2013])*.

(7) The classification of the land is obviously essential to the valuation of tha property. The parties should thus have been given the opportunity to present evidence on the nature of property before the lower court took judicial notice of the commercial nature of a portion of the subject landholdings *(LBP vs. Honecomb Farms, GR No. 166259 [2012])*.

(8) The allegation of the assessed value of the realty must be found in the complaint, if the action (other than forcible entry or unlawful detainer) involves title to or possession of the realty, including quieting of title of the realty. If the assessed value is not found in the complaint, the action should be dismissed for lack of jurisdiction because the trial court is not thereby afforded the means of determining from the allegations of the basic pleading whether jurisdiction over the subject matter of the action pertains to it or to another court. Courts cannot take judicial notice of the assessed or market value of the realty *(Penta Pacific Realty Corporation v. Ley Corporation [2014])*.

(9) Rule 129, Section 4 of the Revised Rules of Court provides:

> Section 4. Judicial admissions. An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

Judicial admissions may be made by a party in his or her pleadings, during the trial, through verbal or written manifestations, or in other stages of the judicial proceeding. They are binding such that no matter how much the party rationalizes it, the party making the admission cannot contradict himself or herself unless it is shown that the admission was made through a palpable mistake *(Metro Rail Transit Development Corporation vs. Gammon Philippines, Inc., GR no. 200401, 01/17/2018)*.

Judicial Notice of Foreign Laws, Law of Nations and Municipal Ordinance

(1) The question as to what are the laws of a foreign state is one of fact, not of law. Foreign laws may not be taken judicial notice of and have to be proved like any other fact *(In re Estate of Johnson, 39 Phil. 156)*, except where said laws are within the actual knowledge of the court such as when they are well and generally known or they have been actually ruled upon in other cases before it and none of the parties claim otherwise *(Phil. Commercial & Industrial Bank vs. Escolin, L-27936, 03/29/1974)*.

(2) To prove the foreign law, the requirements of Secs. 24 and 25, Rule 132 must be complied with, that is, by an official publication or by a duly attested and authenticated copy thereof. The provisions of the foreign law may also be the subject of judicial admission under Sec. 4, Rule 129. Absent any of the foregoing evidence or admission, the foreign law is presumed to the same as that in the Philippines, under the so-called ***doctrine of processual presumption*** *(Collector of Internal Revenue vs. Fisher, L-11622, 01/28/1961)*.

(3) When a foreign law is part of a published treatise, periodical or pamphlet and the writer is recognized in his profession or calling as expert in the subject, the court may take judicial notice of the treatise containing the foreign law *(Sec. 46, Rule 130)*.

(4) When a foreign law refers to the law of nations, said law is subject to mandatory judicial notice under Sec. 1, Rule 129. Under the Philippine Constitution, the Philippines adopts the generally accepted principles of international law as part of the law of the land *(Sec. 2, Art. II)*. These are therefore technically in the nature of local laws and, hence, are subject to a mandatory judicial notice.

(5) MTCs must take judicial notice of municipal ordinances in force in the municipality in which they sit *(US vs. Blanco, 37 Phil. 126)*. RTCs should also take judicial notice of municipal ordinances in force in the municipalities within their jurisdiction but only when so required by law. For instance, the charter of City of Manila requires all courts sitting therein to take judicial notice of all ordinances passed by the city council *(City of Manila vs. Garcia, 19 SCRA 413)*. Such court must take judicial notice also of municipal ordinances on appeal to it from the inferior court in which the latter took judicial notice *(US vs. Hernandez, 31 Phil. 542)*. The Court of Appeals may take judicial notice of municipal ordinances because nothing in the Rules prohibits it from taking cognizance of an ordinance which is capable of unquestionable demonstration *(Gallego vs. People, 8 SCRA 813)*.

(6) **Doctrine of Presumed Identity approach of Processual Presumption.** It is hornbook principle that the party invoking the applicable of a foreign law has the burden of proving the law. In international law, the party who wants to have a foreign law applied to a dispute or case has the burden of proving the foreign law. The foreign laws are treated as a question of fact to be properly pleaded and proved as the judge or labor arbiter cannot take judicial notice of foreign law. He is presumed to know only domestic or forum law. Where a foreign law is not pleaded or, even if pleaded, is not proved, the presumption is that foreign law is the same as ours *(ATCI Overseas Corporation v. Echin [2010])*.

(7) As held in *Garcia v. Recio, 418 Phil. 723-735 [2001]*, divorce obtained abroad is proven bydivorce decree itself. Indeed the best evidence of a judgment is the judgment itself. The decree purports to be a written act or record of an act of an official body or tribunal of a foreign country. It is well-settled in our jurisdiction that our courts take judicial notice of foreign laws. Like any other facts, they must be alleged and proved. The power of judicial notice must be exercised with caution, and every reasonable doubt upon the subject should be resolved in the negative *(Enriquez Vda. De Catalan v. Catalan-Lee [2012])*.

(8) It is well settled that foreign laws do not prove themselves in our jurisdiction and our courts are not authorized to take judicial notice of them. To prove a foreign law, the party invoking it must present a copy thereof and comply with Sections 24 and 25 of Rule 132 of the Revised Rules of Court. Under the rules of private international law, a foreign law must be properly pleaded and proved as a fact. In the absence of pleading and proof, the laws of the foreign country or state will be presumed to be the same as our local or domestic law. This is known as processual presumption. While the foreign law was properly pleaded in the case at bar, it was, however, proven not in the manner provided by Section 24, Rule 132 of the Revised Rules of Court. While a photocopy of the foreign statute relied upon by the court a quo to relieve the common carrier from liability, was presented as evidence during the trial, the same however was not accompanied by the required attestation and certification. *(Nedlloyd Lijnen BV Rotterdam and the East Asiatic Co., Ltd. vs. Glow Laks Enterprises, Ltd., GR No. 156330, 11/19/2014)*.

C. RULES OF ADMISSIBILITY *(Rule 130)*

Object (Real) Evidence

Nature of Object Evidence

(1) Objects as evidence are those addressed to the senses of the court. When an object is relevant to the fact in issue, it may be exhibited to, examined or viewed by the court *(Sec. 1, Rule 130)*.

(2) Real evidence refers to the thing or fact or material or corporate object or human body parts thereof, which can be viewed or inspected by the court and which a party may present in evidence. Real evidence is also called autoptic preference, which is inspection by the court of a thing itself and its conditions, to enable the court to effectively exercise its judicial power of receiving and weighing the evidence *(Tiglao vs. Comelec, 34 SCRA 456)*. It is knowledge acquired by the court from inspection or by direct self-perception or autopsy of the evidence *(Calde vs. CA, 233 SCRA 376)*.

(3) The evidence of one's own senses, furnishes the strongest probability and indeed the only perfect and indubitable certainty of the existence of any sensible fact. Physical evidence is evidence of the highest order. It speaks more eloquently than a hundred witnesses.

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Requisites for Admissibility

(1) The requisites for admissibility of object (real) evidence are as follows:
- (a) The object must be relevant to the fact in issue – There must be a logical connection between the evidence and the point at which it is offered;
- (b) The object must be competent – It should not be excluded by law or the rules;
- (c) The object must be authenticated before it is admitted – Authentication normally consists of showing that the object is the object that was involved in the underlying event;
- (d) The authentication must be made by a competent witness; and
- (e) The object must be formally offered in evidence.

Categories of Object Evidence

(1) For purposes of authentication of an object or for laying the foundation for the exhibit, object evidence may be classified into the following:
   (a) Object that have readily identifiable marks (unique objects);
   (b) Objects that are made readily identifiable (objects made unique); and
   (c) Objects with no identifying marks and cannot be marked (non-unique objects).

(2) **2005 Bar**: May a private document be offered and admitted in evidence both as documentary evidence and as object evidence? Explain.

Answer: Yes. A private document may be offered and admitted in evidence both as documentary and as object evidence. A document can also be considered as an object for purposes of the case. Objects as evidence are those addressed to the senses of the court *(Sec. 1, Rule 130)*. Documentary evidence consists of writings or any material containing letters, words, numbers, figures, symbols, or other modes of written expressions offered as proof of their contents *(Sec. 2, Rule 130)*. A tombstone may be offered in evidence to prove what is written on it and if the same tombstone is found on the tomb, then it is object to evidence. It can be considered as both documentary and object evidence.

Demonstrative Evidence

(1) Demonstrative evidence is tangible evidence that merely illustrates a matter of importance in the litigation. Common types of demonstrative evidence include photographs, motion pictures and recordings, x-ray pictures, scientific tests, demonstrations and experiments, maps, diagrams, models, summaries, and other materials created especially for the litigation.
(2) In contrast to demonstrative evidence, object evidence is a tangible object that played some actual role in the matter that gave rise to the litigation. For instance, the knife used in the altercation that forms the basis for the lawsuit. The distinction between object and demonstrative evidence is important because it helps determine the standards that the evidence must meet to be admissible. In particular, the foundation that must be laid for object evidence is generally somewhat different from that needed for demonstrative evidence.
(3) The foundation for demonstrative evidence does not involve showing that the object was the one used in the underlying event. Rather, the foundation generally involves showing that the demonstrative object fairly represents or illustrates what it is alleged to illustrate.

View of an Object or Scene

(1) Objects as evidence are those addressed to the senses of the court. When an object is relevant to the fact in issue, it may be exhibited to, examined or **viewed** by the court *(Sec. 1, Rule 130)*.
(2) The inspection may be made inside or outside the courtroom. An inspection or view outside the courtroom should be made in the presence of the parties or at least with previous notice to them. It is error for the judge for example, to go alone to the land in question, or to the place where the crime was committed and take a view without the previous knowledge of the parties. Such inspection or view is part of the trial since evidence is thereby being received *(Moran, Comments on the Rules of Court, Vols. 5, 78-79)*.

(1) The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(a) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the DOJ, and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

(b) Within 24 hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(c) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within 24 hours after the receipt of the subject item/s: Provided, that when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: Provided, however, that a final certification shall be issued on the completed forensic laboratory examination on the same within the next 24 hours;

(d) After the filing of the criminal case, the Court shall, within 72 hours, conduct an ocular inspection of the confiscated, seized and/or surrendered dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals, including the instruments/ paraphernalia and/or laboratory equipment, and through the PDEA shall within 24 hours thereafter proceed with the destruction or burning of the same, in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the DOJ, civil society groups and any elected public official. The Board shall draw up the guidelines on the manner of proper disposition and destruction of such item/s which shall be borne by the offender: Provided, that those item/s of unlawful commerce, as determined by the Board, shall be donated, used or recycled for legitimate purposes: Provided further, that a representative sample, duly weighed and recorded is retained;

(e) The Board shall then issue a sworn certification as to the fact of destruction or burning of the subject item/s which, together with the representative sample/s in the custody of the PDEA, shall be submitted to the court having jurisdiction over the case. In all instances, the representative sample/s shall be kept to a minimum quantity as determined by the Board; and

(f) The alleged offender or his/her representative or counsel shall be allowed to personally observe all of the above proceedings and his/her presence shall not constitute an admission of guilt. In case the said offender or accused refuses or fails to appoint a representative after due notice in writing to the accused or his/her counsel within 71 hours before the actual burning or destruction or the evidence in question, the SOJ shall appoint a member of the PAO to represent the former;

(g) After the promulgation and judgment in the criminal case wherein the representative sample/s was presented as evidence in court, the trial prosecutor shall inform the Board of the final termination of the case and, in turn, shall request the court for leave to turn over the said representative sample/s to the PDEA for proper disposition and destruction within 24 hours from receipt of the same.

(2) **Vallejo standards**: In assessing the probative value of DNA evidence, courts should consider the following:

(a) How the samples were collected
(b) How they were handled
(c) The possibility of contamination of the samples
(d) The procedure followed in analyzing the samples, whether the proper standards and procedures were followed
(e) Qualification of the analyst who conducted the tests *(People vs. Vallejo, GR No. 144656 [2002])*.

(3) Chain of custody is a method of authenticating evidence which requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence *(Lopez vs. People, GR No. 172953 [2008])*.

(4) Non-compliance with Sec. 21 of RA 9165, particularly the making of the inventory and their photographing of the drugs confiscated will not render the drugs inadmissible in evidence. The issue if there is non-compliance with the law is not admissibility, but of weight – evidentiary merit or probative value *(People vs. Del Monte, GR No. 179940 [2008])*.

(5) Non-compliance with the Chain of Custody Rule under justifiable grounds, as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items. What is essential is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused *(People vs. Prajes, GR No. 206770, 04/02/2014)*.

(6) Crucial in proving chain of custody is the marking of the seized drugs or other related items immediately after they are seized from the accused. Marking after seizure is the starting point in the custodial link; hence, it is vital that the seized contraband be immediately marked because succeeding handlers of the specimens will use the markings as reference. The records in the present case do not show that the police marked the seized plastic sachet immediately upon confiscation, or at the police station. Notably, the members of the buy-bust team did not also mention that they marked the seized plastic sachet in their Joint Affidavit of Arrest *(People vs. Sabdula, GR No. 184758, 04/21/2014)*.

(7) The chain of custody rule requires that the admission of an exhibit must be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. In the case at bar, the failure of the prosecution to offer any justification on why the procedure was not complied with and the failure of Inspector Lorilla to testify are fatal to the prosecution's case *(People vs. Abetong, GR No. 204029, 06/04/2014)*.

(8) Chain of Custody Rule – Non-compliance with Section 21 of Article II of Republic Act (R.A.) No. 9165, particularly the making of the inventory and the photographing of the drugs confiscated and/or seized, will not render the drugs inadmissible in evidence.

Under Section 3 of Rule 128 of the Rules of Court, evidence is admissible when it is relevant to the issue and is not excluded by the law or these rules. For evidence to be inadmissible, there should be a law or rule which forbids its reception. If there is no such law or rule, the evidence must be admitted subject only to the evidentiary weight that will accorded it by the courts.

In this case, testimonial and documentary evidence show that the poseur-buyer, PO2 Aseboque, marked the seized illegal drug at the crime scene with his initials "REA". At the same place, he also prepared an Acknowledgment Receipt of the items seized from the accused-appellant whose refusal to sign was duly noted in the same document. The alleged discrepancy between the testimony of P02 Aseboque that he placed the marking REA on the seized item, the forensic chemist's report stating that the specimen was marked "R.E.A." and the absence of any such, description in the Spot Report of P02 Castillo did not cause a gap in the chain of custody *(People vs. Gamata, GR No. 205202, 06/09/2014).*

(9) In the prosecution of a case for sale of illegal drugs punishable under Section 5, Article II of Republic Act No. 9165, noncompliance with the procedure set forth in Section 21 of the law is not necessarily fatal as to render an accused's arrest illegal or the items confiscated from him inadmissible as evidence of his guilt, if, nonetheless, the integrity and evidentiary value of the confiscated items is preserved, there will yet be basis for the establishment of the guilt of the accused *(People vs. Bulotano, GR No. 190177, 06/11/2014).*

(10) The Court stresses that what Section 21 of the IRR of R.A. No. 9165 requires is "substantial" and not necessarily "perfect adherence," as long as it can be proven that the integrity and the evidentiary value of the seized items are preserved as the same would be utilized in the determination of the guilt or innocence of the accused *(People vs. Salvidar, GR No. 207664, 06/25/2014).*

(11) Corollarily, the prosecution's failure to comply with Section 21, Article II of R.A. No. 9165, and with the chain of custody requirement of this Act, compromised the identity of the item seized, leading to the failure to adequately prove the corpus delicti of the crime charged. Although the Court has recognized that minor deviations from the procedures under R.A. No. 9165 would not automatically exonerate an accused, the Court have also declared that when there is gross disregard of the procedural safeguards prescribed in the substantive law *(R.A. No. 9165),* serious uncertainty is generated about the identity of the seized items that the prosecution presented in evidence *(People vs. Edano, GR No. 188133, 07/07/2014).*

(12) The chain of custody requirement performs the function of ensuring that the integrity and evidentiary value of the seized items are preserved, so much so that unnecessary doubts as to the identity of the evidence are removed. To be admissible, the prosecution must show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into possession of the police officers and until it was tested in the laboratory to determine its composition up to the time it was offered in evidence. The facts in the case persuasively proved that the three plastic sachets of ephedrine presented in court were the same items seized from the Villarta and Cabiles during the buy-bust operation. The integrity and evidentiary value thereof were duly preserved *(People vs. Villarta, GR No. 205610, 07/30/2014).*

(13) A proviso was added in the implementing rules that "non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items *(People vs. Cerdon, GR No. 201111, 08/06/2014).*

(14) "Immediate confiscation" has no exact definition. Thus, in People v. Gum-Oyen, testimony that included the marking of the seized items at the police station and in the presence of the accused was sufficient in showing compliance with the rules on chain of custody. Marking upon immediate confiscation contemplates even marking at the nearest

police station or office of the apprehending team *(People vs. Balaquiot, GR No. 206366, 08/13/2014).*

(15) Mere possession of a prohibited drug constitutes prima facie evidence of knowledge or animus possidendi sufficient to convict an accused in the absence of any satisfactory explanation. Also, it is worthy to mention that failure to strictly comply with the prescribed procedures in the inventory of seized drugs does not render the arrest of the accused Bontuyan illegal or the item seized/confiscated from him inadmissible. The essential thing to consider is "the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused." Here, there was substantial compliance with the law and the integrity of the seized items from accused appellant was preserved *(People vs. Bontuyan, GR No. 206912, 09/10/2014).*

(16) Section 21 of R.A. No. 9165 deals with the procedure for the custody and disposition of confiscated, seized or surrendered dangerous drugs. As provided for in its Implementing Rules and pointed out by the Court in a long line of cases, non-compliance therewith does not invalidate the seizure or render the arrest of the accused illegal or the items seized from him as inadmissible as long as the integrity and evidentiary value of the seized items are preserved. This can be made if the prosecution will be successful in establishing an unbroken chain of custody of the seized item from the time of seizure/confiscation to receipt by the forensic laboratory to safekeeping up to presentation in court *(People vs. Adriano, GR No. 208169, 10/08/2014).*

(17) "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Record shows that while the identities of the seller and the buyer and the consummation of the transaction involving the sale of illegal drug have been proven by the prosecution, this Court, nonetheless, finds the prosecution evidence to be deficient for failure to adequately show the essential links in the chain of custody, particularly how the four sticks of handrolled marijuana cigarettes subject of the sale transaction came into the hands of PO3 Lawas, Jr. from the trusted informant, who was the designated poseur-buyer. Going to the crime of illegal possession of marijuana, the records do not contain any physical inventory report or photograph of the confiscated items. Even the lone prosecution witness never stated in his testimony that he or any member of the buy-bust team had conducted a physical inventory or taken pictures of the items. Although PO3 Lawas, Jr. testified that the seized drugs subject of the illegal possession case had been marked, nowhere can it be found that the marking thereof was done in the presence of Lagahit or any third-party representatives *(People vs. Lagahit, GR No. 200877, 11/12/2014).*

(18) Truly, objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of an objection. Without such objection, he cannot raise the question for the first time on appeal. *(People vs. Cabrera, GR No. 190175, 11/12/2014).*

(19) The most important factor is the preservation of the integrity and the evidentiary value of the seized items as they will be used to determine the guilt or innocence of the accused. As long as the evidentiary value and integrity of the illegal drug are properly preserved, strict compliance of the requisites under Section 21 of RA 9165 may be disregarded. Though there were deviations from the required procedure, i.e., making physical inventory and taking of photograph of the seized item, still, the integrity and evidentiary value of the dangerous drug seized from appellants were duly proven by the prosecution to have been properly preserved; its identity, quantity and quality remained untarnished. *(People vs. Datsgandawali, GR No. 193385, 12/01/2014).*

(20) Sebastian was charged of illegal sale of drugs. He argued that failure to mention the place where the three plastic sachets of shabu were marked constitutes a gap in the chain

of custody of evidence. The court ruled that even if there was no statement as to where the markings were made, what is important is that the seized specimen never left the custody of PO3 Bongon until he turned over the same to SPO1 Antonio and that thereafter, the chain of custody was shown to be unbroken. Indeed, the integrity and evidentiary value of the seized shabu is shown to have been properly preserved and the crucial links in the chain of custody unbroken *(People vs. Dela Cruz, GR No. 193670, 12/03/2014),*

(21) The fact that the apprehending team in this case did not strictly comply with the procedural requirements of Section 21(1), Article II of R.A. No. 9165 does not necessarily render appellants' arrest illegal or the items seized from them inadmissible in evidence. RA 9165 and its subsequent Implementing Rules and Regulations (IRR) do not require strict compliance as to the chain of custody rule. The Court has emphasized that what is essential is "the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused *(People vs. Pavia and Buendia, GR No. 202687, 01/14/2015).*

(22) Non-compliance with the above-mentioned requirements is not fatal. Non-compliance with Section 21 of the IRR does not make the items seized inadmissible. What is imperative is "the preservation of the integrity and the evidential value of the seized items as the same would be utilized in the determination of the guilt or innocence of the accused" *(Portuguez vs. People, GR No. 194499, 01/14/2015).*

(23) In this case, the chain of custody can be easily established through the following link: (1) PO1 Condez marked the seized four sachets handed to him by appellant with RCC 1 to RCC 4; (2) a request for laboratory examination of the seized items marked RCC 1 to RCC 4 was signed by Police Superintendent Glenn Dichosa Dela Torre; (3) the request and the marked items seized, which were personally delivered by PO1 Condez and PO2 Virtudazo, were received by the PNP Crime Laboratory; (4) Chemistry Report No. D-106-200235 confirmed that the marked items seized from appellant were methamphetamine hydrochloride; and (5) the marked items were offered in evidence.

Hence, it is clear that the integrity and the evidentiary value of the seized drugs were preserved. This Court, therefore, finds no reason to overturn the findings of the RTC that the drugs seized from appellant were the same ones presented during trial. Accordingly, it is but logical to conclude that the chain of custody of the illicit drugs seized from appellant remains unbroken, contrary to the assertions of appellant *(People vs. Minanga, GR No. 202837, 01/21/2015).*

(24) In the prosecution of illegal sale, what is essential is to prove that the transaction or sale actually took place, coupled with the presentation in court of evidence of the corpus delicti. The consummation of sale is perfected the moment the buyer receives the drug from the seller. In this case, the prosecution failed to prove that the four sachets which tested positive for shabu and eventually presented in court were the same ones confiscated by the police officers due to its non-marking at the place where the buy-bust operation was committed at the police station. This non- marking violated the measures defined under Section 21(1) of Republic Act No. 9165 and Section 21(a) of the Implementing Rules and Regulations (IRR) of Republic Act No. 9165 which are also known as the Rule on Chain of Custody *(People vs. Dacumay, GR No. 205889, 02/04/2015).*

(25) The initial link in the chain of custody starts with the seizure of the plastic sachets from appellant and their marking by the apprehending officer. "Marking after seizure is the starting point in the custodial link, thus it is vital that the seized contraband is immediately marked because succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the *corpus* of all other similar or related evidence from the time they are seized from the accused until they are disposed at the end of criminal proceedings, obviating switching, 'planting,' or contamination of evidence. A review of the records, however, reveals that the confiscated sachets subject of the illegal sale of *shabu* were not marked. PO2

Martirez, himself, admitted that he did not put any markings on the two plastic sachets that were handed to him by Borlagdan after the latter's purchase of the same from appellant. While he mentioned that the police investigator to whom he turned over the items wrote something down or made some initials thereon, he nevertheless could not remember who wrote the initials. And albeit later, PO2 Martirez identified the police investigator as SPO1 Desuasido, the latter, however, when called to the witness stand, did not testify that he made any markings on the said sachets or, at the very least, that he received the same from PO2 Martirez. His testimony merely focused on the fact that he prepared the affidavit of a certain Baltazar. Clearly, the absence of markings creates an uncertainty that the two sachets seized during the buy-bust operation were part of the five sachets submitted to the police crime laboratory. The prosecution's evidence failed to establish the marking of the two sachets of *shabu* subject of this case, which is the first link in the chain of custody and which would have shown that the shabu presented in evidence was the same specimen bought from appellant during the buy-bust operation. The lack of certainty therefore on a crucial element of the crime *i.e.,* the identity of the *corpus delicti,* warrants the reversal of the judgment of conviction *(People vs. Butial, GR No. 192785, 02/04/2015),*

(26) The Court of Appeals affirmed the decision of the RTC convicting the accused for illegal sale of dangerous drugs in violation of Section 5 or RA 9165. It is the contention of the accused that her conviction is not warranted because of the failure of the police officer to observe the procedure outlined in Section 21 of RA 9165 otherwise known as the chain of custody rule. The Supreme Court ruled that non-compliance with the procedure outlined therein does not make the conviction of the accused invalid. It can be easily understood from a cursory reading of the implementing rules that the crucial factor is the preservation of the integrity and the evidentiary value of the seized items since they will be used to determine the guilt or innocence of the accused *(Peole vs. Nepomuceno, GR No. 194999, 02/09/2015, J. Del Castillo).*

(27) Appellant questions the decision of the CA finding that the integrity and evidentiary value of the confiscated items had been safeguarded notwithstanding the Prosecution's failure to comply with the requirements prescribed under Sec. 21 of RA 9165. The SC ruled that for failure of the buy-bust team to observe the procedures laid down by Republic Act No. 9165 and its IRR, appellant should be acquitted. The marking of the seized drugs or other related items immediately upon seizure from the accused is crucial in proving the chain of custody because it is the starting point in the custodial link. The marking upon seizure serves a two-fold function, the first being to give to succeeding handlers of the specimens a reference, and the second being to separate the marked evidence from the corpus of all other similar or related evidence from the time of seizure from the accused until their disposition at the end of criminal proceedings, thereby obviating switching, "planting," or contamination of evidence. This requirement of marking as laid down by the law was not complied with *(People vs. Alagarme, GR No. 184789, 02/23/2015).*

(28) The break in chain of custody does not ipso facto render the evidence presented by the prosecution as inadmissible. There must be substantial and convincing proof from the defense for the Court to consider the inadmissibility of the evidence.

In drug cases, the chain of custody rule only calls for substantial compliance, hence, prosecution must establish the chain of custody to prove the guilt of the accused, otherwise, he must be exonerated *(People vs. Recto, GR No. 189296, 03/11/2015),*

(29) There were other indicia of non-conformity with the requirements. It is beyond dispute, for one, that no photograph was taken of the recovered items for documentation purposes. It was also not shown why, despite the requirement of the law itself, no representative from the media, from the DOJ, or any elective official was present to serve as a witness during the arrest. It is true that Sec. 21 of the IRR of R.A. No. 9165 only requires a substantial compliance with the requirements of markings and photographing instead of an absolute or literal compliance. Hence, an accused can still be held guilty

provided that a justifiable ground for excusing the non-compliance with the requirements has been satisfactorily established by the Prosecution.

Such justifiable ground is wanting here. The buy-bust team tendered no explanation for the non-compliance. They were required to render sufficient reasons for their non-compliance during the trial; otherwise, the persons they charged would be acquitted on the ground of reasonable doubt. Yet, they even seemed unaware that such requirements existed at all. The Court is aghast at their dismissive treatment of the requirements *(People vs. Recto, GR No. 189296, 03/11/2015).*

(30) The Court has ruled in *People vs. Enriquez*, that the links that must be established in the chain of custody in a buy-bust situation are: *first,* the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and ifourthi, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court *(People vs. Sapitula, GR No. 209212, 02/18/2016).*

(31) In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drugitself forms an integral part of the *corpus delicti* of the crime. Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and, hence, warrants an acquittal.

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. As part of the chain of custody procedure, the law requires, *inter alia,* that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. In this regard, case law recognizes that "marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team." Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.

The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: *(a)* if **prior** to the amendment of RA 9165 by RA 10640, a representative from the media *AND* the DOJ, and any elected public official; or *(b)* if **after** the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service *OR* the media. The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."

As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded "not merely as a procedural technicality but as a matter of substantive law." This is because "[t]he law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment."

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible. As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: *(a)* there is a justifiable ground for noncompliance;

and *(b)* the integrity and evidentiary value of the seized items are properly preserved. The foregoing is based on the saving clause found in Section 21 (a) Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640. It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses, and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.

Anent the witness requirement, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances. Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance. These considerations arise from the fact that police officers are ordinarily given sufficient time - beginning from the moment they have received the information about the activities of the accused until the time of his arrest - to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule *(People vs. Dela Cruz and Bautista, GR No. 225741, 12/05/2018)*.

(31) The Court finds the appeal meritorious and hereby acquits the appellant for failure of the prosecution to justify the arresting officers' noncompliance with the three-witness rule under Section 21 of RA 9165.

To secure a conviction for illegal sale of dangerous drugs under Section 5, Article II of RA 9165, it is necessary that the prosecution duly prove the identities of the buyer and the seller, the delivery of the drugs, and the payment in consideration thereof. On the other hand, in cases where anaccused is charged with illegal possession of dangerous drugs under Section 11, Article II of RA 9165, the prosecution must establish the following elements: "(a) the accnsed was in possession of dangerons drugs; (b) such possession was not authorized by law[;] and (c) the accused was freely and consciously aware of being in possession of dangerous drugs." In both cases, it is essential that the identity of the dangerous drug be established with moral certainty since the drug itself forms an integral part of the *corpus delicti* of the crime. Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug on account of the possibility of switching, "planting," or contamination of evidence, the prosecution must be able to show an unbroken chain of custody and account for each link in the chain from the moment the drugs are seized until its presentation in court as evidence of the crime.

RA 9165 requires that the marking, physical inventory, and taking of photograph of the seized items be conducted immediately after seizure and confiscation of the same. The said law further requires that the physical inventory and taking of photograph of the seized items be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if **prior** to the amendment of RA 9165 by RA 10640, 16 any elected public official, a representative from the media **AND** the Department of Justice (DOJ); 17 or (b) if **after** the amendment of RA 9165 by RA 10640, any elected public official and a representative from either the National Prosecution Service **OR** the media.

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In this case, since the buy-bust operation against appellant was conducted in 2012, or prior to the enactment of RA 10640 in 2014, the physical inventory and taking of photograph of the seized items must be witnessed by the following persons: (a) any elected public official; (b) a DOJ representative; and (c) a media representative. However, while SPO 1 De los Santos marked the seized items in the presence of *Kagawad* Cuesta

and *Kagawad* Disini, the prosecution failed to establish that the physical inventory and taking of photograph were made in the presence of the appellant or his representative, as well as representatives from the DOJ and media. In fact, the members of the buy-bust team deliberately did not invite members of the media to avoid leakage of the impending operation. Thus, it is clear that the arresting officers did not comply with the rule requiring the presence of representatives from both the DOJ and the media.

In view of the foregoing, the Court is constrained to acquit the appellant for failure of the prosecution to provide a justifiable reason for the non-compliance with the chain of custody rule thereby creating doubt as to the integrity and evidentiary value of the seized drugs *(People vs. Torio, GR No. 225780, 12/03/2018)*.

(32) As stated, Section 21 of RA 9165 requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same **immediately after seizure and confiscation**. The said inventory must be done **in the presence of the aforementioned required witnesses**, all of whom shall be required to sign the copies of the inventory and be given a copy thereof.

The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It is only when the same is not practicable that the IRR of RA 9165 allows the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. **In this connection, this also means that the three required witnesses should already be physically present at the time of the conduct of the physical inventory of the seized items which, as aforementioned, must be immediately done at the place of seizure and confiscation – a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity.** Verily, a buy-bust team normally has enough time to gather and bring with them the said witnesses. [Emphases in the original]

It is true that there are cases where the Court had ruled that the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not *ipso facto* render the seizure and custody over the items void and invalid. However, this is with the caveat that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. The Court has repeatedly emphasized that the prosecution should explain the reasons behind the procedural lapses.

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Here, none of the three required witnesses was present at the time of seizure and apprehension as they were only called to the police station for the conduct of the inventory *(People vs. Ilagan, GR No. 227021, 12/05/2018)*.

Rule on DNA Evidence *(A.M. No. 06-11-5-SC)*

a. Meaning of DNA

(1) DNA means deoxyribonucleic acid, which is the chain of molecules found in every nucleated cell of the body. The totality of an individual's DNA is unique for the individual, except identical twins *(Sec. 3)*.
(2) DNA evidence constitutes the totality of the DNA profiles, results and other genetic information directly generated from DNA testing of biological samples.

(3) DNA profile means genetic information derived from DNA testing of a biological sample obtained from a person, which biological sample is clearly identifiable as originating from that person;
(4) DNA testing means verified and credible scientific methods which include the extraction of DNA from biological samples, the generation of DNA profiles and the comparison of the information obtained from the DNA testing of biological samples for the purpose of determining, with reasonable certainty, whether or not the DNA obtained from two or more distinct biological samples originates from the same person (direct identification) of if the biological samples originate from related persons (kinship analysis).

b. Application for DNA testing order

(1) The appropriate court may, at any time, either *motu propio* or on application of any person who has a legal interest in the matter in litigation, order a DNA testing. Such order shall issue after due hearing and notice to the parties upon a showing of the following:
(a) A biological sample exists that is relevant to the case;
(b) The biological sample:
1) Was not previously subjected to the type of DNA testing now requested; or
2) Was previously subjected to DNA testing but the results may require confirmation for good reasons;
(c) The DNA testing uses a scientifically valid technique;
(d) The DNA testing has the scientific potential to produce new information that is relevant to the proper resolution of the case; and
(e) The existence of other factors, if any, which the court may consider as potentially affecting the accuracy of integrity of the DNA testing.

This rule shall not preclude a DNA testing, without need of prior court order, at the behest of any party, including law enforcement agencies, before a suit or proceeding is commenced *(Sec. 4)*.

c. Post-conviction DNA testing; remedy

(1) Post-conviction DNA testing may be available, without need of prior court order, to the prosecution or any person convicted by final and executory judgment provided that (a) a biological sample exists, (b) such sample is relevant to the case, and (c) the testing would probably result in the reversal or modification of the judgment of conviction *(Sec. 6)*.
(2) Remedy if the results are favorable to the convict. – The convict or the prosecution may file for a writ of *habeas corpus* in the court of origin if the results of the post-conviction DNA testing are favorable to the convict. In the case the court, after due hearing finds the petition to be meritorious, it shall reverse or modify the judgment of conviction and order the release of the convict, unless continued detention is justified for a lawful cause *(Sec. 10)*.

d. Assessment of probative value of DNA evidence and admissibility

(1) In assessing the probative value of the DNA evidence presented, the court shall consider the following:
(a) The chair of custody, including how the biological samples were collected, how they were handled, and the possibility of contamination of the samples;

(b) The DNA testing methodology, including the procedure followed in analyzing the samples, the advantages and disadvantages of the procedure, and compliance with the scientifically valid standards in conducting the tests;
(c) The forensic DNA laboratory, including accreditation by any reputable standards-setting institution and the qualification of the analyst who conducted the tests. If the laboratory is not accredited, the relevant experience of the laboratory in forensic casework and credibility shall be properly established; and
(d) The reliability of the testing result, as herein after provided.

The provisions of the Rules of Court concerning the appreciation of evidence shall apply suppletorily *(Sec. 7).*

e. Rules on evaluation of reliability of the DNA testing Methodology

(1) In evaluating whether the DNA testing methodology is reliable, the court shall consider the following:
(a) The falsifiability of the principles or methods used, that is, whether the theory or technique can be and has been tested;
(b) The subjection to peer review and publication of the principles or methods;
(c) The general acceptance of the principles or methods by the relevant scientific community;
(d) The existence and maintenance of standards and controls to ensure the correctness of data generated;
(e) The existence of an appropriate reference population database; and
(f) The general degree of confidence attributed to mathematical calculations used in comparing DNA profiles and the significance and limitation of statistical calculations used in comparing DNA profiles *(Sec. 8).*

(1) **2004 Bar**: At the scene of a heinous crime, police recovered a man's shorts with blood stains and strands of hair. Shortly afterwards, a warrant was issued and police arrested the suspect, AA. During his detention, a medical technicial extracted blood sample from his finger and cut a strand from his hair, despite AA's objections.

During AA's trial for rape with murder, the prosecution sought to introduce DNA (deoxyribonucleic acid) evidence against AA, based on forensic laboratory matching of the materials found at the crime scene and AA's hair and blood samples. AA's counsel objected, claiming that DNA evidence is inadmissible because the materials taken from AA were in violation of his constitutional right against self-incrimation as well as his right of privacy and personal integrity.

Should the DNA evidence be admitted or not? Reason. (5%)

Answer: Yes. The DNA evidence should be admitted. It is not in violation of the constitutional right against self-incrimination or his right of privacy and personal integrity. The right against self-incrimination is applicable only to testimonial evidence. Extracting a blood sample and cutting a stand from the hair of the accused are purely mechanical acts that do not involve his discretion nor reque his intelligence *(Tijing vs. Court of Appeals, 354 SCRA 17 [2001]).*

(2) The function of the chain of custody requirement is to ensure that the integrity and evidentiary value of the seized items are preserved, so much so that unnecessary doubts as to the identity of the evidence are removed. Thus, the chain of custody requirement has a two-fold purpose: (1) the preservation of of the integrity and evidentiary value of the seized items, and (2) the removal of unnecessary doubts as to the identity of the evidence.

The law recognizes that, while the presentation of a perfect unbroken chain is ideal, the realities and variables of actual police operation usually makes an unbroken chain impossible. With this implied judicial recognition of the difficulty of complete compliance with the chain of custody requirement, substantial compliance is sufficient as long as as the integrity and evidentiary valueS of the seized items are properly preserved by the apprehending police officers *(People vs. Morate [2014]).*

(3) As a matter of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure theat there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same *(People vs. Quesido [2013]).*

D. DOCUMENTARY EVIDENCE

(1) A document is defined as a deed, instrument or other duly notarized paper by which something is proved, evidenced or set forth. Any instrument notarized by a notary public or a competent public official, with the solemnities required by law, is a public document. Pleadings filed in a case and in the custody of the clerk of court are public documents. All other documents are private documents *(Bermejo vs. Barrios, 31 SCRA 764).*

(2) CSFL filed a complaint for collection of sum of money against TKI. CSFL, through its witness, identified several sales invoices and order slips it issued as evidence of its transactions with TKI. The latter objected pointing out that the documents being presented were mere photocopies Section 4(b), Rule 130 of the Rules of Court reads: "When a document is in two or more copies executed at or about the same time, with identical contents, all such copies are equally regarded as originals." In the case at bar, Chiu convincingly explained that CSFL usually prepared two (2) copies of invoices for a particular transaction, giving one copy to a client and retaining the other copy. The evidence presented were duplicate originals of invoices and order slips, and not mere photocopies *(Capital shoes Factory, Ltd. Vs. Traveler Kids, Inc., GR No. 200065, 09/24/2015).*

(3) In *Bartolome vs. Intermediate Appellate Court*, the Court ruled that the requirement of proper custody was met when the ancient document in question was presented in court by the proper custodian thereof who is an heir of the person who would naturally keep it. In this case however, the Court finds that Simplicia also failed to prove her filiation to Vicente and Benita. She merely presented a baptismal certificate which has long been held "as evidence only to prove the administration of the sacrament on the dates therein specified, but not the veracity of the declarations therein stated with respect to her kinsfolk. "The same is conclusive only of the baptism administered, according to the rites of the Catholic Church, by the priest who baptized subject child, but it does not prove the veracity of the declarations and statements contained in the certificate concerning the relationship of the person baptized." As such, Simplicia cannot be considered as an heir, in whose custody the marriage contract is expected to be found. It bears reiteration that Simplicia testified that the marriage contract was given to her by Benita but that Simplicia

cannot make out the contents of said document because she cannot read and write *(Cercado-Siga vs. Cerjcado, Jr., GR No. 185374, 03/11/2015)*.

Meaning of Documentary Evidence

(1) Documentary evidence is evidence supplied by written instruments, or derived from conventional symbols, such as letters, by which ideas are represented on material substances; documents produced for the inspection of the court or judge. It includes books, papers accounts and the like *(22 CJ 791)*.
(2) Documents as evidence consist of writings or any material containing letters, words, numbers, figures, symbols or other modes of written expressions offered as proof of their contents *(Sec. 2, Rule 130)*.

Requisites for Admissibility

(1) The requisites for admissibility of documentary evidence are as follows:
    (a) The object must be relevant to the fact in issue – There must be a logical connection between the evidence and the point at which it is offered;
    (b) The object must be competent – It should not be excluded by law or the rules;
    (c) The object must be authenticated before it is admitted – Authentication normally consists of showing that the object is the object that was involved in the underlying event;
    (d) The authentication must be made by a competent witness; and
    (e) The object must be formally offered in evidence.

Best Evidence Rule

(1) In *Country Bankers Insurance Corporation v. Lagman*, the Court set down the requirements before a party may present secondary evidence to prove the contents of the original document whenever the original copy has been lost: Before a party is allowed to adduce secondary evidence to prove the contents of the original, the offeror must prove the following: (1) the existence or due execution of the original; (2) the loss and destruction of the original or the reason for its non-production in court; and (3) on the part of the offeror, the absence of bad faith to which the unavailability of the original can be attributed. The correct order of proof is as follows: existence, execution, loss, and contents. In the instant case, the CA correctly ruled that the above requisites are present. Both the CA and the RTC gave credence to the testimony of Peregrino that the original Contract in the possession of Monark has been lost and that diligent efforts were exerted to find the same but to no avail. Such testimony has remained uncontroverted. As has been repeatedly held by this Court, "findings of facts and assessment of credibility of witnesses are matters best left to the trial court. Hence, the Court will respect the evaluation of the trial court on the credibility of Peregrino. MCMP, to note, contends that the Contract presented by Monark is not the contract that they entered into. Yet, it has failed to present a copy of the Contract even despite the request of the trial court for it to produce its copy of the Contract. Normal business practice dictates that MCMP should have asked for and retained a copy of their agreement *(MCMP Construction Corp. v. Monark Equipment Corp., GR No. 201001, 11/10/2014)*.

a. Meaning of the rule

(1) The best evidence rule is that rule which requires the highest grade of evidence obtainable to prove a disputed fact *(Wharton's Criminal Evidence, 11th Ed.)*. It cannot be invoked unless the contents of a writing is the subject of judicial inquiry, in which case the best evidence is the original writing itself.

(2) The best evidence refers to that which the law or the rules consider as the best evidence to prove the fact in dispute. The best evidence is the evidence which the case in its nature is susceptible and which is within the power of the party to produce. Evidence cannot be received which indicates on its face that it is secondary, that is, merely substitutionary in its nature, and that the original source of information is in existence and accessible. The underlying purpose is the prevention of fraud *(29 Am. Jur. 508)*.

b. When applicable – When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

(a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;

(b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;

(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and

(d) When the original is a public record in the custody of a public officer or is recorded in a public office *(Sec. 3, Rule 130)*.

c. Meaning of original –

(1) Wigmore states that the original does not necessarily mean the one first written; its meaning is relative only to the particular issue. The original is the document whose contents are to be proved.

(2) Sec. 4, Rule 130 has clarified what constitutes the original of a document:

(a) The original of a document is one the contents of which are the subject of inquiry;

(b) When a document is in two or more copies executed at or about the same time, with identical contents, all such copies are equally regarded as originals; and

(c) When an entry is repeated in the regular course of business, one being copied from another at or near the time of the transaction, all the entries are likewise equally regarded as originals.

d. Requisites for introduction of secondary evidence

(1) Before the contents of the original may be proved by secondary evidence satisfactory proof must be made of the following:

(a) The execution or existence of the original;

(b) The loss and destruction of the original or its nonproduction in court;

(c) Unavailability of the original is not due to bad faith on the part of the offeror *(Bautista vs. CA, 165 SCRA 507)*.

(2) Requisites for introduction of secondary evidence are stated under Sec. 3:

(a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;

(b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;

(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and

(d) When the original is a public record in the custody of a public officer or is recorded in a public office *(Sec. 3, Rule 130)*.

(3) The procedure before secondary evidence may be introduced is:
(a) The offeror should present evidence that he original document has been lost or destroyed and is therefore not available;
(b) He should prove the due execution or existence of said document, in accordance with Sec. 20 of Rule 132;
(c) He must show proof of the contents of the document by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.

(4) *When original document is unavailable.* – When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated *(Sec. 5)*

(5) *When original document is in adverse party's custody or control.* – If the document is in the custody or under the control of the adverse party, he must have reasonable notice to produce it. If after such notice and after satisfactory proof of its existence, he fails to produce the document, secondary evidence may be presented as in the case of its loss *(Sec. 6)*.

(6) *Evidence admissible when original document is a public record.* – When the original of a document is in the custody of a public officer or is recorded in a public office, its contents may be proved by a certified copy issued by the public officer in custody thereof *(Sec. 7)*.

(1) Section 3 of Rule 130 provides that when the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases" (a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror; (b) when the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice. Before a party is allowed to adduce secondary evidence to prove the contents of the original, the offeror must prove the following: (1) the existence or due execution of the original; (2) the loss and destruction of the original or the reason for its non-production in court; and (3) on the part of the offeror, the absence of bad faith to which the unavailability of the original can be attributed. The correct order of proof is as follows: existence, execution, loss, and contents *(MCMP Construction Corp. vs. Monark Equipment Corp., GR No. 201001, 11/10/2014)*.

a. Meaning of electronic evidence; electronic data massage

(1) Electronic evidence is that which use of electronic data message as evidence.

(2) Electronic data message refers to information generated, sent, received or stored by electronic, optical or similar means *(Sec. 1(g), Rule 2).*

b. Probative value of electronic documents or evidentiary weight; method of proof

(1) *Electronic documents as functional equivalent of paper-based documents*. Whenever a rule of evidence to the term of writing, document, record, instrument, memorandum or any other form of writing, such term shall be deemed to include an electronic document *(Sec. 1, Rule 3).*

(2) *Admissibility*. An electronic document is admissible in evidence if it complies with the rules on admissibility prescribed by the Rules and related laws and is authenticated in the manner prescribed by the Rules on Electronic Evidence *(Sec. 2, Rule 3).*

(3) *Factors for assessing evidentiary weight*. In assessing the evidentiary weight of an electronic document, the following factors may be considered:
   (a) The reliability of the manner or method in which it was generated, stored or communicated, including but not limited to input and output procedures, controls, tests and checks for accuracy and reliability of the electronic data message or document, in the light of all the circumstances as well as any relevant agreement;
   (b) The reliability of the manner in which its originator was identified;
   (c) The integrity of the information and communication system in which it is recorded or stored, including but not limited to the hardware and computer programs or software used as well as programming errors;
   (d) The familiarity of the witness or the person who made the entry with the communication and information system;
   (e) The nature and quality of the information which went into the communication and information system upon which the electronic data message or electronic document was based; or
   (f) Other factors which the court may consider as affecting the accuracy or integrity of the electronic document or electronic data message *(Sec. 1, Rule 7).*

(4) *Method of proof: affidavit of evidence*. All matters relating to the admissibility and evidentiary weight of an electronic document may be established by an affidavit stating facts of direct personal knowledge of the affiant or based on authentic records. The affidavit must affirmatively show the competence of the affiant to testify on the matters contained therein *(Sec. 1, Rule 9).*

(5) *Method of proof: cross-examination of deponent*. The affiant shall be made to affirm the contents of the affidavit in open court and may be cross-examined as a matter of right by the adverse party *(Sec. 2, Rule 9).*

c. Authentication of electronic documents and electronic signatures

(1) ***Burden of proving authenticity***. The person seeking to introduce an electronic document in any legal proceeding has the burden of proving its authenticity in the manner provided in this Rule *(Sec. 1, Rule 5).*

(2) ***Manner of authentication.*** Before any private electronic document offered as authentic is received in evidence, its authenticity must be proved by any of the following means:

(a) By evidence that it had been digitally signed by the person purported to have signed the same;
(b) By evidence that other appropriate security procedures or devices as may be authorized by the Supreme Court or by law for authentication of electronic documents were applied to the document; or
(c) By other evidence showing its integrity and reliability to the satisfaction of the judge *(Sec. 2, Rule 5).*

(3) ***Proof of electronically notarized document.*** A document electronically notarized in accordance with the rules promulgated by the Supreme Court shall be considered as a public document and proved as a notarial document under the Rules of Court *(Sec. 3, Rule 5).*

(4) ***Electronic signature***. An electronic signature or a digital signature authenticated in the manner prescribed hereunder is inadmissible in evidence as the functional equivalent of the signature or a person on a written document *(Sec. 1, Rule 6).*

(5) ***Authentication of electronic signatures***. An electronic signature may be authenticated in any of the following manners:

(a) By evidence that a method or process was utilized to establish a digital signature and verify the same;
(b) By any other means provided by law; or
(c) By any other means satisfactory to the judge as establishing the genuineness of the electronic signature *(Sec. 2, Rule 6).*

(6) ***Disputable presumptions relating to electronic signature***. Upon the authentication of an electronic signature, it shall be presumed that:

(a) The electronic signature is that of the person to whom it correlates;
(b) The electronic signature was affixed by that person with the intention of authenticating or approving the electronic document to which it is related or to indicate such person's consent to the transaction embodied therein; and
(c) The methods or processes utilized to affix or verify the electronic signature without error or fault *(Sec. 3, Rule 6).*

(7) ***Disputable presumptions relating to digital signatures.*** Upon the authentication of a digital signature, it shall be presumed, in addition to those mentioned in the immediately preceding section, that:

(a) The information contained in a certificate is correct;
(b) The digital signature was created during the operational period of a certificate;
(c) The message associated with a digital signature has not been altered from the time it was signed; and
(d) A certificate had been issued by the certification authority indicated therein *(Sec. 4, Rule 6).*

d. Electronic documents and the hearsay rule

(1) Electronic document refers to information or the representation of information, data, figures, symbols or other modes of written expression, described or however represented, by which a right is established or an obligation extinguished, or by which a fact may be proved and affirmed, which is received, recorded, transmitted, stored, processed, retrieved or produced electronically. It includes digitally signed documents and any print-out or output, readable by sight or other means, which accurately reflects the electronic data message or electronic document. For purposes of these Rules, the term "electronic

document" may be used interchangeably with electronic data message *(Sec. 1(h), Rule 2)*.

(2) *Original of an electronic document*. An electronic document shall be regarded as the equivalent of an original document under the Best Evidence Rule if it is a printout or output readable by sight or other means, shown to reflect the data accurately *(Sec. 1, Rule 4)*.

(3) *Copies as equivalent to the originals*. When a document is in two or more copies executed at or about the same time with identical contents, or is a counterpart produced by the same impression as the original, or from the same matrix, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduces the original, such copies or duplicates shall be regarded as the equivalent of the original.

Notwithstanding the foregoing, copies or duplicates shall not be admissible to the same extent as the original if:

(a) A genuine question is raised as to the authenticity of the original; or

(b) In the circumstances it would be unjust or inequitable to admit a copy in lieu of the original *(Sec. 2, Rule 4)*.

(4) *Inapplicability of the hearsay rule*. A memorandum, report, record or data compilation of acts, events, conditions, opinions, or diagnoses, made by electronic, optical or other similar means at or near the time of or from transmission or supply of regular course of conduct of a business activity, and such was the regular practice to make the memorandum, report, record, or data compilation by electronic, optical or similar means, all of which are shown by the testimony of the custodian or other qualified witnesses, is excepted from the rule on hearsay evidence *(Sec. 1, Rule 8)*.

(5) *Overcoming the presumption*. The presumption provided for in Sec. 1, Rule 8, may be overcome by evidence of the untrustworthiness of the source of information of the method or circumstances of the preparation, transmission or storage thereof *(Sec. 2, Rule 8)*.

e. Audio, photographic, video and ephemeral evidence

(1) Audio, photographic and video evidence of events, acts or transactions shall be admissible provided it shall be shown, presented or displayed to the court and shall be identified, explained or authenticated by the person who made the recording or by some other person competent to testify on the accuracy thereof *(Sec. 1, Rule 11)*.

(2) Ephemeral electronic communications shall be proven by the testimony of a person who was a party to the same or has personal knowledge thereof. In the absence or unavailability of such witnesses, other competent evidence may be admitted.

A recording of the telephone conversation or ephemeral electronic communication shall be covered by the immediately preceding section.

If the foregoing communications are recorded or embodied in an electronic document, then the provisions of Rule 5 (authentication of electronic documents) shall apply *(Sec. 2, Rule 11)*.

(3) Ephemeral electronic communication refers to telephone conversations, text messages, chatroom sessions, streaming audio, streaming video, and other electronic forms of communication the evidence of which is not recorded or retained *(Sec. 1(k), Rule 2)*.

(1) **2003 Bar**: State the rule on the admissibility of an electronic evidence. (4%)

Answer: Whenever a rule of evidence refers to the term writing, document, record, instrument, memorandum, or any other form of writing, such term, shall be deemed to include an electronic document as defined in these Rules *(Sec. 1)*.

An electronic document is admissible in evidence if it complies with the rules on admissibility prescribed by the Rules of Court and related laws and is authenticated in the manner prescribed these Rules *(Sec. 2)*. The authenticity of any private electronic document must be proved by evidence that it had been digitally signed and other appropriate security measures hav been applied *(Sec. 2, Rule 5)*.

(2) Before a tape recording is admissible in evidence and given probative value, the following requisites must first be established:

(a) A showing that the recording device was capable of taking testimony;
(b) A showing that the operator of the device was competent;
(c) Establishment of the authenticity and correctness of the recording;
(d) A showing that changes, additions, or deletions have not been made;
(e) A showing of the manner of the preservation of the tape recording;
(f) Identification of the speakers; and
(g) A showing that the testimony elicited was voluntarily made without any kind of inducement.

The party seeking the introduction in evidence of a tape recording bears the burden of going forth with sufficient evidence to show that the recording is an accurate reproduction of the conversation recorded. These requisites were laid down precisely to a address the criticism of susceptibility of tampering of recordings *(Torralba v. People [2005])*.

Parol Evidence Rule *(Rule 130)*

Application of the parol evidence rule

(1) The parol evidence rule is a rule which states that when the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon, and there can be between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement. It seeks to preserve what the parties have reduced in writing and probibits evidence *alliunde* or oral testimonial evidence from being presented to vary the terms of, or add stipulations to, the written agreement *(Gaw vs. IAC, 220 SCRA 405)*. In other words, any oral evidence of an agreement should be excluded when the existing agreement is already in writing *(Congregations of the Religious of the Virgin Mary vs. CA, 291 SCRA 385)*.

(2) Parol evidence forbids any addition to or contradiction of the terms of a written instrument by testimony purporting to show that, at or before the signing of the document, other or different terms were orally agreed upon by the parties *(Goldband vs. Allen, 245 Mass. 143)*. Oral testimony cannot prevail over a written agreement of the parties, the purpose being to give stability to written agreements and to remove the temptation and possibility of perjury, which would be afforded if parol evidence were admissible.

(3) The rule is based on the presumption that the parties have made the written instrument the only repository and memorial of the truth and whatever is not found in the instrument must have been waived and abandoned by the parties. Hence, parol evidence cannot serve the purpose of incorporation into the contract additional contemporaneous

conditions which are not mentioned at all in the writing, unless the case falls under any of the exceptions to the rule *(Cu vs. CA, 195 SCRA 647)*.

(4) Contrary to the claim of the respondents, it is not error for the trial court to rely on parol evidence, i.e., the oral testimonies of witnesses Simeon Juan Tong and Jose Juan Tong, to arrive at the conclusion that an implied resulting trust exists. Because an implied trust is neither dependent upon an express agreement nor required to be evidenced by writing, Article 1457 of our Civil Code authorizes the admission of parol evidence to prove their existence. Parol evidence that is required to establish the existence of an implied trust necessarily has to be trustworthy and it cannot rest on loose, equivocal or indefinite declarations *(Tong vs. Go Tiat Kun, GR No. 196023, 04/21/2014)*.

(5) The failure of the Deed of Absolute Sale to express the true intent and agreement of the contracting parties was clearly put in issue in the present case. The RTC is justified to apply the exceptions provided in the second paragraph of Sec. 9, Rule 130 to ascertain the true intent of the parties, which shall prevail over the letter of the document. That said, considering that the Deed of Absolute Sale has been shown to be void for being absolutely simulated, petitioners are not precluded from presenting evidence to modify, explain or add to the terms of the written agreement *(Abarrientos Rebusquillo vs. Sps. Rebusquillo Gualvez, GR No. 204029, 06/04/2014),*

(6) The MOA of March 21, 2000 made no mention therein that petitioners had given their consent and approval to the Revere REM to securitize the obligations of Go. As such, it was unwarranted to assume that petitioners had consented to and approved the Revere REM, for to do so would run counter to the Parol Evidence Rule embodied in Section 9, Rule 130 of the *Rules of Court, viz.:*

> Section 9. *Evidence of written agreements.* - When the terms of an agreement have been reduced into writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors-in-interest, no evidence of such terms other than the contents of the written agreement.

xx xx

Under the Parol Evidence Rule, the affected party's pleadings must allege the basis for the exception, and only then may such party adduce evidence thereon.36 However, UCPB adduced no evidence showing that the Spouses Chua had consented to or approved the Revere REM.

Moreover, the express terms of the MOA of March 21, 2000, which UCPB itself had prepared and drafted, did not indicate that the Spouses Chua had consented to or approved the Revere REM. On the contrary, Section 5.4 of the MOA expressly forbade the parties from varying or modifying the written terms thereof. For reference, Section 5.4 is quoted hereunder:

> Section 5.4 Entire Agreement - This Agreement constitutes the entire, complete and exclusive statement of the terms and conditions of the agreement between the parties with respect to the subject matter referred to herein. No statement or agreement, oral or written, made prior to the signing hereof and no prior conduct or practice by either party shall vary or modify the written terms embodied he1reof, and neither party shall claim any modification of any provision set forth herein unless such modification is in writing and signed by both parties.

Also underscoring the non-consent of petitioners, the Revere REM was signed only by Go acting for and in behalf of Revere. Nowhere in any of its 11 pages did the Revere REM bear the signatures of the Spouses Chua although its Article I patently lumped together the obligations of petitioners and Go at P404,597,177.04, xxx *(Sps. Felix and Carmen Chua vs. United Coconut Planters Bank, GR No. 215999, 12/17/2018)*.

When parol evidence can be introduced

(1) Introducing parol evidence means offering extrinsic or extraneous evidence that would modify, explain or add to the terms of the written agreement. Parol evidence can be introduced as long as the pleader puts in issue in the pleading any of the matters set forth in the rule such as:

(a) An intrinsic ambiguity, mistake or imperfection in the written agreement;
(b) The failure of the written agreement to express the true intent and agreement of the parties thereto;
(c) The validity of the written agreement; or
(d) The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement.

The terms "agreement" includes wills.

Distinctions between the best evidence rule and parol evidence rule

Best Evidence Rule	Parol Evidence Rule
The issue is contents of a writing.	There is no issue as to contents of a writing.
Secondary evidence is offered to prove the contents of a writing, which is not allowed unless the case falls under any of the exceptions.	The purpose for the offer of parol evidence is to change, vary, modify, qualify, or contradict the terms of a complete written agreement, which is not allowed unless the case falls under any of the exceptions.
Establishes preference for the original document over a secondary evidence thereof.	Not concerned with the primacy of evidence but presupposes that the original is available.
Precludes the admission of secondary evidence if the original document is available.	Precludes the admission of other evidence to prove the terms of a document other than the contents of the document itself.
Can be invoked by any litigant to an action whether or not said litigant is a party to the document involved.	Can be invoked only be the parties to the document and their successors in interest.
Applies to all forms of writing.	Applies to written agreements (contracts) and wills.

Authentication and Proof of Documents *(Rule 132)*

Meaning of authentication

(1) Authentication is the process of evidencing the due execution and genuineness of a document.

Public and private documents

Public document	Private document
Admissible in evidence without further proof of their due execution or genuineness.	Must be proved as to their due execution and authenticity before they may be received as evidence.
Evidence even against a third person of the fact which gave rise to their due execution and to the date of the latter.	Bind only the parties who executed them or their privies, insofar as due execution and date of the document are concerned.
Certain agreements require that they should be in a public instrument (in writing and notarized) to be valid and effective, such as sale of real property.	Valid as to agreement between parties, unless otherwise disallowed by law.
Public documents include the written official acts, or records	Every deed or instrument executed by a private person, without the intervention of a public notary or other person legally authorized, by which document some disposition or agreement is proved, evidenced or set forth.

When a private writing requires authentication; proof of a private writing

(1) *Proof of private document.* – Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:
(a) By anyone who saw the document executed or written; or
(b) By evidence of the genuineness of the signature or handwriting of the maker
Any other private document need only be identified as that which it is claimed to be *(Sec. 20).*

(2) A private document or writing is one which is executed by the parties without the intervention of a public notary or a duly authorized public official, by which some disposition or agreement is proved, evidenced or set forth. Being a private document, its due execution and authenticity must first be established, by one of the parties thereto, by the testimony of any one who saw the writing executed, by evidence of the genuineness of the handwriting of the maker thereof *(Ong vs. People, 342 SCRA 372).*

(3) A public document enjoys the presumption of regularity. It is prima facie evidence of the truth of the facts stated therein and a conclusive presumption of its existence and due execution. To overcome this presumption there must be clear and convincing evidence *(Chua vs. Westmont Bank, GR No. 182650 [2012])*.

(4) A public document is self-authenticating and requires no further authentication in order to be presented as evidence in court *(Patula vs. People, GR No. 164457 [2012])*.

(5) A private document is any other writing, deed, or instrument executed by a private person without the intervention of a notary or other person legally authorized by which some dispostition or agreement is proved or set forth *(Patula vs. People, GR No. 164457 [2012])*.

(6) Private documents in the custody of PCGG are not public documents. What became public are not the private documents [themselves] but the recording of it in the PCGG. If a private writing itself is inserted officially into a public record, its record, its recordation, or its incorporation into the public record becomes a public document, but that does not make the private writing itself a public docuent so as to make it admissible without authentication *(Republic vs. Sandiganbayan, GR No. 188881 [2014])*.

When evidence of authenticity of a private writing is not required (ancient documents)

(1) *When evidence of authenticity of private document not necessary.* - Where a private document is more than thirty years old, is produced from a custody in which it would naturally be found if genuine, and is unblemished by any alterations or circumstances of suspicion, no other evidence of its authenticity need be given *(Sec. 21)*.

(2) Private documents whose due execution and authenticity need not be proved, and may thus be presented in evidence like public documents, include the following:
   (a) Ancient documents as provided for in Sec. 21; and
   (b) Documents admitted by the adverse party *(Chua vs. CA, 206 SCRA 339)*.

(3) An ancient document is one that is:
   (a) More than thirty (30) years old;
   (b) Found in the proper custody;
   (c) Unblemished by any alteration or by any circumstance of suspicion; and
   (d) It must on its face appear to be genuine *(Cequena vs. Bolante, 330 SCRA 216)*.

How to prove genuineness of a handwriting

(1) *How genuineness of handwriting proved.* - The handwriting of a person may be proved by any witness who believes it to be the handwriting of such person because he has seen the person write, or has seen writing purporting to be his upon which the witness has acted or been charged, and has thus acquired knowledge of the handwriting of such person. Evidence respecting the handwriting may also be given by a comparison, made by the witness or the court, with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge *(Sec. 22, Rule 132)*.

(2) The genuineness of a handwriting may be proved By any witness who believes it to be the handwriting of a person because:
   (a) He has seen the person write; or
   (b) He has seen the writing purporting to be his upon which the witness has acted or been charged, and has thus acquired knowledge of the handwriting of such person;
   (c) By a comparison made by the witness or the court, with writings admitted or treated as genuine by the party against whom the document is offered, or proved to be genuine to the satisfaction of the judge *(Heirs of Amado Celestial vs. Heirs of Editha Celestial, GR 142691, 08/05/03)*.

(3) The test of genuineness ought to be the resemblance, not the formation of letters in some other specimens but to the general character of writing, which is impressed on it as the involuntary and unconscious result of constitution, habit or other permanent course, and

is, therefore, itself permanent. The identification of handwriting should not rest, therefore, on the apparent similarity or dissimilarity of one feature but should be based on the examination of all the basic characteristics of the handwriting under study *(People vs. Agresor, 320 SCRA 302)*.

Public documents as evidence; proof of official record

(1) Public documents are:
  (a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;
  (b) Documents acknowledged before a notary public except last wills and testaments; and
  (c) Public records, kept in the Philippines, of private documents required by law to be entered therein *(Sec. 19)*.

(2) *Public documents as evidence.* – Documents consisting of entries in public records made in the performance of a duty by a public officer are prima facie evidence of the facts therein stated. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter *(Sec. 23)*. Public documents are of two classes:
  (a) Those issued by competent public officials by reason of their office, and
  (b) Those executed by private individuals which are authenticated by notaries public *(Intestate Estate of Pareja vs. Pareja, 95 Phil. 167)*.

(3) *Proof of official record.* – The record of public documents referred to in paragraph (a) of Section 19 (official acts), when admissible for any purpose, may be evidenced (a) by an official publication thereof or (b) by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office *(Sec. 24)*.

Attestation of a copy

(1) *What attestation of copy must state.* – Whenever a copy of a document or record is attested for the purpose of evidence, the attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer, if there be any, or if he be the clerk of a court having a seal, under the seal of such court *(Sec. 25)*.

Public record of a private document

(1) *Public record of a private document.* – An authorized public record of a private document may be proved by the original record, or by a copy thereof, attested by the legal custodian of the record, with an appropriate certificate that such officer has the custody *(Sec. 27)*.

Proof of lack of record

(1) *Proof of lack of record.* – A written statement signed by an officer having the custody of an official record or by his deputy that after diligent search no record or entry of a specified tenor is found to exist in the records of his office, accompanied by a certificate as above provided, is admissible as evidence that the records of his office contain no such record or entry *(Sec. 28).*

How a judicial record is impeached

(1) *How judicial record impeached.* – Any judicial record may be impeached by evidence of: (a) want of jurisdiction in the court or judicial officer, (b) collusion between the parties, or (c) fraud in the party offering the record, in respect to the proceedings *(Sec. 29).*

(2) Judicial proceedings are presumed to be regular and should be given full faith and credit, and that all steps required by law had been taken. It is also presumed that a court or judge acting as such, whether in the Philippines or elsewhere, was acting in the lawful exercise of jurisdiction. To impeach judicial record, there must therefore be evidence of want of jurisdiction, collusion between the parties or fraud on the part of the party offering the record, which must be clear, convincing and more than merely preponderant, in order to overcome the presumption of regularity in the performance of official duties and the presumption of regularity of judicial proceedings, and the burden of proof lies on the part of the party who challenges the validity of judicial records.

(3) Under section 29, rule 132, a written statement signed by an officer having the custody of an official record or by his deputy that after diligent search, no record or entry of a specified tenor is found to exist in the records of his office, accompanied by a certificate to that effect, is admissible as evidence that the records of his office contain no such record or entry. Thus, the certification of the MCR, who is undeniably the custodian of marriage licenses issued in their jurisdictions, to the effect that no such marriage license was issued by the registry to the parties herein as admissible and sufficient evidence to prove that the marriage of the parties was celebrated without such license.

Furthermore, as custodians of public documents such as marriage licenses, civil registrars are public officers who enjoy the presumption of regularity in the performance of their duties, absent contradiction or other evidence to the contrary pursuant to Sec. 3(m), Rule 131 of the Rules of Court. Here, respondent failed to present proof that the MCR was lax in performing her duty of checking the records of theif office, thus the presumption must stand *(Abbas vs. Abbas, GR No. 183896, 01/30/2013).*

Proof of notarial documents

(1) *Proof of notarial documents.* – Every instrument duly acknowledged or proved and certified as provided by law, may be presented in evidence without further proof, the certificate of acknowledgment being prima facie evidence of the execution of the instrument or document involved *(Sec. 30).*

(2) Notarization is not an empty routine. It converts a private document into a public document and renders it admissible in court without further proof of its authenticity. A notarial document is by law entitled to full faith and credit upon its face and, for this reason, notaries public must observe with utmost care the basic requirements in the performance of their duties. Otherwise, the confidence of the public in the integrity of this form of conveyance would be undermined *(Coronado vs. Felonco, 344 SCRA 565).*

How to explain alterations in a document

(1) *Alterations in document, how to explain.* – The party producing a document as genuine which has been altered and appears to have been altered after its execution, in a part material to the question in dispute, must account for the alteration. He may show that the alteration was made by another, without his concurrence, or was made with the consent of the parties affected by it, or was otherwise properly or innocently made, or that the alteration did not change the meaning or language of the instrument. If he fails to do that the document shall not be admissible in evidence *(Sec. 31).*

Documentary evidence in an unofficial language

(1) *Documentary evidence in an unofficial language.* – Documents written in an unofficial language shall not be admitted as evidence, unless accompanied with a translation into English or Filipino. To avoid interruption of proceedings, parties or their attorneys are directed to have such translation prepared before trial *(Sec. 33).*

E. TESTIMONIAL EVIDENCE

Qualifications of a Witness

(1) Except as provided in the next succeeding section, all persons who can perceive, and perceiving, can make known their perception to others, may be witnesses. Religious or political belief, interest in the outcome of the case, or conviction of a crime unless otherwise provided by law, shall not be a ground for disqualification *(Sec. 20, Rule 130).*

(2) A person is qualified or is competent to be a witness, if (a) he is capable of perceiving, and (b) he can make his perception known. It should be noted however, that loss of the perceptive sense after the occurrence of the fact does not affect the admissibility of the testimony. Hence, a blind man can testify to what he saw prior to his blindness or a deaf man, to what he heard prior to his deafness. But a person incapable of perception is *pro tanto* incapable of testifying *(Wharton's Criminal Evidence).*

(3) A witness may have been capable of perceiving, yet incapable of narration. He may have no powers of speech, and have no means of expressing himself by signs. He may have become insane since the occurrence he is called upon to relate. A person incapable of narration is *pro tanto* incapable of testifying *(ibid.).*

(4) A deaf-mute is competent to be a witness so long as he/she has the facultu to make observations and he/she can make those observations known to others *(People vs. Aleman, GR No. 181539 [2013])*.

(5) Parties declared in default are not disqualified from taking the witness stand for non-disqualified parties. The law does not provide provide default as an exception *(Marcos vs. Heirs of Navarro, GR No. 198240 [2013])*.

(6) There is no substantive or procedural rule which requires a witness for a party to present some form of authorization to testify as a witness for the party presenting him or her *(AFP Retirement and Separation Benefits System vs. Rrepublic, GR No. 188956 [2013])*

(7) Testimonies of child-victims are normally given full weight and credit, since when a girl, particularly if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape has in fact been committed *(People vs Roxas, GR No. 200793, 06/04/2014).*

(8) In cases of rape, the testimony of the victim alone may be sufficient to obtain a conviction. However, this is not true to all rape cases as the Supreme Court may consider other circumstances and evidence present in the case such as behavior of the victim and her family during and after the incident, the intent of the accused to flee and the medico legal report submitted *(People vs. Cruz, GR No. 194234, 06/18/2014)*,

Competency and Credibility of a Witness

Competency	Credibility
Means the legal fitness or ability of a witness to be heard on the trial of a cause *(Bouvier's Law Dictionary).*	Means a witness's disposition and intention to tell the truth in the testimony that he has given.
As a general rule, when a witness takes the stand to testify, the law, on grounds of public policy, presumes that he is competent. Hence, if the evidence is in equipoise, the witness should be permitted to testify. The court certainly cannot reject the witness if there is no proof of his incompetency. The burden is therefore upon the party objecting to the competency of a witness to establish the grounds of incompetency *(Wharton's Criminal Evidence).*	Reflects upon the integrity and believability of a witness which rests upon the discretion of the court.
The decision of competency of a witness rests primarily with the trial judge, who sees the proposed witness, notices his manner, his apparent possession or lack of intelligence, and may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath *(US vs. Buncad, 25 Phil. 530).*	Depends on the appreciation of a witness's testimony and arises from the belief and conclusion of the court that said witness is telling the truth *(Gonzales vs. CA, 90 SCRA 183).*

(1) It is settled that the assessment of the credibility of witnesses is within the province and expertise of the trial court. In this case, we find no cogent reason to depart from the findings of the trial court. The court below categorically found that Relecita had no ill motive to testify against appellant. She has no reason to impute on him the heinous crime of murder had she not witnessed the actual killing of the victim. Similarly, the appellate court found Relecita to have positively identified the appellant as the perpetrator of the crime. Also, the failure of Relecita to warn the victim of the appellant's impending attack should not be taken against her. Neither should it be taken as a blemish to her credibility *(People v. Abaigar, GR No. 199442, 04/07/2014).*

(2) Inconsistencies and discrepancies in details which are irrelevant to the elements of the crime are not grounds for acquittal. As long as the inaccuracies concern only minor matters, the same do not affect the credibility of witnesses. Truth-telling witnesses are not always expected to give error-free testimonies considering the lapse of time and

treachery of human memory. Inaccuracies may even suggest that the witnesses are telling the truth and have not been rehearsed *(People v. Paras, GR No. 192912, 06/04/2014).*

(3) Jurisprudence instructs that when the credibility of a witness is of primordial consideration, as in this case, the findings of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded respect if not conclusive effect. This is because the trial court has had the unique opportunity to observe the demeanor of a witness and was in the best position to discern whether they were telling the truth *(People v. Dela Cruz, GR No. 192820, 06/04/2014).*

(4) A few discrepancies and inconsistencies in the testimonies of witnesses referring to minor details and not actually touching upon the central fact of the crime do not impair their credibility. Instead of weakening their testimonies, such inconsistencies tend to strengthen their credibility, because they discount the possibility of their being rehearsed *(People vs. Fernandez, GR No. 193478, 06/23/2014).*

(5) Contending that the inconsistencies in the testimony of the witness affected her credibility as such, the accused-appellant filed the instant petition arguing that the prosecution failed to prove his guilt beyond reasonable doubt. The SC ruled that due to its intimate nature, rape is usually a crime bereft of witnesses, and, more often than not, the victim is left to testify for herself. Thus, in the resolution of rape cases, the victim's credibility becomes the primordial consideration. It is settled that when the victim's testimony is straightforward, convincing, and consistent with human nature and the normal course of things, unflawed by any material or significant inconsistency, it passes the test of credibility, and the accused may be convicted solely on the basis thereof. Inconsistencies in the victim's testimony do not impair her credibility, especially if the inconsistencies refer to trivial matters that do not alter the essential fact of the commission of rape. The trial court's assessment of the witnesses' credibility is given great weight and is even conclusive and binding. In the case at bar, the trial court found the testimony of AAA to be clear, candid, and straightforward, one which could not be considered as a common child's tale *(People vs. Balino, GR No. 194833, 07/02/2014).*

(6) Where the issue is one of credibility of witnesses, and in this case their testimonies as well, the findings of the trial court are not to be disturbed unless the consideration of certain facts of substance and value, which have been plainly overlooked, might affect the result of the case. Moreover, in cases involving violations of the Dangerous Drugs Act of 2002, as amended, credence should be given to the narration of the incident by the prosecution witnesses especially when they are police officers who are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary *(People vs. Alcala, GR No. 201725, 07/18/2014).*

(7) AAA's mental condition may have prevented her from delving into the specifics of the assault in her testimony almost three years later, unlike the way she narrated the same when she was asked at the barangay outpost merely minutes after the incident. However, as we have ruled in a litany of cases, when a woman, more so if she is a minor, says she has been raped, she says, in effect, all that is necessary to prove that rape was committed. Youth and, as is more applicable in the case at bar, immaturity are generally badges of truth. Furthermore, the report of PC/Insp. Chua that the findings of the physical examination were consistent with recent sexual intercourse, provide additional corroboration to the testimonies of AAA and BBB. It should be noted that this report was stipulated upon by the prosecution and the defense *(People v. Silvano, GR No. 196315, 07/28/2014).*

Disqualifications of Witnesses

(1) **Absolute disqualification**:

(a) Those who cannot perceive *(Sec. 20)*;
(b) Those who can perceive but cannot make their perception known *(Sec. 20)*;
(c) Mentally incapacity – Those whose mental condition, at the time of their production for examination, is such that they are incapable of intelligently making known their perception to others *(Sec. 21)*;
(d) Mentally immaturity – Children whose mental maturity is such as to render them incapable of perceiving the facts respecting which they are examined and of relating them truthfully *(Sec. 21)*;
(e) Marital disqualification – During their marriage, neither the husband nor the wife may testify for or against the other without the consent of the affected spouse, except in a civil case by one against the other, or in a criminal case for a crime committed by one against the other or the latter's direct descendants or ascendants *(Sec. 22)*.

(f) Parental and filial privilege -- No person may be compelled to testify against his parents, other direct ascendants, children or other direct descendants *(Sec. 25)*.

(2) Relative disqualification:

(a) **Dead Man's Statute** – Parties or assignors of parties to a case, or persons in whose behalf a case is prosecuted, against an executor or administrator or other representative of a deceased person, or against a person of unsound mind, upon a claim or demand against the estate of such deceased person or against such person of unsound mind, cannot testify as to any matter of fact occurring before the death of such deceased person or before such person became of unsound mind *(Sec. 23)*.

(b) **Disqualification by reason of privileged communication** *(Sec. 24)*:

1. The husband or the wife, during or after the marriage, cannot be examined without the consent of the other as to any communication received in confidence by one from the other during the marriage except in a civil case by one against the other, or in a criminal case for a crime committed by one against the other or the latter's direct descendants or ascendants;
2. An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of, or with a view to, professional employment, nor can an attorney's secretary, stenographer, or clerk be examined, without the consent of the client and his employer, concerning any fact the knowledge of which has been acquired in such capacity;
3. A person authorized to practice medicine, surgery or obstetrics cannot in a civil case, without the consent of the patient, be examined as to any advice or treatment given by him or any information which he may have acquired in attending such patient in a professional capacity, which information was necessary to enable him to act in that capacity, and which would blacken the reputation of the patient;
4. A minister or priest cannot, without the consent of the person making the confession, be examined as to any confession made to or any advice given by him in his professional character in the course of discipline enjoined by the church to which the minister or priest belongs;
5. A public officer cannot be examined during his term of office or afterwards, as to communications made to him in official confidence, when the court finds that the public interest would suffer by the disclosure.

(c) **Newsman's privilege** -- Without prejudice to his liability under the civil and criminal laws, the publisher, editor, columnist or duly accredited reporter of any newspaper, magazine or periodical of general circulation cannot be compelled to reveal the source of any news-report or information appearing in said publication which was related in confidence to such publisher, editor or reporter unless the court or a House or committee of Congress finds that such revelation is demanded by the security of the State *(RA 1477)*;

(d) **Bank deposits** -- All deposits of whatever nature with banks or banking institutions in the Philippines including investments in bonds issued by the Government of the Philippines, its political subdivisions and its instrumentalities, are hereby considered as of an absolutely confidential nature and may not be examined, inquired or looked into by any person, government official, bureau or office, except upon written permission of the depositor, or in cases of impeachment, or upon order of a competent court in cases of bribery or dereliction of duty of public officials, or in cases where the money deposited or invested is the subject matter of the litigation *(RA 1405)*.

(e) **Sanctity of the ballot** – voters may not be compelled to disclose for whom they voted.

(f) **Trade secrets**.

(g) **Information contained in tax returns** *(RA 2070, as amended by RA 2212)*.

Disqualification by reason of mental capacity or immaturity

(1) The following persons cannot be witnesses:

(a) Those whose mental condition, at the time of their production for examination, is such that they are incapable of intelligently making known their perception to others;

(b) Children whose mental maturity is such as to render them incapable of perceiving the facts respecting which they are examined and of relating them truthfully *(Sec. 21)*.

(2) Regardless of the nature or cause of mental disability, the test of competency to testify is as to whether the individual has sufficient understanding to appreciate the nature and obligation of an oath and sufficient capacity to observe and describe correctly the facts in regard to which he is called to testify.

(3) Basic requirements of a child's competency as a witness:

(a) Capacity of observation;
(b) Capacity of recollection;
(c) Capacity of communication.

In ascertaining whether a child is of sufficient intelligence according to the foregoing requirements, it is settled rule that the trial court is called upon to make such determination *(People vs. Mendoza, 68 SCAD 552, 02/22/1996)*.

Disqualification by reason of marriage (spousal immunity)

(1) During their marriage, neither the husband nor the wife may testify for or against the other without the consent of the affected spouse, except in a civil case by one against the other, or in a criminal case for a crime committed by one against the other or the latter's direct descendants or ascendants *(Sec. 22)*.

(2) The spouses must be legally married to each other to invoke the benefit of the rule; it does not cover an illicit relationship *(People vs. Francisco, 78 Phil. 694)*. When the marriage is dissolved on the grounds provided for by law like annulment or declaration of nullity, the rule can no longer be invoked. A spouse can already testify against the other despite an objection being interposed by the affected spouse. If the testimony for or against the other

spouse is offered during the existence of the marriage, it does not matter if the facts subject of the testimony occurred before the marriage. It only matters that the affected spouse objects to the offer of testimony.

(3) The testimony covered by the marital disqualification rule not only consists of utterances but also the production of documents *(State vs. Bramlet, 114 SC 389).*

(4) **2006 Bar:** Leticia was estranged from her husband Paul for more than a year due to his suspicion that she was having an affair with Manuel their neighbor. She was temporarily living with her sister in Pasig City.

For unknown reasons, the house of Leticia's sister was burned, killing the latter. Leticia survived. She saw her husband in the vicinity during the incident. Later he was charged with arson in an Information firled with the Regional Trial Court, Pasig City.

During the trial, the prosecutor called Leticia to the witness stand and offered her testimony to prove that her husband committed arson.

Can Leticia testify over the objection of her husband on the ground of marital privilege? (5%)

Answer: No, Leticia cannot testify over the objection of her husband, not under marital privilege which is inapplicable and which can be waived, but she would be barred under Sec. 22 of Rule 130, which prohibits her from testifying and which cannot be waived *(Alvarez v. Ramirez, GR No. 143439, 10/14/2005).*

(5) **2004 Bar**: XYZ, an alien, was criminally charged of promoting and facilitating child prostitution and other sexual abuses under RA No. 7610. The principal witness against him was his Filipina wife, ABC. Earlier, she had complained that XYZ's hotel was being used as a center for sex tourism and child trafficking. The defense counsel for XYZ objected to the testimony of ABC at the trial of the child prostitution case and the introduction of the affidavits she executed against her husband as a violation of espousal confidentiality and marital privilege rule. It turned out the DEF, the minor daughter of ABC by her first husband who was a Filipino, was molested by XYZ earlier. Thus, ABC had filed for legal separation from XYZ since last year.

May the court admit the testimonyand affidavits of the wife, ABC, against her husband XYZ, in the criminal case involving child prostitution? Reason. (5%)

Answer: Yes. The court maydmit the testimonyand affidavits of the wife against her husband in the criminal case where it involves child prostitution of the wife's daughter. It is not covered bythe marital privilege rule. One exception thereof is where the crime is committed byone against the other or the latter's direct descendants or ascendants *(Sec. 22, Rule 130).* A crime by the hdaughter is a crime against the wife and directly attacks or vitallyimpairs the conjul relation *(Ordondo vs. Daquigan, 62 SCRA 270 [1975]).*

Disqualification by reason of death or insanity of adverse party (Survivorship or Dead Man's Statute)

(1) This rule applies only to a civil case or a special proceeding. The following are the elements for the application of the rule:

(a) The plaintiff is the person who has a claim against the estate of the decedent or person of unsound mind;
(b) The defendant in the case is the executor or administrator or a representative of the deceased or the person of unsound mind;
(c) The suit is upon a claim by the plaintiff against the estate of said deceased or person of unsound mind;

(d) The witness is the plaintiff, or an assignor of that party, or a person in whose behalf the case is prosecuted; and
(e) The subject of the testimony is as to any matter of fact occurring before the death *(ante litem motam)* of such deceased person or before such person became of unsound mind *(Sec. 23)*.

Disqualification by Reason of Privileged Communications between Husband and Wife

Marital Disqualification *(Sec. 22)*	Marital Privilege *(Sec. 24)*
Can be invoked only if one of the spouses is a party to the action;	Can be claimed whether or not the spouse is a party to the action;
Applies only if the marriage is existing at the time the testimony is offered;	Can be claimed even after the marriage has been dissolved;
Ceases upon the death or either spouse;	Continues even after the termination of the marriage;
Constitutes a total prohibition against any testimony for or against the spouse of the witness;	Applies only to confidential communications between the spouses.
The prohibition is a testimony for or against the other.	The prohibition is the examination of a spouse as to matters related in confidence to the other spouse.

(1) The husband or the wife, during or after the marriage, cannot be examined without the consent of the other as to any communication received in confidence by one from the other during the marriage except in a civil case by one against the other, or in a criminal case for a crime committed by one against the other or the latter's direct descendants or ascendants *(Sec. 24)*.
(2) The application of the rule requires the presence of the following elements:
    (a) There must be a valid marriage between the husband and the wife;
    (b) There is a communication made in confidence by one to the other; and
    (c) The confidential communication must have been made during the marriage.

Disqualification by Reason of Privileged Communications between Attorney and Client

(1) An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of, or with a view to, professional employment, nor can an attorney's secretary, stenographer, or clerk be examined, without the consent of the client and his employer, concerning any fact the knowledge of which has been acquired in such capacity *(Sec. 24)*.
(2) For the rule to apply, it is required that:
    (a) There is an attorney and client relation;
    (b) The privilege is invoked with respect to a confidential communication between them in the course of or with a view to professional employment; and
    (c) The client has not given his consent to the attorney's testimony thereon; or
    (d) If the attorney's secretary, stenographer or clerk is sought to be examined, that both the client and the attorney have not given their consent thereto.

(3) The rule applies when the attorney has been consulted in his professional capacity, even if no fee has been paid therefor. Preliminary communications made for the purpose of creating the attorney-client relationship are within the privilege *(8 Wigmore 587).* However, if the communications were not made for the purpose of creating that relationship, they will not be covered by the privilege even if thereafter the lawyer becomes the counsel of the party in a case involving said statements *(People vs. Enriquez, 256 Phil. 221).*

(4) The communications covered by the privilege include verbal statements and documents or papers entrusted to the attorney, and of facts learned by the attorney through the act or agency of his client.

(5) The privilege does not apply to communications which are:
   (a) Intended to be public;
   (b) Intended to be communicated to others;
   (c) Intended for an unlawful purpose;
   (d) Received from third persons not acting on behalf of or as agents of the client; or
   (e) Made in the presence of third parties who are strangers to the attorney-client relationship.

(6) **2008 Bar**: On August 15, 2008, Edgardo committed estafa against Petronilo in the amout of P3 Million. Petronilo brought his complaint to the National Bureau of Investigation, which found that Edgardo had visited his lawyer twice, the first time on August 14, 2008, and the second time on August 26, 2008; and that both visits concerned the swindling of Petronilo. During the trial of Edgardo, the RTC issued a subpowna *ad testificandum* to Edgardo's lawyer for him to testifyon the convesations during their first and second meetings. May the subpoena be quashed on the ground of privileged communication? Explain fully. (4%)

   Answer: Yes. The mantle of privileged communication based on lawyer-client relationship protects the communication between a lawyer and his client against any adverse party as in this case. The subpoena requiring the lawyer to testify can be quashed on the ground of privileged communication *(Regala v. Sandiganbayan, GR No. 105938, 09/20/1996).* Sec. 24 of Rule 130 provides that an attorney cannot, without the consent of his client, be examined on any communicaiton made to him by his client, or his advice given thereon, including his secretary, stenographer, or clerk, concerning any fact the knowledge of which has been acquired in such capacity. However, where the subject matter of the communication involves the commission of a crime, in which the lawyer himself is a participant or conspirator, then the same is not covered by the privilege. Moreover, if the substance of the communication can be established by independent evidence, the lawyer maybe compelled to testify.

Disqualification by reason of privileged communications between Physician and Patient

(1) A person authorized to practice medicine, surgery or obstetrics cannot in a civil case, without the consent of the patient, be examined as to any advice or treatment given by him or any information which he may have acquired in attending such patient in a professional capacity, which information was necessary to enable him to act in that capacity, and which would blacken the reputation of the patient *(Sec. 24).*

(2) For the disqualification to apply, it is necessary that:
   (a) The physician is authorized to practice medicine, surgery or obstetrics;
   (b) The information was acquired or the advice or treatment was given by him in his professional capacity for the purpose of treating and curing the patient;

(c) The information, advice or treatment, if revealed, would blacken the reputation of the patient; and

(d) The privilege is invoked in a civil case, whether the patient is a party thereto or not.

(3) The privilege does not apply where:
(a) The communication was not given in confidence;
(b) The communication is irrelevant to the professional employment;
(c) The communication was made for an unlawful purpose, as when it is intended for the commission or concealment of a crime;
(d) The information was intended to be made public; or
(e) There was a waiver of the privilege either by the provisions of contract or law.

(4) The privilege survives the death of the patient *(Bassil vs. Ford Motor Co., 278 Mich. 173)*.

(5) A doctor is allowed to be an expert witness when he does not disclose anything obtained in the course of his examination, interview and treatment of a patient *(Lim vs. CA, GR No. 91114 [1992])*.

(6) If the information was not acquired by the physician in confidence, he may be allowed to testify thereto. But if the physician performing the autopsy was also the deceased's physician, he cannot be permitted either directly or indirectly to disclose facts that came to his knowledge while treating the living patient *(Travelers' Insurance Co vs. Bergeron, [US])*.

(7) To allow the disclorure during discovery procedure of the hospital records would be to allow access to evidence that is inadmissible without the patient's consent. Disclosing them would be the equivalent of compelling the physician to testify on privileged matters he gained while dealing with the patient, without the latter's prior consent *(Chan vs. Chan, GR 179786 [2013])*.

Disqualification by reason of privileged communications between Priest and Penitent

(1) A minister or priest cannot, without the consent of the person making the confession, be examined as to any confession made to or any advice given by him in his professional character in the course of discipline enjoined by the church to which the minister or priest belongs *(Sec. 24)*.

(2) The communication must be made pursuant to confessions of sin *(Wigmore, 848)*. Where the penitent discussed business arrangements with the priest, the privilege does not apply *(US vs. Gordon, 493 F. Supp. 822)*.

Disqualification by Reason of Privileged Communications Involving Public Officers

(1) A public officer cannot be examined during his term of office or afterwards, as to communications made to him in official confidence, when the court finds that the public interest would suffer by the disclosure *(Sec. 24)*.

(2) The disqualification because of privileged communications to public officers requires that:
(a) It was made to the public officer in official confidence; and
(b) Public interest would suffer by the disclosure of such communications, as in the case of State secrets. Where no public interest would be prejudiced, this rule does not apply *(Banco Filipino vs. Monetary Board, GR 70054, 07/08/1986)*.

(3) The privilege is not intended for the protection of public officers but for the protection of the public interest. When no public interest would be prejudiced, this privilege cannot be invoked *(Banco Filipino vs. Monetary Board, GR 70054, 07/08/1986)*.

(4) Presidential communications privilege (a) must relate to a "quintessential and non-delegable presidential power"; (b) must be authored or "solicited and received" by a closer advisor of the President or the President himself; and (c) privilege may be overcome by a showing of adequate need such that the information sought "likely contains important evidence" and by the unavailability of the information elsewhere *(Neri vs. Senate, GR No. 180643 [2008])*.

(5) Public interest means more than a mere curiosity; it means something in which the public, the community at large, has some pecuniary interest by which their legal rights or liabilities are affected *(State vs. Crockett, 206 P. 816)*.

(6) Exceptions to the rule:
   (a) What is asked is useful evidence to vindicate the innocence of an accused person;
   (b) Disclosure would lessen the risk of false testimony;
   (c) Disclosure is essential to the proper disposition of the case;
   (d) The benefit to be gained by a correct disposition of the litigation was greater than any injury which could inure to the relation by a disclosure of the information *(70 CJ 453)*.

Parental and Filial Testimonial Privilege Rule

(1) No person may be compelled to testify against his parents, other direct ascendants, children or other direct descendants *(Sec. 25)*.

(2) Under Art. 215 of the Family Code, the descendant may be compelled to testify against his parents and grandparents if such testimony is indispensable in prosecuting a crime against the descendant or by one parent against the other.

(3) The privilege cannot apply between stepmothers and stepchildren because the rule applies only to direct ascendants and descendants, a family tie connected by a common ancestry by her stepmother *(Lee vs. CA, GR No. 177861 [2010])*.

(4) A child can waive the filial privilege and choose to testify against his father. The rule refers to a privilege not to testify, which can be invoked or waived like other privileges *(People vs. Invencion, GR No. 131636 [2003])*.

Other Privileged Communications outside the Rules of Court

(1) Data Privacy Act. Personal information controllers may invoke the principle of privileged communication over privileged communication that they lawfully control or process. Subject to existing laws and regulations, any evidence gathered on privileged information is inadmissible *(Sec 15, RA 10173)*.

(2) Food and Drug Administration Act. Prohibits the use of a person to his own advantage, or revealing, other than to the Secretary of Health or officers or employees of the Department of Health or to the courts when relevant in any judicial proceeding under this Act, any information acquired under authority Board of Food Inspection and board of Food and Drugs, or concerning any method or process which as a trade secret is entitled to proptection *(Secs. 9, 11[f], and 12, RA 3729)*.

(3) Newsmen's Privilege. Publisher, editor or duly accredited reporter cannot be compelled to reveal the source of any news report or information related in confidence, unless the security of the State demands that such revelation be made before the court or the Congress *(RA 53, amended by RA 1477)*.

(4) Information in Conciliation Proceedings. All information and statements made at conciliation proceedings shall be treated as privileged communicaitons *(Art. 233, Labor Code)*.

Examination of a Witness *(Rule 132)*

(1) The examination of witnesses presented in a trial or hearing shall be done in open court, and under oath or affirmation. Unless the witness is incapacitated to speak, or the question calls for a different mode of answer, the answers of the witness shall be given orally *(Sec. 1)*.

(2) The entire proceedings of a trial or hearing, including the questions propounded to a witness and his answers thereto, the statements made by the judge or any of the parties, counsel, or witnesses with reference to the case, shall be recorded by means of shorthand or stenotype or by other means of recording found suitable by the court. A transcript of the record of the proceedings made by the official stenographer, stenotypist or recorder and certified as correct by him shall be deemed prima facie a correct statement of such proceedings *(Sec. 2)*.

Rights and obligations of a witness

(1) A witness must answer questions, although his answer may tend to establish a claim against him. However, it is the right of a witness:
   (a) To be protected from irrelevant, improper, or insulting questions, and from harsh or insulting demeanor;
   (b) Not to be detained longer than the interests of justice require;
   (c) Not to be examined except only as to matters pertinent to the issue;
   (d) Not to give an answer which will tend to subject him to a penalty for an offense unless otherwise provided by law; or
   (e) Not to give an answer which will tend to degrade his reputation, unless it be to the very fact at issue or to a fact from which the fact in issue would be presumed. But a witness must answer to the fact of his previous final conviction for an offense *(Sec. 3)*.

(2) Cross-examination is the most reliable and effective waw known of testing the credibility and accuracy of testimony. This is an essential element of due process *(Alford vs. US [1931])*.

(3) The right to cross-examinaiton under the Constitution is superior to technical rules on evidence *(People vs. Valero [1982])*.

(4) Partial cross-examination is sufficient where the witness was cross-examination was not due to prosecutor's fault but that of the defense who repeatedly moved for postponement, direct examination cannot be thrown off the case *(People vs. Caparas, 102 SCRA 782)*.

(5) Cross-examination must be completed or finished. When cross-examination is not and cannot be done or completed due to causes attributable to the party offering the wirness, the uncompleted testimony is thereby rendered incompetent *(Ortigas, Jr. vs. Luftansa German Airlines [1979])*.

One-Day Examination Rule

(1) A witness has to be fully examined in one (1) day only. It shall be strictly adhered to subject to the conurt's discretion during trial on whether or not to extend the direct and/or cross-examination for justifiable reasons *(AM 03-1-09-SC)*.

Order in the examination of an individual witness

(1) The order in which an individual witness may be examined is as follows:
   (a) Direct examination by the proponent;
   (b) Cross-examination by the opponent;
   (c) Re-direct examination by the proponent;
   (d) Re-cross-examination by the opponent *(Sec. 4).*

(2) Cross-examination of a witness is an absolute right, not a mere privilege, of the party against whom he is called; and with regard to the accused, it is a right granted by the Constitution. Sec. 14(2), Art. III thereof provides that the accused shall enjoy the right to meet the witnesses face to face.

(3) The right to cross-examine opposing witnesses has long been considered a fundamental element of due process in both civil and criminal proceedings.

In proceedings for the perpetuation of testimony, the right to crossexamine a deponent is an even more vital part of the procedure. In fact, theRevised Rules on Evidence provide that depositions previously taken are only admissible in evidence against an adverse party who had the opportunity to cross-examine the witness. Because depositions are an exception to the general rule on the inadmissibility of hearsay testimony, the process of cross-examination is an important safeguard against false statements. As the Court explained in *Republic v. Sandiganbayan (678 Phil. 358 [2011]):*

> The function of cross-examination is to test the truthfulness of the statements of a witness made on direct examination. The opportunity of cross-examination has been regarded as an essential safeguard of the accuracy and completeness of a testimony. In civil cases, the right of cross-examination is absolute, and is not a mere privilege of the party against whom a witness may be called. This right is available, of course, at the taking of depositions, as well as on the examination of witnesses at the trial. The principal justification for the general exclusion of hearsay statements and for the admission, as an exception to the hearsay rule, of reported testimony taken at a former hearing where the present adversary was afforded the opportunity to cross-examine, is based on the premise that the opportunity of cross-examination is an essential safeguard against falsehoods and frauds.
>
> The right of a party to confront and cross-examine opposing witnesses in a judicial litigation, be it criminal or civil in nature, or in proceedings before administrative tribunals with quasi-judicial powers, is a fundamental right which is part of due process. However, the right is a personal one which may be waived expressly or impliedly by conduct amounting to a renunciation of the right of cross-examination. Thus, where a party has had the opportunity to cross-examine a witness but failed to avail himself of it, he necessarily forfeits the right to cross- examine and the testimony given on direct examination of the witness will be received or allowed to remain in the record.

The conduct of a party which may be construed as an implied waiver of the right to cross-examine may take various forms. But the common basic principle underlying the application of the rule on implied waiver is that the party was given the opportunity to confront and cross-examine an opposing witness but failed to take advantage of it for reasons attributable to himself alone.

...The failure of petitioner to receive the Notice of Hearing prior to the date of the scheduled cross-examination is not attributable to him *(Martinez vs. Ongsiako, GR No. 209057, 03/15/2017).*

Direct examination	Direct examination is the examination-in-chief of a witness by the party presenting him on the facts relevant to the issue *(Sec. 5)*.	Purpose is to build up the theory of the case by eliciting facts about the client's cause of action or defense.
Cross examination	Upon the termination of the direct examination, the witness may be cross-examined by the adverse party as to any matters stated in the direct examination, or connected therewith, with sufficient fullness and freedom to test his accuracy and truthfulness and freedom from interest or bias, or the reverse, and to elicit all important facts bearing upon the issue *(Sec. 6)*.	Cross-examination aims to: (a) Test the accuracy and truthfulness of the witness and his freedom from interest or bias or the reverse; and (b) Elicit all important facts bearing upon the issue, not only of those covered in the direct examination but also on all other matters relevant to the issue/s pleaded.
Re-direct examination	After the cross-examination of the witness has been concluded, he may be re-examined by the party calling him, to explain or supplement his answers given during the cross-examination. On re-direct examination, questions on matters not dealt with during the cross-examination, may be allowed by the court in its discretion *(Sec. 7)*.	Principal objects are (a) to prevent injustice to the witness and the party who has called him by affording an opportunity to the witness to explain the testimony given on cross-examination, (b) to explain any apparent contradiction or inconsistency in his statements, and (c) complete the answer of a witness, or add a new matter which has been omitted, or correct a possible misinterpretation of testimony.
Re-cross examination	Upon the conclusion of the re-direct examination, the adverse party may re-cross-examine the witness on matters stated in his re-direct examination, and also on such other matters as may be allowed by the court in its discretion *(Sec. 8)*.	A witness cannot be recalled without leave of court, which may be granted only upon showing of concrete, substantial grounds.
Recalling the witness	After the examination of a witness by both sides has been concluded, the witness cannot be recalled without leave of the court. The court will grant or withhold leave in its discretion, as the interests of justice may require *(Sec. 9)*.	Aims to correct or explain his prior testimony; or lay the proper foundation for his impeachment, but this is permitted only with the discretion of the court.

Leading and misleading questions (Sec. 10, Rule 132)

(1) A question which suggests to the witness the answer which the examining party desires is a leading question. It is not allowed, except:

(a) On cross examination;

(b) On Preliminary matters;

(c) When there is difficulty in getting direct and intelligible answers from a witness who is ignorant, or a child of tender years, or is of feeble mind, or a deaf-mute;

(d) Of an unwilling or hostile witness; or

(e) Of a witness who is an adverse party or an officer, director, or managing agent of a public or private corporation or of a partnership or association which is an adverse party.

(f) In all stages of examination of a child if the same will further the interests of justice *(Sec. 20, AM 004-07-SC)*.

(4) A misleading question is one which assumes as true a fact not yet testified to by the witness, or contrary to that which he has previously stated. It is not allowed *(Sec. 10)*. The adverse party should object thereto or ask the court to expunge the answer from the records, if he has already given his answer.

Methods of impeachment of adverse party's witness

(1) To impeach means to call into question the veracity of the witness's testimony by means of evidence offered for that purpose, or by showing that the witness is unworthy of belief. Impeachment is an allegation, supported by proof, that a witness who has been examined is unworthy of credit *(98 CJS 353)*.

(2) A witness be impeached by the party against whom he was called:
   (a) By contradictory evidence;
   (b) By evidence that his general reputation for truth, honesty, or integrity is bad; or
   (c) By evidence that he has made at other times statements inconsistent with his present testimony;
   (d) But not by evidence of particular wrongful acts, except that it may be shown by the examination of the witness, or the record of the judgment, that he has been convicted of an offense *(Sec. 11)*.

(3) Other modes of impeachment aside from those provided by the Rules are:
   (a) By producing the record of his conviction of an offense;
   (b) By showing improbability or unreasonableness of testimony;
   (c) By showing bias, prejudice or hostility;
   (d) By prior acts or conduct inconsistent with his testimony;
   (e) By showing social connections, occupation and manner of living *(Underhill's Criminal Evidence, 5th Ed., Vol I)*;
   (f) By showing interest *(Wigmore on Evidence)*;
   (g) By showing intent and motive *(US vs. Lamb, 26 Phil. 423)*.

(4) The credibility of a witness may be attacked by proof of his bias, interest or hostility; by contradictory evidence; by evidence that his general reputation for truth, honesty or integrity is bad; by evidence that he has made at other times statements inconsistent with his present testimony; and by the testimony of other witness that the facts about which he has testified are otherwise than he as stated *(58 Am. Jur. 370)*.

(5) *Party may not impeach his own witness.* - Except with respect to witnesses referred to in paragraphs (d) and (e) of Section 10, the party producing a witness is not allowed to impeach his credibility. A witness may be considered as unwilling or hostile only if so declared by the court upon adequate showing of his adverse interest, unjustified reluctance to testify, or his having misled the party into calling him to the witness stand. The unwilling or hostile witness so declared, or the witness who is an adverse party, may be impeached by the party presenting him in all respects as if he had been called by the adverse party, except by evidence of his bad character. He may also be impeached and

cross-examined by the adverse party, but such cross examination must only be on the subject matter of his examination-in-chief *(Sec. 12)*.

How the witness is impeached by evidence of inconsistent statements (Laying the Predicate)

(1) Before a witness can be impeached by evidence that he has made at other times statements inconsistent with his present testimony, (a) the statements must be related to him, with the circumstances of the times and places and the persons present, and (b) he must be asked whether he made such statements, and if so, allowed to explain them. If the statements be in writing they must be shown to the witness before any question is put to him concerning them *(Sec. 13)*.

(2) A witness cannot be impeached by evidence of contradictory or prior inconsistent statements until the proper foundation or predicate has been laid by the party against whom said witness was called *(People vs. De Guzman, 288 SCRA 346)*. Laying the predicate means that it is the duty of a party trying to impugn the testimony of a witness by means of prior or subsequent inconsistent statements, whether oral or in writing, to give the witness a change to reconcile his conflicting declaration *(People vs. Relucio, 85 SCRA 227)*.

(3) Where no predicate is laid during the trial by calling the attention of a witness to alleged inconsistent statements and asking him to explain the contradiction, proof of alleged inconsistent statements of the witness, whether verbal or written, cannot be admitted on objection of the adverse party, or be pointed out on appeal for the purpose of destroying the credibility of the witness *(People vs. Escosura, 82 Phil. 41)*.

(4) An exception to the rule requiring the laying of foundation for the admissibility of evidence of inconsistent statements has been allowed in the case of dying declarations. Since they are admitted on the ground of necessity, proof of inconsistent or contradictory statements of the deceased may be admitted on the same ground without laying any foundation therefor *(Jones on Evidence, 2nd Ed., Sec. 2411)*.

Evidence of the good character of a witness

(1) Evidence of the good character of a witness is not admissible until such character has been impeached *(Sec. 14, Rule 132)*. This rule that evidence of a good character of a witness is not admissible until such character has been impeached is the logical result of the other one, that the law presumes every person to be reputedly truthful until evidence shall have been produced to the contrary *(Johnson vs. State, 129 Wis. 146)*.

(2) *Character evidence not generally admissible; exceptions.* –

(a) In Criminal Cases:

(1) The accused may prove his good moral character which is pertinent to the moral trait involved in the offense charged.

(2) Unless in rebuttal, the prosecution may not prove his bad moral character which is pertinent it to the moral trait involved in the offense charged.

Note that in criminal cases, the prosecution goes first. Hence, it cannot present evidence on the bad moral character of the accused on its evidence in chief.

(3) The good or bad moral character of the offended party may be proved if it tends to establish in any reasonable degree the probability or improbability of the offense charged.

(b) In Civil Cases:

Evidence of the moral character of a party in a civil case is admissible only when pertinent to the issue of character involved in the case.

(c) In the case provided for in Rule 132, Section 14 *(Sec. 51, Rule 130).*

Judicial Affidavit Rule *(AM No. 12-8-8-SC)*

Section 1. ***Scope.*** – (a) This Rule shall apply to all acitons, proceedings, and incidents requiring the reception of evidence before:

(1) The Metropolitan Trial Courts, the Municipal Trial Courts in Cities, the Municipal Trial Courts, and the Municipal Circuit Trial Courts, and the Shari'a Circuit courts but shall not apply to small claims cases unde AM No. 08-8-7-SC;
(2) The Regional Trial Courts and the Shari'a District Courts;
(3) The Sandiganbayan, the Court of Tax Appeals, the Court of Appeals, and the Shari'a Appellate Courts;
(4) The investigating officers and bodies authorized by the Supreme Court to receive evidence, including the Integrated Bar of the Philippines (IBP); and
(5) The special courts and quasi-judicial bodies, whose rules of procedure are subject to disapproval of the Supreme Court, insofar as their existing rules of procedure contravene the provisions of this Rule.

(b) For the purpose of brevity, the above courts, quasi-judicial bodies, or investigating officers shall be uniformly referred to here as the "court."

Sec. 2. ***Submission of Judicial Affidavits and Exhibits in lieu of direct testimonies.*** – (a) The parites shall file with the court and serve on the adverse party, personally or by licensed courier service, not later than five days before pre-trial or preliminary conference or the scheduled hearing with respect to motions and incidents, the following:

(1) The judicial affidavits of their witnesses, which shall take the place of such witnesses' direct testimonies; and
(2) The parties' documentary or object evidence, if any, which shall be attached to the judicial affidavits and marked as Exhibits A, B, C, and so on in the case of the complainant or the plaintiff, and as Exhibits 1, 2,3, and so on in the case of the respondent or the defendant.

(b) Should a party or a witness desire to keep the original document or object evidence in his possession, he may, after the same has been identified, marked as exhibit, and authenticated, warrant in his judicial affidavit that the copy or reproduction attached to such affidavit is a faithful copy or reproduction of that original. In addition, the party or witness shall bring the original document or object evidence for comparison during the preliminary conference with the attached copy, reproduction, or pictures, failing which the latter shall not be admitted.

This is without prejudice to the introduction of secondary evidence in place of the original when allowed by existing rules.

Sec. 3. ***Contents of Judicial Affidavits.*** – A judicial affidavit shall be prepared in the language known to the witness and, if not in English or Filipino, accompanied by a translation in English or Filipino, and shall contain the following:

(a) The name, age, residence or business address, and occupation of the witness;
(b) The name and address of the lawyer who conducts or supervises the examination of the witness and the place where the examination is being held;

(c) A statement that the witness is anwering the questions asked of him, fully conscious that he does so under oath, and that he may face criminal liability for false testimony or perjury;
(d) Questions asked of the witness and his corresponding answers, consecutively numbered, that:
  (1) Show the circumstances under which the witnbess acquired the facts upon which he testifies;
  (2) Elicit from him those facts which are relevant to the issues that the case presents; and
  (3) Identify the attached documentary and object evicdence and establish their authenticity in accordance with the Rules of Court;
(e) The signature of the witness over his printed name; and
(f) A jurat with the signature of the notary public who administers the oath or an officer who is authorized by law to administer the same.

Sec. 4. ***Sworn attestation of the lawyer.*** – (a) The judicial affidavit shall contain a sworn attestation at the end, executed by the lawyer who conducted or supervised the examination of the witness, to the effect that:

(1) He faithfully recorded or caused to be recorded the questions he asked and the corresponding answers that the witness gave; and
(2) Neither he nor other person then present or assisting him coached the witness regarding the latter's answers.

(b) A false attestation shall subject the lawyer mentioned to disciplinary action, including disbarment.

Sec. 5. ***Subpoena.*** – If the government employee or official, or the requested witnbess, who is neither the witness of the adverse party nor a hostile witness, unjustifiably declines to execute a judicial affidavit or refuses without just cause to make the relevant books, documents, or other things under his control available for copying, authentication, and eventual production in court, the requesting party may avail himself or the issuance of a subpoena *ad testificandum* or *duces tecum* under Rule 21 of the Rules of Court. The rules governing the issuance of a subpoena to the witness in this case shall be the same as when taking his deposition except that the taking of a judicial affidavit shall be understood to be *ex parte*.

Sec. 6. ***Offer and objections to testimony in judicial affidavit.*** – The party presenting the judicial affidavit of his witness in place of direct testimony shall state the purpose of such testimony at the start of the presentation of the witness. The adverse party may move to disqualify the witness or to strike out his affidavit or any of the answers found in it on ground of inadmissibility. The court shall promptly rule on the motion and, if granted, shall cause the marking of anyexcluded answer by placing it in brackets under the initials of an authorized court personnel, without prejudice to a tender of excluded evidence under Section 40 of Rule 132 of the Rules of Court.

Sec. 7. ***Examination of the witness on his judicial affidavit.*** – The adverse party shall have the right to cross-examine the witness on his judicial affidavit and on the exhibits attached to the same. The party who presents the witness may also examine him as on re-direct. In every case, the court shall take active part in examining the witness to determine his credibility as well as the truth of his testimony and to elicit answers that it needs for resolving the issues.

Sec. 8. ***Oral offer and objections to exhibits.*** – (a) Upon the determination of the testimony of his last wintess, a party shall immediately make an oral offer of evidence of his documentaryor object exhibits, piece by piece, in their chronological order, stating the purpose or purposes for which he offers the particular exhibit.

(b) After each piece of exhibits is offered, the adverse party shall state the legal ground for his objection, if any, to its admission, and the court shall immediately make its ruling respecting that exhibit.

(c) Since the documentary or object exhibits form part of the judicial affidavits that describe and authenticate them, it is sufficient that such exhibits are simply cited by their markings during the offers, the objections, and the rulings, dispensing with the description of each exhibit.

Sec. 9. ***Application of rule to criminal actions.*** – (a) This rule shall apply to all criminal actions:

(1) Where the maximum of the imposable penalty does not exceed six years;
(2) Where the accused agrees to the use of judicial affidavits, irrespective of the penalty involved; or
(3) With respect to the civil aspect of the actions, whatever the panalties involved are.

(b) The prosecution shall submit the judicial affidavits of its witnesses not later than five days before the pre-triall, serving copies of the same upon the accused. The complainant or public prosecutor shall attach to the affidavits such documentaryor object evidence as he may have, marking them as Exhibits A, B, C, and so on. No further judicial affidavit, documentary or object evidence shall be admitted at the trial.

(c) If the accused desires to be heard on his defense after receipt of the judicial affidavits of the prosecution, he shall have the option to submit his judicial affidavit as well as those of his witnesses to the court within ten days from receipt of such affidavits and serve a copy of each object evidence previously marked as Exhibits 1, 2, 3, and so on. These affidavits shall serve as direct testimonies of the accused and his witnesses when they appear before the court to testify.

Sec. 10. Effect of non-compliance with the Judicial Affidavit Rule. – (a) A party who fails to submit the required judicial affidavits and exhibits on time shall be deemed to have waived their submission. The court may, however, allow only once the late submission of the same provided, the delay is for a valid reason, would not unduly prejudice the opposing party, and the defaulting party pays a fine of not less than P1,000.00 nor more than P5,000.00, at the discretion of the court.

(b) The court shall not consider the affidavit of any witness who fails to appear at the scheduled hearing of the case as required. Counsel who fails to appear wihout valid cause despite notice shall be deemed to have waived his client's right to confront by cross-examination the witnesses there present.

(c) The court shall not admit as evidence judicial affidavits that do not conform to the content requirements of Section 3 and the attestation requirement of Section 4 above. The court may, however, allow only once the subsequent submission of the complaint replacement affidavits before the hearing or trial provided the delay is for a valid reason and would not unduly prejudice the opposing partyand provided further, that public or private counsel responsible for their preparation and submission pays a fine of not less than P1,000.00 nor more than P5,000.00, at the discretion of the court.

[Rule took effect on January1, 2013.]

(1) In the case at bar, Lagon accuses Judge Velasco of having committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed order, requiring him (Lagon) to submit his Judicial Affidavits before the commencement of the trial of the case.

The Court is not convinced.

In issuing the assailed order, Judge Velasco was actually enforcing the Judicial Affidavit Rule, promulgated by the Court. Therefore, by no stretch of the imagination may Judge

Velasco's faithful observance of the rules of procedure, be regarded as a capricious, whimsical or arbitrary act.

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The Judicial Affidavit Rule was particularly created to solve the following ills brought about by protracted litigations, such as, the dismissal of criminal cases due to the frustration of complainants in shuttling back and forth to court after repeated postponements; and the dearth of foreign businessmen making long-term investments in the Philippines because the courts are unable to provide ample and speedy protection to their investments, thereby keeping the people poor. At first, the Court approved the piloting by trial courts in Quezon City of the compulsory use of judicial affidavits in place of the direct testimonies of witnesses. Eventually, the success of the judicial affidavit rule was unprecedented, and its implementation led to a reduction of about two-thirds of the time used for presenting the testimonies of witnesses. Indeed, the use of judicial affidavits greatly hastened the hearing and adjudication of cases.

Accordingly, the Court *en bane* directed the application of the Judicial Affidavit Rule to all actions, proceedings, and incidents requiring the reception of evidence before the following tribunals, such as,

(i) the Metropolitan Trial Courts, the Municipal Trial Courts in Cities, the Municipal Trial Courts, the Municipal Circuit Trial Courts, and the Shari' a Circuit Courts but shall not apply to small claims cases under A.M. 08-8-7-SC;

(ii) The Regional Trial Courts and the Shari'a District Courts;

(iii) The Sandiganbayan, the Court of Tax Appeals, the Court of Appeals, and the Shari'a Appellate Courts;

(iv) The investigating officers and bodies authorized by the Supreme Court to receive evidence, including the Integrated Bar of the Philippine (IBP); and

(v) The special courts and quasi-judicial bodies, whose rules of procedure are subject to disapproval of the Supreme Court, insofar as their existing rules of procedure contravene the provisions of this Rule.

Thus, in all proceedings before the aforementioned tribunals, the parties are required to file the Judicial Affidavits of their witnesses, in lieu of their direct testimonies. Specifically, Section 2 of the Judicial Affidavit Rule ordains that:

> **Section** 2. *Submission of Judicial Affidavits and Exhibits in lieu of direct testimonies.* - (a) The parties shall file with the court and serve on the adverse party, personally or by licensed courier service, **not later than** five days before pre-trial or preliminary conference or the scheduled hearing xxx.

Clearly, both the Judicial Affidavit Rule and Demurrer to Evidence can co-exist harmoniously as tools for a more efficient and speedy administration of trial procedures. On the one hand, the Judicial Affidavit Rule simply dispenses with the direct testimony, thereby reducing the time at which a case stands for trial, in the same way that the Demurrer to Evidence abbreviates proceedings by allowing the defendant to seek for an early resolution of the case should the plaintiff be unable to sufficiently prove his complaint. These rules do not conflict, and when used hand in hand will lead to an efficient administration of the trial *(Lagon vs. Judge Velasco, GR No. 208424, 02/14/2018)*.

(2) **2015 Bar:** Pedro was charged with theft for stealing Juan's cellphone worth P20,000.00. Prosecutor Marilag at the pre-trial submitted the judicial affidavit of Juan attaching the receipt for the purchase of the sellphone to prove civil liability. She also submitted the judicial affidavit of Mario, an eyewitness who narrated therein how Pedro stole Juan's cellphone.

At the trial, Pedro's lawyer objected to the prosecution's use of judicial affidavits of her witnesses considering the imposable penalty on the offense with which his client was charged.

(A) Is Pedro's lawyer correct in objecting to the judicial affidavit of Mario? (2%)

(B) Is Pedro's lawyer correct in objecting to the judicial affidavit of Juan? (2%)

At the conclusion of the prosecution's presentation of evidence, Prosecutor Marilag orallyoffered the receipt attached to Juan's judicial affidavit, which the court admitted over the objection of Pedro's lawyer.

After Pedro's presentation of his evidence, the court rendered judgment finding him guilty as charged and holding him civilly libale for P20,000.00.

Pedro's lawyer seasonably filed a motion for reconsideration of the decision asserting that the court erred in awarding the civil liability on the basis of Juan's judicial affidavit, a documentary evidence which Prosecutor failed to orally offer.

(C) Is the motion for reconsideration meritorious? (2%)

Answer:

(A) Yes, Pedro's lawyer is correct in objecting to the judicial affivit of Mario. The Judicial Affidavit Rules shall apply only to criminal actions where the maximum of the imposable pernatly does not exceed six years *(Section 9[a][1], AM No. 12-8-8-SC)*. Here, the maximum imposable penalty for the crime of theft of a cellphone worth P20,000.00 is prision mayor in its minimum to medium periods, or six years and one day to eight years and one day. Thus, Pedor's lawyer is correct in objecting to the judicial affidavit of Mario.

(B) No, Pedro's lawyer is not correct in objecting to the judicial affidavit of Juan because the Judicial Affidavit Rules apply with respect to the civil aspect of the actions, regardless of the penalties involved *(Section 9)*. Here, the judicial affidavit of Juan was offered to prove the civil liability of Pedfro. Thus, the objection of Pedro's lawyer to the judicial affidavit of Juan is not correct.

(C) No. The motion for reconsideration is not meritorious. The judicial affidavit is not required to be offered as separate documentary evidence, because it is filed in lieu of the direct testimony of the witness. It is offered, at the time the witness is called to testify, and any objection to it shoud have been made at the time the witness was presented *(Sections 6 and 8)*.

Since the receipt attached to the judicial affidavit was orally offered, there was enough basis for the court to award civil liability.

(3) **2016 Bar**: What are the contents of a judicial affidavit? (5%)

F. ADMISSIONS AND CONFESSIONS *(Rule 130)*

Extra-Judicial Admissions

(1) The act, declaration or omission of a party, as to a relevant fact may be given in evidence against him *(Sec. 26, Rule 130)*. This rule pertains to extra-judicial admissions.

(2) A statement by the accused, direct or implied, of facts pertinent to the issue, and tending in connection with proof of other facts, to prove his guilt *(People vs. Lorenzo, GR No. 110107 [1995])*.

Judicial Admissions

(1) An admission, verbal or written, made by party in the course of the proceedings ion the same case does not require proof. It maybe made:

(a) In the pleadings filed by the parties;
(b) In the course of the trial either by verbal or written manifestations or stipulations; or
(c) In other stages of judicial proceedings, as in the pre-trial of the case.

When made in the same case in which it is offered, "no evidence is needed to prove the same and it cannot be contradicted unless it is shown to have been made through palpable mistake or when no such admission was made." The admission becomes conclusive on him, and all proof submitted contrary thereto or inconsistent therewith should be ignored, whether an objection is interposed by the adverse party or not *(Republic vs. Estate of Hans Menzi [2012])*.

(2) The admission having been made in a stipulation of facts at pre-trial by the parties, it must be treated as a judicial admission. Under Section 24, Rule 129, a judicial admission requires no proof. The admission may be contradicted only b y a showing that it was made through palpable mistake or that no such admission was made. The Supreme Court cannot lightly set aside a judicial admission especially when the opposing party relied upon the same and accordingly dispensed with further proof of the fact already admitted. An admission made by a party in the course of the proceedings does not require proof *(Toshiba Information Equipment (Phils.), Inc. vs. Commissioner of Internal Revenue [2010])*.

(3) A judicial admission conclusively binds the party making it, he cannot thereafter take a position contradictory to, or inconsistent with his pleadings. Acts or facts admitted do not require proof and cannot be contradicted unless it is shown that the admission was made through palpable mistake or that no such admission was made *(Cahilig v. Hon. Terencio [2010])*.

(4) The extrajudicial confession or admission of one accused is admissible only against said accused, but is inadmissible against the other accused. But if the declarant or admitter repeats in court his extrajudicial admission, during the trial and the other accused is accorded the opportunity to cross-examine the admitter, the admission is admissible against both accused because then it is transposed into a judicial admission *(Enriquez v. Sandiganbayan [2012])*.

(5) Judicial admissions are cannot be contradicted by the admitter who is the party and binds the person who makes the same, and absent any showing that this was maden thru palpable mistake or that no such admission was made, no amount of realization can offset it *(Sps. Manzanilla v. Waterfields Industries Corporation [2014])*.

(6) Judicial admissions are legally binding on the party making the admissions. Pre-trial admission in civil cases is one the instances of judicial admissions explicitly provided for under Section 7, Rule 18, which mandates that the contents of the pre-trial order shall control the subsequent course of the action, thereby, defining and limiting the issues to be tried. Under Section 4, Rule 129 of the Rules of Court, a judicial admission requires no proof *(Eastern Shipping Lines, Inc. vs, BPI/MS Insurance Corporation [2015])*.

Admission	Confession
An act, declaration or omission of a party as to a relevant fact *(Sec. 26, Rule 130)*.	The declaration of an accused acknowledging his guilt of the offense charged, or of any offense necessarily included therein *(Sec. 33, Rule 130)*.
It is a voluntary acknowledgment made by a party of the existence of the truth of certain facts which are inconsistent with his claims in an action *(Black's Law Dictionary, 5th Ed.)*.	It is a statement by the accused that he engaged in conduct which constitutes a crime *(29 Am. Jur. 708)*.
Broader than confession.	Specific type of admission which refers only to an acknowledgment of guilt
May be implied like admission by silence.	Cannot be implied, but should be a direct and positive acknowledgment of guilt.
May be judicial or extrajudicial.	May be judicial or extrajudicial.
May be adoptive, which occurs when a person manifests his assent to the statements of another person *(Estrada vs. Desierto, 356 SCRA 108)*.	

(1) **2008 Bar**: Bembol was charged with rape. Bembol's father, Ramil, approached Artemon, the victim's father, during the preliminary investigation and offered P1 Million to Artemon to settle the case. Artemon refused the offer.

(a) During the trial, the prosecution presented Artemon to testify on Ramil's offer and thereby establish an implied admission of guilt. Is Ramil's offer to settle admissible in evidence? (3%)

(b) During the pre-trial, Bembol personally offered to settle the case for P1 Million to the private prosecutor, who immediately put the offer on record in the presence of the trial judge. Is Bembol's offer a judicial admission of his guilt? (3%)

Answer:

(a) Yes. The offer to settle by the father of the accused, is admissible in evidence as an implied admission of guilt *(Peo vs. Salvador, GR No. 136870-72, 01/28/2003)*.

(b) Yes. Bembol's offer is an admission of guilt *(Sec. 33, Rule 130)*. If it was repeated by the prosecutor in the presence of the judge at pre-trial, the extrajudicial confession becomes transposed into a judicial confession. There is no need for the assistance of counsel *(Peo v. Buntag GR No. 123070, 04/14/2004)*.

Presumptions

(1) Under the Doctrine of Estoppel, an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person

relying thereon. A party may not go back to his own acts and representations to the prejudice of the other party who relied upon them. In the law of evidence, whenever a party has by his own declaration, act or omission, intentionally and deliberately led another to believe a particular thing to be true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act, or omission, be permitted to falsify it *(Sps. Manzanilla v. Waterfields Industries Corporation [2014])*.

(2) In "estoppel," a person who by his deed or conduct has induced another to act in a particular manner, is barred from adopting an inconsistent position, attitude or course of conduct that thereby causes loss or injury to another. It further bars him from denying the truth of a fact which has, in the contemplation of the law, become settled by the acts and proceeding of a judicial or legislative officer or by the act of the party himself, either by conventional writing or by representations, express or implied or in pais *(Adolfo v. Adolfo [2015])*.

(3) Suppression of testimony. Under Section 3(3), Rule 131, the rule that "evidence suppressed would be adverse if produced" does not apply if:

(a) The evidence is at the disposal of both parties;
(b) The suppression was not willful;
(c) It is merely corroborative or cumulative; and
(d) The suppression is an exercise of a privilege.

Plainly, there was no suppression of evidence in this case. First, the defense had the opportunity to subpoena Rowena even if the prosecution did not present her as a witness; instead, the defense failed to call her to the witness stand. Second, Rowena was certified to be suffering from "Acute Psychotic Depressive Condition" and thus "cannot stand judicial proceedings yet." The non-presentation, therefore, of Rowena was not willful. Third, in any case, while Rowena was the victim, Nimfa was also present and in fact witnessed the violation committed on her sister *(People v. Padrigone [2002])*.

(4) Disputable presumption that official duties have been regularly performed. As regards affidavits, including Answers to interrogatories which are required to be sworn to by the person making them, the only portion thereof executed by the person authorized to take oaths is the jurat. The presumption that official duty has been regularly performed therefor applies only to the latter portion, where the notary public merely attests that the affidavit was subscribed and sworn to before him or her on the date mentioned thereon. Thus, even though affidavits are notarized documents, affidavits are self-serving and must be received with caution *(Philippine Trust Company v. Court of Appeals [2010])*.

Res Inter Alios Acta Rule

(1) *Res inter alios acta alteri nocere debt* means that "things done to strangers ought not to injure those who are not parties to them" *(Black's Law Dictionary, 5th Ed.)*. It has two branches, namely:
   (a) The rule that the rights of a party cannot be prejudiced by the father of the an act, declaration, or omission of another *(Sec. 28, Rule 130)*; and
   (b) The rule that evidence of previous conduct or similar acts at one time is not admissible to prove that one did or did not do the same act at another time *(Sec. 34, Rule 132)*.

(2) The rule has reference to *extrajudicial declarations*. Hence, statements made in open court by a witness implicating persons aside from his own judicial admissions are admissible as declarations from one who has personal knowledge of the facts testified to.

(3) Exceptions to the first branch of the rule:

(a) Admission by a co-partner or agent *(Sec. 29, Rule 130)*;

(b) Admission by a co-conspirator *(Sec. 30, Rule 130)*; and
(c) Admission by privies *(Sec. 31, Rule 130)*.

Admission by a party

(1) The act, declaration or omission of a party as to a relevant fact may be given in evidence against him *(Sec. 26)*.

Admission by a third party

(1) The rights of a party cannot be prejudiced by an act, declaration, or omission of another, except as hereinafter provided *(Sec. 28)*.

Admission by a co-partner or agent

(1) The act or declaration of a partner or agent of the party within the scope of his authority and during the existence of the partnership or agency, may be given in evidence against such party after the partnership or agency is shown by evidence other than such act or declaration. The same rule applies to the act or declaration of a joint owner, joint debtor, or other person jointly interested with the party *(Sec. 29)*.
(2) For the admission of a co-partner or agent to be admissible, the following requisites must concur:
    (a) The declaration or act of the partner and agent must have been made or done within the scope of his authority;
    (b) The declaration or act of the partner and agent must have been made or done during the existence of the partnership or agency, and the person making the declaration still a partner or an agent; and
    (c) The existence of the partnership or agency is proven by evidence other than the declaration or act of the partner and agent.
(3) Admissions by counsel are admissible against the client as the former acts in representation and as an agent of the client, subject to the limitation that the same should not amount to a compromise *(Sec. 23, Rule 138)* or confession of judgment *(Arcenas vs. Sison, GR No. L-17011 [1963])*.

Admission by a conspirator

(1) The act or declaration of a conspirator relating to the conspiracy and during its existence, may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act of declaration *(Sec. 30)*.
(2) Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it *(Art. 8, RPC)*. Once conspiracy is proven, the act of one is the act of all. The statement therefore of one may be admitted against the other co-conspirators as an exception to the rule of *res inter alios acta*.
(3) For the exception to apply, the following requisites must concur:
    (a) The declaration or act be made or done during the existence of the conspiracy;
    (b) The declaration or act must relate to the conspiracy; and
    (c) The conspiracy must be shown by evidence other than the declaration or act.

(4) An extrajudicial confession is binding only on the confessant. It cannot be admitted against his or her co-accused and is considered as hearsay against them. It would not only be rightly inconvenient, but also manifestly unjust, that a man should be bound by the acts of mere unauthorized strangers; and if a party ought not to be bund by the acts of strangers, neither ought their acts or conduct be used as evidence against him. The exception provided under Sec. 30, Rule 130 of the Rules of Court to the rule allowing the admission of a conspirator requires the prior establishment of the conspiracy by evidence other than the confession *(Salapuddin v. CA, GR No. 184681, 02/25/2013)*.

Admission by privies

(1) Where one derives title to property from another, the act, declaration, or omission of the latter, while holding the title, in relation to the property, is evidence against the former *(Sec. 31)*.

(2) Privity means mutual succession of relationship to the same rights of property. Privies are those who have mutual or successive relationship to the same right of property or subject matter, such as personal representatives, heirs, devisees, legatees, assigns, voluntary grantees or judgment creditors or purchasers from them with notice of the facts.

(3) Three exceptions are recognized to the rule that declarations of the transferor, made subsequent to the transfer, are inadmissible:
   (a) Where the declarations are made in the presence of the transferee, and he acquiesces in the statements, or asserts no rights where he ought to speak;
   (b) Where there has been a *prima facie* case of fraud established, as where the thing after the sale or transfer, remains with the seller or transferor;
   (c) Where the evidence establishes a continuing conspiracy to defraud, which conspiracy exists between the vendor and the vendee *(Jones on Evidence, Sec. 912)*.

Admission by silence

(1) An act or declaration made in the presence and within the hearing or observation of a party who does or says nothing when the act or declaration is such as naturally to call for action or comment if not true, and when proper and possible for him to do so, may be given in evidence against him *(Sec. 32)*.

(2) The rule that the silence of a party against whom a claim or right is asserted may be construed as an admission of the truth of the assertion rests on that instinct of our nature, which leads us to resist an unfounded demand. The common sense of mankind is expressed in the popular phrase, silence gives consent which is but another form of expressing the maxim of the law, *qui tacet cosentire videtur (Perry vs. Johnson, 59 Ala. 648)*.

(3) Before the silence of a party can be taken as an admission of what is said, the following requisites must concur:
   (a) Hearing and understanding of the statement by the party;
   (b) Opportunity and necessity of denying the statements;
   (c) Statement must refer to a matter affecting his right;
   (d) Facts were within the knowledge of the party; and
   (e) Facts admitted or the inference to be drawn from his silence would be material to the issue.

(1) The declaration of an accused acknowledging his guilt of the offense charged, or of any offense necessarily included therein, may be given in evidence against him *(Sec. 33)*.

(2) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.
   (a) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited;
   (b) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him *(Sec. 12, Art. III, Constitution)*.

(3) Confession is an acknowledgment in express words, by the accused in a criminal case, of the truth of the offense charged, or of some essential parts thereof *(Wigmore)*. To be valid, confessions must be voluntarily and freely made.

(4) Exceptions to the rule that confessions of an accused may be given in evidence against him and incompetent against his co-accused:
   (a) When several accused are tried together, confession made by one of them during the trial implicating the others is evidence against the latter *(People vs. Impit Gumaling, 61 Phil. 165)*;
   (b) When one of the defendants is discharged from the information and testifies as a witness for the prosecution, the confession made in the course of his testimony is admissible against his co-defendants, if corroborated by indisputable proof *(People vs. Bautista,40 Phil. 389)*;
   (c) If a defendant after having been apprised of the confession of his co-defendant ratifies or confirms said confession, the same is admissible against him *(People vs. Orenciada and Cenita,47 Phil. 970)*;
   (d) Interlocking confessions -- Where several extra-judicial confession had been made by several persons charged with an offense and there could have been no collusion with reference to said several confessions, the facts that the statements therein are in all material respects identical, is confirmatory of the confession of the co-defendant, and is admissible against his other co-defendants *(People vs. Badilla, 48 Phil. 718)*;
   (e) A statement made by one defendant after his arrest, in the presence of this co-defendant, confessing his guilt and implicating his co-defendant who failed to contradict or deny it, is admissible against his co-defendant *(22 CJS 1441)*;
   (f) When the confession is of a conspirator and made after conspiracy in furtherance of its object, the same is admissible against his co-conspirator; and
   (g) The confession of one conspirator made after the termination of a conspiracy is admissible against his co-conspirator if made in his presence and assented to by him, or admitted its truth or failed to contradict or deny it *(Wharton on Evidence)*.

(5) If the accused admits having committed the act in question but alleges a justification therefor, the same is merely an admission *(Ladiana vs. People, GR No. 144293 [2002])*.

(6) Any confession, including a re-enactment, without admonition of the right to silence and to counsel, and without counsel chosen by the accused is inadmissible in evidence *(People vs. Yip Wai Ming, GR No. 120959 [1996])*.

(7) The basic test for the validity of a confession is – was it voluntarily and freely made? The term "voluntary" means that the accused speaks of his free will and accord, without inducement of any kind, and with a full and complete knowledge of the nature and

consequences of the confession, and when the speaking is so free from influences affecting the will of the accused, at the time the confession was made, that it renders it admissible in evidence against him. Plainly, the admissibility of a confession in evidence hinges on its voluntariness *(People vs. Satorre, GR No. 133858 [2003])*.

Similar acts as evidence

(1) Evidence that one did or did not do a certain thing at one time is not admissible to prove that he did or did not do the same or a similar thing at another time; but it may be received to prove a specific intent or knowledge, identity, plan, system, scheme, habit, custom or usage, and the like *(Sec. 34)*.

(2) Reason for the rule: It is clear that evidence of other crimes compels the defendant to meet charges of which the indictment gives him no information, confuses him in his defense, raises a variety of issue, and thus diverts the attention of the court from the charge immediately before it. The rule may be said to be an application of the principle that the evidence must be confined to the point in issue in the case on trial. In other words, evidence of collateral offenses must not be received as substantive evidence of the offenses on trial *(20 Am. Jur. 288)*.

Hearsay Rule

(1) *Testimony generally confined to personal knowledge; hearsay excluded.* - A witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception, except as otherwise provided in these rules *(Sec. 36, Rule 130)*.

(2) The hearsay rule is not limited to oral testimony or statements; it applies to written, as well as oral statements *(Consunji vs. CA, GR No. 137873 [2001])*.

Meaning of hearsay

(1) Evidence is called hearsay when its probative force depends in whole or in part on the competency and credibility of some persons other than the witness by whom it is sought to produce it *(31 CJS 919)*. It also means the evidence not of what the witness himself knows but of what he has heard from others *(Woodroffes Law on Evidence, 9th Ed.)*.

(2) **2003 Bar**: X and Y were charged with murder. Upon application of the prosecution, Y was discharged from the Information to be utilized as a state witness but forgot to state the purpose of his testimony much less offer it in evidence establishing the guilt of X. Y testified that he and X conspired to kill the victim but it was X who actually shot the victim. The testimony of Y was the only material evidence. Y testified that he and X conspired to kill the victim but it was x who actually shot the victim. The testimony of Y was the only material evidence establishing the guilt of X. Y was thoroughly cross-examined by the defense counsel. After the prosecution rested its case, the defense filed a motion fore demurrer to evidence based on the following grounds: Y's testimony is not admissible against X pursuant to the rule on "*res inter alios acta*".

Rule on the motion for demurrer to evidence on the above ground.

Answer: The *res inter allos acta* rule does not apply because Y testified in open court and was subjected to cross examination.

(3) **2002 Bar**: Pomeo sued for injuries suffered b the plaintiff in a vehicular accident. Julieta, a witness in court, testifies that Romeo told her (Julieta) that he (Romeo) heard Antonio, a witness to the accident, had given an excited account of the accident immediately after its occurrence. Is Julieta's testimony admissible against Romeo over proper and timely objection? Why? (5%)

Answer: No. Julieta's testimony is not admissible in evidence against Romeo, because while the excited account of Antonio, a witness to the accident, was told to Romeo, it was only Romeo who told Julieta about it, which makes it hearsay.

Doctrine of Independently Relevant Statements

(1) Statements or writings attributed to a person not on the witness stand, which are being offered not to prove the truth of the facts stated therein, but only to prove that such were actually made.

(2) These are not covered by the hearsay rule *(People vs. Cusi, GR No. L-20986 [1965])*.

(3) Two classes of independently relevant statements:

(a) Statements which are the very facts in issues, and

(b) Statements which are circumstantial evidence of the facts in issue *(Estrada vs. Desierto, GR No. 146710-15 [2001])*. They include the following:

1. statement of a person showing his state of mind, that is, his mental condition, knowledge, belief, intention, ill will and other emotions;
2. statements of a person which show his physical condition, as ilnness and the like;
3. statements of a person from which an inference may be made as to the state of mind of another, that is, the knowledge, belief, motive, good or bad faith, etc. of the latter'
4. statements which may identify the date, place and person in question; and
5. statements showing the lack of credibility of a witness *(Estrada vs. Desierto, GR No. 146710-15 [2001])*.

Reason for exclusion of hearsay evidence

(1) Hearsay evidence is inadmissible according to the general rule. The real basis for the exclusion appears to lie in the fact that hearsay testimony is not subject to the tests which can ordinarily be applied for the ascertainment of the truth of testimony, since the declarant is not present and available for cross-examination. In criminal cases the admission of hearsay evidence would be a violation of the constitutional provision that the accused shall enjoy the right of being confronted with the witnesses testifying against him and to cross-examine them. Moreover, the court is without the opportunity to test the credibility of hearsay statements by observing the demeanor of the person who made them *(20 Am. Jur. 400)*.

Exceptions to the hearsay rule

(1) Exceptions to the hearsay rule: (DEVFLECT'D WI-CAP)
(a) Dying declaration *(Sec. 37)*;
(b) Entries in the course of business *(Sec. 43)*;
(c) Verbal acts *(Sec. 42)*;

(d) Family reputation or tradition regarding pedigree *(Sec. 40)*;
(e) Learned treatises *(Sec. 46)*;
(f) Entries in official records *(Sec. 44)*;
(g) Common reputation *(Sec. 41)*;
(h) Testimony or deposition at a former proceeding *(Sec. 47)*;
(i) Declaration against interest *(Sec. 38)*;
(j) Waiver;
(k) Independently relevant evidence *(Estrada vs. Desierto, 356 SCRA 108)*;
(l) Commercial lists and the like *(Sec. 45)*;
(m) Act or declaration about pedigree *(Sec. 39)*; and
(n) Part of *res gestae (Sec. 42)*.

(2) The statements from which the facts in issue may be inferred may be testified to by witnesses without violating the hearsay rule. Of this kind are:
(a) Statements of a person showing his state of mind, that is his mental condition, knowledge, belief, intention, ill-will and other emotion *(US vs. Enriquez, 1 Phil. 241)*;
(b) Statements of a person whish show his physical condition, as illness and the like *(Steely vs. Central, 88 Vt. 178)*;
(c) Statements of a person from which an inference may be made as to the state of mind of another, that is, knowledge, belief, motive, good or bad faith, etc. of the latter *(Roles vs. Lizarraga Hermanos, 42 Phil. 584)*;
(d) Statements which may identify the date,, place, and person in question *(State vs. Dunn, 109 Ia. 750)*; and
(e) Statements showing the lack of credibility of a witness.

(3) It appears that not all the requisites of a dying declaration are present. From the records, no questions relative to the second requisite was propounded to Januario. It does not appear that the declarant was under the consciousness of his impending death when he made the statements. The rule is that, in order to make a dying declaration admissible, a fixed belief in inevitable and imminent death must be entered by the declarant. It is the belief in impending death and not the rapid succession of death in point of fact that renders a dying declaration admissible. The test is whether the declarant has abandoned all hopes of survival and looked on death as certainly impending. Thus, the utterances made by Januario could not be considered as a dying declaration.
The test of admissibility of evidence as a part of the res gestae is, therefore, whether the act, declaration, or exclamation, is so interwoven or connected with the principal fact or event that it characterizes as to be regarded as a part of the transaction itself, and also whether it clearly negates any premeditation or purpose to manufacture testimony.
When Januario gave the identity of the assailants to SPO3 Mendoza, he was referring to a startling occurrence which is the stabbing by appellant and his co-accused. At that time, Januario and the witness were in the vehicle that would bring him to the hospital, and thus, had no time to contrive his identification of the assailant. His utterance about appellant and his co-accused having stabbed him, in answer to the question of SPO3 Mendoza, was made in spontaneity and only in reaction to the startling occurrence. Definitely, the statement is relevant because it identified the accused as the authors of the crime. Verily, the killing of Januario, perpetrated by appellant, is adequately proven by the prosecution *(People vs. Gatarin, GR No. 198022, 04/07/2014)*.

Dying declaration

(1) The declaration of a dying person, made under the consciousness of an impending death, may be received in any case wherein his death is the subject of inquiry, as evidence of the cause and surrounding circumstances of such death *(Sec. 37)*.

(2) Dying declarations are the statements made by a person after the mortal wounds have been inflicted, under the belief that death is certain, stating the facts concerning the cause of, and the circumstances surrounding the homicide *(Wharton's Criminal Evidence)*.

(3) Requisites:
   (a) That death is imminent and the declarant is conscious of that fact;
   (b) That the declaration refers to the cause and surrounding circumstances of such death;
   (c) That the declaration relates to facts which the victim is competent to testify to; and
   (d) That the declaration is offered in a case wherein the declarant's death is the subject of the inquiry.

(4) Victim Januario was stabbed by respondents on his way home. Policemen patrolling the area saw Januario lying on the street. He was brought by the policemen to the hospital. While in the vehicle, the police asked him who jurt him. He answered that it was the respondents. He eventually died because of the stab wounds.

It does not appear that the declarant was under the consciousness of his impending death when he made the statements. No questions relative to the second requisite was propounded to Januario. The rule is that, in order to make a dying declaration admissible, a fixed belief in inevitable and imminent death must be entered by the declarant. It is the belief in impeding death and not the rapid succession of death in point of fact that renders a dyiing declaration admissible. The test is whether the declarant has abandoned all hopes of survival and looked on death as certainly impending. Thus, the utterances made by Januario could not be considered as a dying declaration.

The Court appreciated the testimony as part of *res gestae* *(People vs. Quinsayas, GR No. 198022 [2014])*.

Declaration against interest

(1) The declaration made by a person deceased, or unable to testify, against the interest of the declarant, if the fact asserted in the declaration was at the time it was made so far contrary to declarant's own interest, that a reasonable man in his position would not have made the declaration unless he believed it to be true, may be received in evidence against himself or his successors in interest and against third persons *(Sec. 38)*.

(2) Requisites for the exception to apply:
   (a) That the declarant is dead or unable to testify;
   (b) That it relates to a fact against the interest of the declarant;
   (c) That at the time he made said declaration the declarant was aware that the same was contrary to his aforesaid interest; and
   (d) That the declarant had no motive to falsify and believed such declaration to be true.

Admission by privies	Declaration against interest
One of 3 exceptions to res inter alios acta	Exception to hearsay
Evidence against the successor in interest of the admitter	Evidence against even the declarant, his successor in interest, or 3rd persons
Admitter need not be dead or unable to testify	Declarant is dead or unable to testify
Relates to title to property	Relates to any interest
Admission need not be against the admitter's interest	Declaration must be against the interest of the declarant

Act or declaration about pedigree

(1) The act or declaration of a person deceased, or unable to testify, in respect to the pedigree of another person related to him by birth or marriage, may be received in evidence where it occurred before the controversy, and the relationship between the two persons is shown by evidence other than such act or declaration. The word "pedigree" includes relationship, family genealogy, birth, marriage, death, the dates when and the places where these facts occurred, and the names of the relatives. It embraces also facts of family history intimately connected with pedigree *(Sec. 39)*.

(2) Pedigree is the history of family descent which is transmitted from one generation to another by both oral and written declarations and by traditions *(Jones on Evidence)*.

(3) Requisites for applicability:
   (a) Declarant is dead or unable to testify;
   (b) Necessity that pedigree be in issue;
   (c) Declarant must be a relative of the person whose pedigree is in question;
   (d) Declaration must be made before the controversy occurred; and
   (e) The relationship between the declarant and the person whose pedigree is in question must be shown by evidence other than such act or declaration.

Family reputation or tradition regarding pedigree

(1) The reputation or tradition existing in a family previous to the controversy, in respect to the pedigree of any one of its members, may be received in evidence if the witness testifying thereon be also a member of the family, either by consanguinity or affinity. Entries in family bibles or other family books or charts, engravings on rings, family portraits and the like, may be received as evidence of pedigree *(Sec. 40)*.

(2) Requisites for the exception to apply:
   (a) There is a controversy in respect to the pedigree of any members of a family;
   (b) The reputation or tradition of the pedigree of the person concerned existed *ante litem motam* or pervious to the controversy; and
   (c) The witness testifying to the reputation or tradition regarding the pedigree of the person concerned must be a member of the family of said person, either by consanguinity or affinity.

Common reputation

(1) Common reputation existing previous to the controversy, respecting facts of public or general interest more than thirty years old, or respecting marriage or moral character, may be given in evidence. Monuments and inscriptions in public places may be received as evidence of common reputation *(Sec. 41)*.

(2) Requisites for the admissibility of the exception:
   (a) The facts must be of public or general interest and more than thirty years old;
   (b) The common reputation must have been ancient (more than 30 years old or one generation old);
   (c) The reputation must have been one formed among the class of persons who were in a position to have some sources of information and to contribute intelligently to the formation of the opinion; and
   (d) The common reputation must have been existing previous to the controversy.

(3) Requisites for the admissibility of common reputation respecting marriage:
   (a) The common reputation must have been formed previous to the controversy; and
   (b) The common reputation must have been formed in the community or among the class of persons who are in a position to have sources of information and to contribute intelligently to the formation of the opinion.

(4) Requisites for the admissibility of common reputation respecting moral character:
   (a) That it is the reputation in the place where the person in question is best known;
   (b) That it was formed *ante litem motam*.

(5) Character refers to the inherent qualities of the person, rather than to any opinion that may be formed or expressed of him by others. Reputation applies to the opinion which others may have formed and expressed of his character.

Part of the *res gestae*

(1) Statements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as part of the *res gestae*. So, also, statements accompanying an equivocal act material to the issue, and giving it a legal significance, may be received as part of the *res gestae (Sec. 42)*.

(2) Res gestae is from the Latin meaning "things done" and includes the circumstances, facts and declarations incidental to the main fact or transaction, necessary to illustrate its character, and also includes acts, words and declarations which are so closely connected therewith as to constitute a part of the transaction. As applied to a crime, *res gestae* means the complete criminal transaction from its beginning or starting point in the act of the accused until the end is reached.

(3) The test for the admissibility of evidence as part of the res gestae is whether the act, declaration or exclamation is so intimately interwoven or connected with the principal fact or event which it characterizes as to be regarded as a part of the transaction itself, and also whether it clearly negative any premeditation or purpose to manufacture testimony *(32 CJS 21)*.

(4) The general classes of declarations to which the term *res gestae* is usually applied are (a) spontaneous statements, and (b) verbal acts.

(5) The test of admissibility of evidence as a part of the res gestae is, therefore, whether the act, declaration, or exclamation, is so interwoven or connected with the principal fact or event that it characterizes as to be regarded as a part of the transaction itself, and also whether it clearly negates any premeditation or purpose to manufacture testimony.

When Januario gave the identity of the assailants to SPO3 Mendoza, he was referring to a startling occurrence which is the stabbing by appellant and his co-accused. At that time, Januario and the witness were in the vehicle that would bring him to the hospital, and thus, had no time to contrive his identification of the assailant. His utterance about appellant and his co-accused having stabbed him, in answer to the question of SPO3 Mendoza, was made in spontaneity and only in reaction to the startling occurrence. Definitely, the statement is relevant because it identified the accused as the authors of the crime. Verily, the killing of Januario, perpetrated by appellant, is adequately proven by the prosecution *(People v. Gatarin, GR No. 198022, 04/07/2014)*.

(6) There is no doubt that a sudden attack on a group peacefully eating lunch on a school campus is a startling occurrence. Considering that the statements of the bystanders were made immediately after the startling occurrence, they are, in fact, admissible as evidence given in res gestae *(People v. Feliciano, GR No. 196735, 05/05/2014)*.

(7) *Res gestae* means the "things done." It refers to those exclamations and statements made by either the participants, victims, or spectators to a crime immediately before, during, or immediately after the commission of the crime, when the circumstances are such that the statements were made as a spontaneous reaction or utterance inspired by the excitement of the occasion and there was no opportunity for the declarant to deliberate and to fabricate a false statement." There are then three essential requisites to admit evidence as part of the res gestae, namely: (1) that the principal act, the res gestae, be a startling occurrence; (2) the statements were made before the declarant had the time to contrive or devise a falsehood; and (3) that the statements must concern the occurrence in question and its immediate attending circumstances.

In this case, AAA's statements to the barangay tanod and the police do not qualify as part of res gestae in view of the missing element of spontaneity and the lapse of an appreciable time between the rape and the declarations which afforded her sufficient opportunity for reflection *(People v. Estibal, GR No. 208749, 11/26/2014).*

Spontaneous statements	Verbal acts
Statement or exclamation made immediately after some exciting occasion by a participant or spectator and asserting the circumstances of that occasion as it is observed by him.	Utterances which accompany some act or conduct to which it is desired to give a legal effect. When such act has intrinsically no definite legal significance, or only an ambiguous one, its legal purport or tenor may be ascertained by considering the words accompanying it, and these utterances thus enter merely as verbal part of the act.
The *res gestae* is the startling occurrence;	The *res gestae* is the equivocal act;
Spontaneous exclamation may be prior to, simultaneous with, or subsequent to the startling occurrence.	Verbal act must be contemporaneous with or must accompany the equivocal act to be admissible.
Reason for admissibility: Trustworthiness and necessity–because statements are made instinctively, and because said natural and spontaneous utterances are more convincing than the testimony of the same person on the stand.	Reason for admissibility: The motive, character and object of an act are frequently indicated by what was said by the person engaged in the act.
Requisites for admissibility: (a) There must be a startling occurrence; (b) The statement must relate to the circumstances of the startling occurrence; (c) The statement must be spontaneous;	Requisites for admissibility: (a) Act or occurrence characterized must be equivocal; (b) Verbal acts must characterize or explain the equivocal act; (c) Equivocal act must be relevant to the issue; (d) Verbal acts must be contemporaneous with equivocal act.
Factors to consider to determine whether statements offered in evidence as part of *res gestae* have been made spontaneous or not: (a) The time that has elapsed between the occurrence of the act or transaction and the making of the statement;	

(b) The place where the statement was made;
(c) The condition of the declarant when he made the statement;
(d) The presence or absence of intervening occurrences between the occurrence and the statement relative thereto;
(e) The nature and circumstances of the statement itself.

Entries in the course of business

(1) Entries made at, or near the time of the transactions to which they refer, by a person deceased, or unable to testify, who was in a position to know the facts therein stated, may be received as prima facie evidence, if such person made the entries in his professional capacity or in the performance of duty and in the ordinary or regular course of business or duty *(Sec. 43)*.
(2) Requisites for admissibility:
   (a) Entries must have been made at or near the time of the transaction to which they refer;
   (b) Entrant must have been in a position to know the facts stated in the entries;
   (c) Entries must have been made by entrant in his professional capacity or in the performance of his duty;
   (d) Entries were made in the ordinary or regular course of business of duties;
   (e) Entrant must be deceased or unable to testify.

Entries in official records

(1) Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are prima facie evidence of the facts therein stated *(Sec. 44)*.
(2) Requisites for admissibility:
   (a) That it was made by a public officer, or by another persons specially enjoined by law to do so;
   (b) It was made by a public officer in the performance of his duty, of by another person in the performance of a duty specially enjoined by law;
   (c) The public officer or the other person had sufficient knowledge of the facts by him stated, which must have been acquired by him personally or through official information.

Commercial lists and the like

(1) Evidence of statements of matters of interest, to persons engaged in an occupation contained in a list, register, periodical, or other published compilation is admissible as tending to prove the truth of any relevant matter so stated if that compilation is published for use by persons engaged in that occupation and is generally used and relied upon by them therein *(Sec. 45)*.
(2) Requisites for admissibility:
   (a) The commercial list is a statement of matters of interest to persons engaged in an occupation;
   (b) Such statement is contained in a list, register, periodical or other published compilation;
   (c) Said compilation is published for the use of persons engaged in that occupation; and

(d) It is generally used and relied upon by persons in the same occupation *(PNOC Shipping and Transport Co. vs. CA, 297 SCRA 402)*.

Learned treaties

(1) A published treatise, periodical or pamphlet on a subject of history, law, science or art is admissible as tending to prove the truth of a matter stated therein if the court takes judicial notice, or a witness expert in the subject testifies that the writer of the statement in the treatise, periodical or pamphlet is recognized in his profession or calling as expert in the subject *(Sec. 46)*.
(2) Requisites for admissibility:
   (a) The court takes judicial notice that the writer of the statement in the treatise, periodical or pamphlet, is recognized in his profession or calling as expert in the subject; or
   (b) A witness, expert in the subject testifies that the writer of the statement in the treatise, periodical or pamphlet is recognized in his profession or calling as expert in the subject *(Wigmore on Evidence)*.

Testimony or deposition at a former trial

(1) The testimony or deposition of a witness deceased or unable to testify, given in a former case or proceeding, judicial or administrative, involving the same parties and subject matter, may be given in evidence against the adverse party who had the opportunity to cross-examine him *(Sec. 47)*.
(2) Requisites for admissibility:
   (a) The witness whose testimony is offered in evidence is either dead, unable to testify, insane, mentally incapacitated, lost his memory through old age or disease, physically disabled, kept away by contrivance of the opposite party and despite diligent search cannot be found;
   (b) Identity of parties in the previous and the present case or proceeding;
   (c) Identity of issues;
   (d) Opportunity of cross-examination of witness.
(3) If the witness has been subjected to cross-examination in a former trial, the rule is satisfied, and the former testimony may now be used. In applying this proposition, the following details may arise for settlement:
   (a) Was the testimony given before a court allowing cross-examination by adverse parties and having power to compel answer? If not, the testimony cannot be used.
   (b) If the testimony was given as a deposition, was the opponent given reasonable notice and opportunity to attend and cross-examine?
   (c) Whether at a former trial or before a deposition officer, were the then issues and parties so nearly the same as now that the opportunity to cross-examine on the present issues was inadequate? If not, the testimony cannot be used.
   (d) Was cross-examination prevented by the death or illness or refusal of the witness, after giving his direct testimony? If it was, the direct examination cannot be used *(Wigmore on Evidence)*.

Opinion Rule

(1) General rule: the opinion of a witness is not admissible. Upon the question of the existence or non-existence of any fact in issue, whether a main fact or evidentiary fact, opinion evicence as to its existence or nonexistence is inadmissible. The witness must testify to facts within their knowledge and may not state their opinion, even on their cross-examination.

(2) Exceptions: opinion of expert witness under Sec. 49, and opinion of ordinary witnesses under Sec. 50 *(Sec. 48, Rule 130)*:
   (a) On a matter requiring special knowledge, skill, experience or training which he possesses, that is, when he is an expert thereon;
   (b) Regarding the identity or the handwriting of a person, when he has knowledge of the person or handwriting, whether he is an ordinary or expert witness *(Sec. 22, Rule 132)*;
   (c) On the mental sanity or a person, if the witness is sufficiently acquainted with the former or if the latter is an expert witness;
   (d) On the emotion, behavior, condition or appearance of a person which he has observed; and
   (e) On ordinary matters known to all men of common perception, such as the value of ordinary household articles *(Galian vs. State Assurance Co., 29 Phil. 413)*.

(3) The reason is that it is for the court to form an opinion concerning the facts in proof of which evidence is offered. This in turn is based upon the fact that even when witnesses are limited in their statements to detailed facts, their bias, ignorance, and disregard of the truth are obstacles which too often hinder in the investigation of the truth, so that if witnesses might be allowed to state the opinions they might entertain about the facts in issue, the administration of justice would become little less than a farce *(Jones, Commentaries on Evidence, 2nd Ed.)*.

Opinion of expert witness

(1) The opinion of a witness on a matter requiring special knowledge, skill, experience or training which he is shown to possess, may be received in evidence *(Sec. 49)*.

(2) An expert is a person who is so qualified, either by actual experience or by careful study, as to enable him to form a definite opinion of his own respecting any division of science, branch of art, or department of trade about which persons having no particular training or special study are incapable of forming accurate opinions or of deducing correct conclusions *(20 Am. Jur. 634)*. It is sufficient that the following factors are present:
   (a) Training and education;
   (b) Particular, first-hand familiarity with the facts of the case; and
   (c) Presentation of the authorities or standards upon which his opinion is based.

(3) Before one may be allowed to testify as an expert witness, his qualification must first be established by the party presenting him, *i.e.,* he must be shown to possess the special skill or knowledge relevant to the question to which he is to express an opinion *(People vs. Fundano, 291 SCRA 356)*.

(4) Requisites for admissibility of expert testimony:
   (a) The subject under examination must be one that requires that the court has the aid of knowledge or experience as cannot be obtained from the ordinary witnesses;
   (b) The witness called an expert must possess the knowledge, skill, or experience needed to inform the court in the particular case under consideration;
   (c) Like other evidence, expert testimony is not admissible as to a matter not in issue *(Wharton's Criminal Evidence, 11th Ed,)*.

(5) Form of the question on direct examination of an expert witness:
   (a) Opinion based on facts known personally by the expert;
   (b) Opinion based on facts of which he has personal knowledge.

(6) How may the opinion of an expert witness be impeached:
   (a) He may be contradicted by others in his own class or by any competent witness, or by use of exhibits; or
   (b) The weight of his testimony may be impaired by showing that he is interested or biased;
   (c) That he made inconsistent statement at another time, provided a proper foundation is laid therefor;
   (d) That he formed a different opinion at another time;
   (e) That he did not express the opinion testified to at a time when such expression might reasonably have been expected; or
   (f) That he changed sides in the case *(32 CJS 411)*.

(7) Common subjects of expert testimony: handwriting, typewritten documents, fingerprints, ballistics, medicine, value of properties and services,

(8) Despite the fact that petitioner is a physician and even assuming that she is an expert in neurology, she was not presented as an expert witness. As an ordinary witness, she was not competent to testify on the nature, and the cause and effects of whiplash injury *(Dela Llana vs. Biong, GR No. 182356 [2013])*.

(9) Rule 130, Section 49 of the Revised Rules on Evidence specifies that courts may admit the testimonies of expert witnesses or of individuals possessing "special knowledge, skill, experience or training":

> Section 49. *Opinion of expert witness.* - The opinion of a witness on a matter requiring special knowledge, skill, experience or training which he is shown to possess, may be received in evidence.

Testimonies of expert witnesses are not absolutely binding on courts. However, courts exercise a wide latitude of discretion in giving weight to expert testimonies, taking into consideration the factual circumstances of the case…

The witness rendering an opinion must be credible, in addition to possessing all the qualifications and none of the disqualifications specified in the Revised Rules on Evidence. In the case of an expert witness, he or she must be shown to possess knowledge, skill, experience, or training on the subject matter of his or her testimony. On the other hand, an ordinary witness may give an opinion on matters which are within his or her knowledge or with which he or she has sufficient familiarity *(Tortona vs. Gregorio, GR No. 202612, 01/17/2018)*.

Opinion of ordinary witness

(1) The opinion of a witness for which proper basis is given, may be received in evidence regarding -

(a) the identity of a person about whom he has adequate knowledge;

(b) A handwriting with which he has sufficient familiarity; and

(c) The mental sanity of a person with whom he is sufficiently acquainted.

The witness may also testify on his impressions of the emotion, behavior, condition or appearance of a person *(Sec. 50)*.

(1) *Character evidence not generally admissible; exceptions.* -

In Criminal Cases:

(a) The accused may prove his good moral character which is pertinent to the moral trait involved in the offense charged.

(b) Unless in rebuttal, the prosecution may not prove his bad moral character which is pertinent it to the moral trait involved in the offense charged.

Note that in criminal cases, the prosecution goes first. Hence, it can not present evidence on the bad moral character of the accused on its evidence in chief.

(c) The good or bad moral character of the offended party may be proved if it tends to establish in any reasonable degree the probability or improbability of the offense charged.

In Civil Cases:

Evidence of the moral character of a party in a civil case is admissible only when pertinent to the issue of character involved in the case.

In the case provided for in Rule 132, Section 14 *(Sec. 51, Rule 130)*.

(2) The rules on the admissibility of character evidence may be summarized as follows:

(a) In criminal cases, the prosecution may not at the outset prove the bad moral character of the accused which is pertinent to the moral trait involved in the offense charged. If the accused, however, in his defense attempts to prove his good moral character then the prosecution can introduce evidence of such bad moral character at the rebuttal stage.

(b) Also in criminal case, the good or bad moral character of the offended party may always be proved by either party as long as such evidence tends to establish the probability or improbability of the offense charged.

(c) In civil cases, the moral character of either party thereto cannot be proved unless it is pertinent to the issue of character involved in the case.

(d) In both civil and criminal cases, the bad moral character of a witness may always be proved by either party *(Sec. 11, Rule 132)*, but not evidence of his good character, unless it has been impeached *(Sec. 14, Rule 132)*.

(3) With respect to the nature or substance of the character evidence which may be admissible, the rules require that:

(a) With respect to the accused, such character evidence must be pertinent to the moral trait involved in the offense charged;

(b) With respect to the offended person, it is sufficient that such character evidence may establish in any reasonable degree the probability or improbability of the offense charged, as in prosecutions for rape or consented abduction wherein the victim's chastity may be questioned, and in prosecution for homicide wherein the pugnacious, quarrelsome or trouble-seeking character of the victim is a proper subject of inquiry; and

(c) With respect to witnesses, such character evidence must refer to his general reputation for truth, honesty or integrity, that is, as affecting his credibility *(Regalado, Remedial Law Compendium, Vol. II)*.

(4) **2002 Bar**: D was prosecuted for homicide for allegedly beating up V to death with an iron pipe.

a. May the prosecution introduce evidence that V had a good reputation for peacefulness and non-violence? Why? (2%)

b. May D introduce evidence of specific violent acts by V? Why? (3%)

Answer:

a. The prosecution may introduce evidence of the good or even bad moral character of the victim if it tends to establish in any reasonable degree the probability or improbability of the offense charged *(Sec. 50 a, Rule 130)*. In this case, the evidence is not relevant.

b. Yes, D may introduce evidence of specific violent acts by V. Evidence that one did not do a certain thing at one time is not admissible to prove that he did or did not do the same or similar thing at another time; but it maybe received to prove a specific intent, or knowledge, identity, plan, system, scheme, habit, customs, or usage, and the like *(Sec. 34, Rule 130)*.

Rule on Examination of a Child Witness *(A.M. No. 005-07-SC)*

a. Applicability of the rule

(1) Unless otherwise provided, this Rule shall govern the examination of child witnesses who are victims of crime, accused of a crime, and witnesses to crime. It shall apply in all criminal proceedings and non-criminal proceedings involving child witnesses *(Sec. 1)*.

b. Meaning of "child witness"

(1) A child witness is any person who at the time of giving testimony is below the age of 18 years. In child abuse cases, a child includes one over 18 years but is found by the court as unable to fully take care of himself or protect himself from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition *(Sec. 4[a])*.

c. Competency of a child witness

(1) Every child is presumed qualified to be a witness. However, the court shall conduct a competency examination of a child, *motu propio* or on motion of a party, when it finds that substantial doubt exists regarding the stability of the child to perceive, remember, communicate, distinguish truth from falsehood, or appreciate the duty to tell the truth in court *(Sec. 6)*.

(2) *Proof of necessity*. A party seeking a competency examination must present proof of necessity of competency examination. The age of the child by itself is not a sufficient basis for a competency examination *(Sec. 6[a])*.

(3) *Burden of proof*. To rebut the presumption of competence enjoyed by a child, the burden of proof lies on the party challenging his competence *(Sec. 6[b])*.

(4) *Persons allowed at competency examination*. Only the following are allowed to attend a competency examination:
   (a) The judge and necessary court personnel;
   (b) The counsel for the parties;
   (c) The guardian *ad litem*;
   (d) One or more support persons for the child; and
   (e) The defendant, unless the court determines that competence can be fully evaluated in his absence *(Sec. 6[c])*.

(5) *Conduct of examination*. Examination of a child as to his competence shall be conducted only by the judge. Counsel for the parties, however, can submit questions to the judge that he may, in his discretion, ask the child *(Sec. 6[d])*.

(6) *Developmentally appropriate questions*. The questions asked at the competency examination shall be appropriate to the age and developmental level of the child; shall not be related to the issues at trial; and shall focus on the ability of the child to

remember, communicate, distinguish between truth and falsehood, and appreciate the duty to testify truthfully *(Sec. 6[e])*.

(7) *Continuing duty to assess competence*. The court has the duty of continuously assessing the competence of the child throughout his testimony *(Sec. 6[f])*.

d. Examination of a child witness

(1) The examination of a child witness presented in a hearing or any proceeding shall be done in open court. Unless the witness is incapacitated to speak, or the question calls for a different mode of answer, the answers of the witness shall be given orally. The party who presents a child witness or the guardian *ad litem* of such child witness may, however, move the court to allow him to testify in the manner provided in this Rule *(Sec. 8)*.

e. Live-link TV testimony of a child witness *(Sec. 25)*

(a) The prosecutor, counsel or the guardian *ad litem* may apply for an order that the testimony of the child be taken in a room outside the courtroom and be televised to the courtroom by live-link television.

Before the guardian *ad litem* applies for an order under this section, he shall consult the prosecutor or counsel and shall defer to the judgment of the prosecutor or counsel regarding the necessity of applying for an order. In case the guardian *ad litem* is convinced that the decision of the prosecutor or counsel not to apply will cause the child serious emotional trauma, he himself may apply for the order.

The person seeking such an order shall apply at least five (5) days before the trial date, unless the court finds on the record that the need for such an order was not reasonably foreseeable.

(b) The court may *motu propio* hear and determine, with notice to the parties, the need for taking the testimony of the child through live-link television.

(c) The judge may question the child in chambers or in some comfortable place other than the courtroom, in the presence of the support person, guardian *ad litem*, prosecutor, and counsel for the parties. The questions of the judge shall not be related to the issues at trial but to the feelings of the child about testifying in the courtroom.

(d) The judge may exclude any person, including the accused, whose presence or conduct causes fear to the child.

(e) The court shall issue an order granting or denying the use of live-link television and stating the reasons therefor. It shall consider the following factors:

(1) The age and level of development of the child;
(2) His physical and mental health, including any mental or physical disability;
(3) Any physical, emotional, or psychological injury experienced by him;
(4) The nature of the alleged abuse;
(5) Any threats against the child;
(6) His relationship with the accused or adverse party;
(7) His reaction to any prior encounters with the accused in court or elsewhere;
(8) His reaction prior to trial when the topic of testifying was discussed with him by parents or professionals;
(9) Specific symptoms of stress exhibited by the child in the days prior to testifying;
(10) Testimony of expert or lay witnesses;
(11) The custodial situation of the child and the attitude of the members of his family regarding the events about which he will testify; and
(12) Other relevant factors, such as court atmosphere and formalities of court procedure.

(f) The court may order that the testimony of the child be taken by live-link television if there is a substantial likelihood that the child would suffer trauma from testifying in

the presence of the accused, his counsel or the prosecutor as the case may be. The trauma must be of a kind which would impair the completeness or truthfulness of the testimony of the child.

(g) If the court orders the taking of testimony by live-link television:

(1) The child shall testify in a room separate from the courtroom in the presence of the guardian *ad litem*; one or both of his support persons, the facilitator and interpreter, if any; a court officer appointed by the court; persons necessary to operate the closed-circuit television equipment; and other persons whose presence are determined by the court to be necessary to the welfare and well-being of the child;

(2) The judge, prosecutor, accused, and counsel for the parties shall be in the courtroom. The testimony of the child shall be transmitted by live-link television into the courtroom for viewing and hearing by the judge, prosecutor, counsel for the parties, accused, victim, and the public unless excluded.

(3) It if is necessary for the child to identify the accused at trial, the court may allow the child to enter the courtroom for the limited purpose of identifying the accused, or the court may allow the child to identify the accused by observing the image of the latter on a television monitor.

(4) The court may set other conditions and limitations on the taking of the testimony that it finds just and appropriate, taking into consideration the best interests of the child.

(h) The testimony of the child shall be preserved on videotape, digital disc, or other similar devices which shall be made part of the court record and shall be subject to a protective order as provided in Section 31(b).

f. Videotaped deposition of a child witness

(a) The prosecutor, counsel, or guardian *ad litem* may apply for an order that a deposition be taken of the testimony of the child and that it be recorded and preserved on videotape. Before the guardian *ad litem* applies for an order under this section, he shall consult with the prosecutor or counsel subject to the second and third paragraphs of section 25(a).

(b) If the court finds that the child will not be able to testify in open court at trial, it shall issue an order that the deposition of the child be taken and preserved by videotape.

(c) The judge shall preside at the videotaped deposition of a child. Objections to deposition testimony or evidence, or parts thereof, and the grounds for the objection shall be stated and shall ruled upon at the time of the taking of the deposition. The other persons who may be permitted to be present at the proceeding are:

(1) The prosecutor;
(2) The defense counsel;
(3) The guardian *ad litem*;
(4) The accused, subject to subsection (e);
(5) Other persons whose presence is determined by the court to be necessary to the welfare and well-being of the child;
(6) One or both of his support persons, the facilitator and interpreter, if any;
(7) The court stenographer; and
(8) Persons necessary to operate the videotape equipment.

(d) The rights of the accused during trial, especially the right to counsel and to confront and cross-examine the child, shall not be violated during the deposition.

(e) If the order of the court is based on evidence that the child is unable to testify in the physical presence of the accused, the court may direct the latter to be excluded from the room in which the deposition is conducted. In case of exclusion of the accused, the court shall order that the testimony of the child be taken by live-link

television in accordance with section 25 of this Rule. If the accused is excluded from the deposition, it is not necessary that the child be able to view an image of the accused.

(f) The videotaped deposition shall be preserved and stenographically recorded. The videotape and the stenographic notes shall be transmitted to the clerk of the court where the case is pending for safekeeping and shall be made a part of the record.

(g) The court may set other conditions on the taking of the deposition that it finds just and appropriate, taking into consideration the best interests of the child, the constitutional rights of the accused, and other relevant factors.

(h) The videotaped deposition and stenographic notes shall be subject to a protective order as provided in section 31(b).

(i) If, at the time of trial, the court finds that the child is unable to testify for a reason stated in section 25(f) of this Rule, or is unavailable for any reason described in section 4(c0, Rule 23 of the 1997 Rules of Civil Procedure, the court may admit into evidence the videotaped deposition of the child in lieu of his testimony at the trial. The court shall issue an order stating the reasons therefor.

(j) After the original videotaping but before or during trial, any party may file any motion for additional videotaping on the ground of newly discovered evidence. The court may order an additional videotaped deposition to receive the newly discovered evidence *(Sec. 27)*.

g. Hearsay exception in child abuse cases

A statement made by a child describing any act or attempted act of child abuse, not otherwise admissible under the hearsay rule, may be admitted in evidence in any criminal or non-criminal proceeding subject to the following rules:

(a) Before such hearsay statement may be admitted, its proponent shall make known to the adverse party the intention to offer such statement and its particulars to provide him a fair opportunity to object. If the child is available, the court shall, upon motion of the adverse party, require the child to be present at the presentation of the hearsay statement for cross-examination by the adverse party. When the child is unavailable, the fact of such circumstance must be proved by the proponent.

(b) In ruling on the admissibility of such hearsay statement, the court shall consider the time, content and circumstances thereof which provide sufficient indicia of reliability. It shall consider the following factors:

(1) Whether there is a motive to lie;
(2) The general character of the declarant child;
(3) Whether more than one person heard the statement;
(4) Whether the statement was spontaneous;
(5) The timing of the statement and the relationship between the declarant child and witness;
(6) Cross-examination could not show the lack of knowledge of the declarant child;
(7) The possibility of faulty recollection of the declarant child is remote; and
(8) The circumstances surrounding the statement are such that there is no reason to suppose the declarant child misrepresented the involvement of the accused.

(c) The child witness shall be considered unavailable under the following situations:

(1) Is deceased, suffers from physical infirmity, lack of memory, mental illness, or will be exposed to sever psychological injury; or

(2) Is absent from the hearing and the proponent of his statement has been unable to procure his attendance by process or other reasonable means.

(d) When the child witness is unavailable, his hearsay testimony shall be admitted only if corroborated by other admissible evidence *(Sec. 28)*.

h. Sexual abuse shield rule

(a) *Inadmissible evidence*. The following evidence is not admissible in any criminal proceeding involving alleged child sexual abuse:

(1) Evidence offered to prove that the alleged victim engaged in other sexual behavior; and

(2) Evidence offered to prove the sexual pre-disposition of the alleged victim.

(b) *Exception*. Evidence of specific instances of sexual behavior by the alleged victim to prove that a person other than the accused was the source of semen, injury, or other physical evidence shall be admissible. A party intending to offer such evidence must:

(1) File a written motion at least fifteen (5) days before trial, specifically describing the evidence and stating the purpose for which it is offered, unless the court, for good cause, requires a different time for filing or permits filing during trial; and

(2) Serve the motion on all parties and the guardian *ad litem* at least three (3) days before the hearing of the motion.

Before admitting such evidence, the court must conduct a hearing in chambers and afford the child, his guardian *ad litem*, the parties, and their counsel a right to attend and be heard. The motion and the record of the hearing must be sealed and remain under seal and protected by a protected order set forth in section 31(b). The child shall not be required to testify at the hearing in chambers except with his consent *(Sec. 30)*.

i. Protective orders

(a) *Protection of privacy and safety. - Protective order*. Any videotape or audiotape of a child that is part of the court record shall be under a protective order that provides as follows:

(1) Tapes may be viewed only by parties, their counsel, their expert witness, and the guardian *ad litem*.

(2) No tape, or any portion thereof, shall be divulged by any person mentioned in subsection (a) to any other person, except as necessary for the trial.

(3) No person shall be granted access to the tape, its transcription or any part thereof unless he signs a written affirmation that he has received and read a copy of the protective order; that he submits to the jurisdiction of the court with respect to the protective order; and that in case of violation thereof, he will be subject to the contempt power of the court.

(4) Each of the tape cassettes and transcripts thereof made available to the parties, their counsel, and respective agents shall bear the following cautionary notice:

> *This object or document and the contents thereof are subject to a protective order issued by the court in (case title), (case number). They shall not be examined, inspected, read, viewed, or copied by any person, or disclosed to any person, except as provided in the protective order. No additional copies of the tape or any of its portion shall be made, given, sold, or shown to any person without prior court order. Any person violating such protective order is subject to the contempt power of the court and other penalties prescribed by law.*

(5) No tape shall be given, loaned, sold, or shown to any person except as ordered by the court.

(6) Within thirty (30) days from receipt, all copies of the tape and any transcripts thereof shall be returned to the clerk of court for safekeeping unless the period is extended by the court on motion of a party.

(7) This protective order shall remain in full force and effect until further order of the court *(Sec. 31(b)*.

(b) *Additional protective orders*. The court may, *motu propio* or on motion of any party, the child, his parents, legal guardian, or the guardian *ad litem*, issue additional orders to protect the privacy of the child *(Sec. 31(c)*.

(1) AA, a twelve-year-old girl, while walking alone met BB, a teenage boywho befriended her. Later, BB brought AA to a nearby shanty where he raped her. The Information for rape filed against BB states:

> "On or about October 30, 2015, in the City of S.P. and within the jurisdiction of this Honorable Court, the accused, a minor, fifteen (15) years old with lewd design and by means of force, violence and intimidation, did then and there, willfully, unlawfully and feloniously had sexual intercourse with AA, a minor, twelve (12) years old against the latter's will and consent."

At the trial, the prosecutor called to the winess stand AA as his first witness and manifested that he be allowed to ask leading questions in conducting his direct examination pursuant to the Rule on the Examination of a Child Witness. BB's counsel objected on the ground that the prosecutor has not conducted a competency examination on the witness, a requirement before the rule cited can be applied in the case.

(A) Is BB's counsel correct? (3%)

In order to obviate the counsel's argument on the competency of AA as prosecution witness, the judge motu propio conducted his *voir dire* examination on AA.

(B) Was the action taken by the judge proper? (2%)

After the prosecution had rested its case, BB's counsel filed with leave a demurrer to evidence, seeking the dismissal of the case on the ground that the prosecutor failed to present any evidence on BB's minority as alleged in the Information.

Answer:

(A) No. BB's counsel is not correct. Every child is presumed qualified to be a witness *(Sec. 6, RECW)*. To rebut the presumption of competence enjoyed by a child, the burden of proof lies on the party challenging his competence. Here, AA, a 12-year old child witness who is presumed to be competent, may be asked leading questions by the prosecutor inconducting his direct examination pursuant to the RECW and the Revised Rules on Criminal Procedure *(People vs. Santos, GR No. 171452, 10/17/2008)*.

(B) Yes. The judge may *motu propio* conduct his *voir dire* examination on AA. Under the Rules on Examination of Child Witness, the court shall conduct a competency examination of a child, *motu propio* or on motion of a party, when it finds that substantial doubt exists regarding the ability of the child to perceive, remember, communicate, distinguish truth from falsehood, or appropriate the duty to tell the truth in court *(Sec. 6, AM No. 006-07-SC)*.

OFFER AND OBJECTION *(Rule 132)*

Offer of Evidence

(1) The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified *(Sec. 34)*.

(2) **2003 Bar**: X and Y were charged with murder. Upon application of the prosecutor, Y was discharged from the Information to be utilized as a state witness. The prosecutor presented Y as witness but forgot to state the purpose of his testimony much less offer it in evidence. Y testified that he and X conspired to kill the victim but it was X who actually shot the victim. The testimony of Y was the only material evidence establishing the guilt of X. Y was thouroughly cross-examined by the defense counsel. After the prosecution rested its case, the defense filed a motion for demurrer to evidence based on the following grounds: (6%)

The testimony should be excluded because its purpose was not initially stated and it was not formally offered in evidence as required by Section 34, Rule 132. Rule on the motion.

Answer: The demurrer to evidence must be denied because:

The testimony of Y should not be excluded because the defense counsel did not object to his testimony despite the fact that the prosecutor forgot to state its purpose or offer it in evidence. Moreover, the defense counsel thoroughly cross-examined Y and thus waived the objection.

(3) **2003 Bar**: X was charged with robbery. On the strength of a warrant of arrest issued by the court, X was arrested by polic operatives. They seized from his person a handgun. A charge for illegal possession of firearm was also filed against him. In a press conference called by the police, X admitted that he had robbed the victim of jewelry valued at P500,000.00.

The robbery and illegal possession of firearm cases were tried jointly. The prosecution presented in evidence a newspaper clipping of the report to the reporter who was present during the press conference stating that X admitted the robbery. It likewise presented a certification of the PNP Firearms and Explosive Office attesting that the accused had no license to carry any firearm. The certifying officer, however, was not presented as a witness. Both pieces of evidence were objected to by the defense.

Is the certification of the PNP Firearms and Explosive Office without the certifying officer testifying on it admissible in eveidence against X? (6%)

Answer: Yes. The certification is admissible in evidence against X because a written statement signed by an officer having the custody of an official official record or by his deputy that after diligent search no record or entry of a specified tenor is found to exist in the records of his office, accompanied by a certificate as above provided, is admissible as evidence that the records of his office contain no such record or entry *(Sec. 28, Rule 132)*.

(4) **2007 Bar**: G files a complaint for recovery of possession and damages against F. In the course of the trial, G marked his evidence but his counsel failed to file a formal offer of evidence. F then presented in evidence tax declarations in the name of his father to establish that his father is a co-owner of the property. The court ruled in favor of F, saying that G failed to prove sole ownership of the property in the face of F's evidence. Was the court correct? Explain briefly. (5%)

Answer: Yes. The court shall consider no evidence which has not been formally offered. The trial court rendered judgment considering only the evidence offered by F. The offer is necessary because it is the duty of the judge to rest his findings of fact and his judgment only and strictly upon the evidence offered bythe partied at the trial and because the purpose for which the evidence is offered must be specified *(Sec. 34, Rule 132)*. However, there had been exceptional instances when the Court allowed exhibited documents which were not offered but duly identified by testimony and incorporated in the records of the case *(People v. Pecardal, GR No. 71381, 11/24/1986; People v. Mate, L-34754, 03/21/1981)*.

When to Make an Offer

(1) As regards the testimony of a witness, the offer must be made at the time the witness is called to testify. Documentary and object evidence shall be offered after the presentation of a party's testimonial evidence. Such offer shall be done orally unless allowed by the court to be done in writing *(Sec. 35)*.

(2) It is the duty of each contending party to lay before the court the facts in issue-fully and fairly; i.e., to present to the court all the material and relevant facts known to him, suppressing or concealing nothing, nor preventing another party, by clever and adroit manipulation of the technical rules of pleading and evidence, from also presenting all the facts within his knowledge. Republic's failure to offer a plausible explanation for its concealment of the main bulk of its exhibits even when it was under a directive to produce them and even as the defendants were consistently objecting to the presentation of the concealed documents gives rise to a reasonable inference that the Republic, at the very outset, had no intention whatsoever of complying with the directive of this Court *(Republic v. Sandiganbayan, GR No. 188881, 04/21/2014)*.

Objection

(1) Objection to evidence offered orally must be made immediately after the offer is made. Objection to a question propounded in the course of the oral examination of a witness shall be made as soon as the grounds therefor shall become reasonably apparent. An offer of evidence in writing shall be objected to within three (3) days after notice of the offer unless a different period is allowed by the court. In any case, the grounds for the objections must be specified *(Sec. 36)*.

(2) Grounds for objection:
   (a) Hearsay
   (b) Argumentative
   (c) Leading
   (d) Misleading
   (e) Incompetent
   (f) Irrelevant
   (g) Best evidence rule
   (h) Parole evidence rule
   (i) Question has no basis

(3) The established doctrine is that when a party failed to interpose a timely objection to evidence at the time they were offered in evidence, such objection shall be considered as waived. According to Corpuz, the CA erred in affirming the ruling of the trial court, admitting in evidence a receipt dated May 2, 1991 marked as Exhibit "A" and its submarkings, although the same was merely a photocopy, thus, violating the best evidence rule. However, the records show that Corpuz never objected to the admissibility

of the said evidence at the time it was identified, marked and testified upon in court by private complainant. The CA also correctly pointed out that Corpuz also failed to raise an objection in his Comment to the prosecution's formal offer of evidence and even admitted having signed the said receipt *(Corpuz v. People, GR No. 180016, 04/29/2014)*.

(4) Pursuant to Section 34, Rule 132 of the Rules of Court, the RTC as the trial court could consider only the evidence that had been formally offered; towards that end, the offering party must specify the purpose for which the evidence was being offered. In the case at bar, The RTC could not take the declaration of Villas into consideration because Villas' extra-judicial sworn statement containing the declaration had not been offered and admitted as evidence by either side. The CA stressed that only evidence that was formally offered and made part of the records could be considered; and that in any event, the supposed contradiction between the extra-judicial sworn statement and the court testimony should be resolved in favor of the latter *(Barut v. People, GR No. 167454, 09/24/2014)*.

(5) Section 34 of Rule 132 of our Rules on Evidence provides that the court cannot consider any evidence that has not been formally offered. This rule, however, admits of an exception. The Court, in the appropriate cases, has relaxed the formal-offer rule and allowed evidence not formally offered to be admitted. Jurisprudence enumerated the requirements so that evidence, not previously offered, can be admitted, namely: first, the evidence must have been duly identified by testimony duly recorded and, second, the evidence must have been incorporated in the records of the case *(Sabay v. People, GR No. 192150, 10/01/2014)*.

Repetition of an Objection

(1) *When repetition of objection unnecessary.* – When it becomes reasonably apparent in the course of the examination of a witness that the questions being propounded are of the same class as those to which objection has been made, whether such objection was sustained or overruled, it shall not be necessary to repeat the objection, it being sufficient for the adverse party to record his continuing objection to such class of questions *(Sec. 37)*.

Ruling

(1) The ruling of the court must be given immediately after the objection is made, unless the court desires to take a reasonable time to inform itself on the question presented; but the ruling shall always be made during the trial and at such time as will give the party against whom it is made an opportunity to meet the situation presented by the ruling. The reason for sustaining or overruling an objection need not be stated. However, if the objection is based on two or more grounds, a ruling sustaining the objection on one or some of them must specify the ground or grounds relied upon *(Sec. 38)*.

Striking Out of an Answer

(1) Should a witness answer the question before the adverse party had the opportunity to voice fully its objection to the same, and such objection is found to be meritorious, the court shall sustain the objection and order the answer given to be stricken off the record. On proper motion, the court may also order the striking out of answers which are incompetent, irrelevant, or otherwise improper *(Sec. 39)*.

Tender of Excluded Evidence

(1) If documents or things offered in evidence are excluded by the court, the offeror may have the same attached to or made part of the record. If the evidence excluded is oral, the offeror may state for the record the name and other personal circumstances of the witness and the substance of the proposed testimony *(Sec. 40)*.

PART V
AUXILLARY RULES OF PROCEDURE

REVISED RULES OF SUMMARY PROCEDURE

Cases covered by the Rule

The Rules shall govern the summary procedure in the MeTC, MTC and MCTC in the following cases falling within their jurisdiction:

(1) Civil cases
   (a) All cases of forcible entry and unlawful detainer irrespective of the amount of damages or unpaid rentals sought to be recovered, and where attorney's fees awarded do not exceed P20,000;
   (b) All other cases, except probate proceedings where the total amount of the plaintiff's claim does not exceed P100,000 outside, or P200,000 in Metro Manila *(as amended by AM 02-11-09-SC)*.

(2) Criminal cases
   (a) Violation of traffic laws, rules and regulations;
   (b) Violations of rental laws;
   (c) All other criminal cases where the penalty prescribed by law for the offense charged is imprisonment not exceeding 6 months or a fine not exceeding P1,000 or both, irrespective of other imposable penalties, accessory or otherwise, or of the civil liability arising therefrom; and in offenses involving damages to property through criminal negligence, where the imposable fine does not exceed P1,000.
   (d) The Rule shall not apply in a civil case where the cause of action is pleaded with another cause of action subject to the ordinary procedure, nor to criminal case where the offense charged is necessary related to another criminal case subject to the ordinary procedure *(Sec. 1)*.

Effect of failure to answer

(1) Should the defendant fail to answer the complaint within 10 days from service of summons, the court shall *motu propio* or on motion of the plaintiff, shall render judgment as may be warranted by the facts alleged in the complaint and limited to what is prayed for therein; Provided, that the court may in its discretion reduce the amount of damages and attorney's fees claimed for being excessive or otherwise unconscionable *(Sec. 6)*. This is without prejudice to the applicability of Sec. 4, Rule 18 if there are two or more defendants, Sec. 4, Rule 18*: It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor or if a representative shall appear in his behalf fully authorized in writing to enter into an*

amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents).

Preliminary conference and appearances of parties

(1) Not later than 30 days after the last answer is filed, a preliminary conference shall be held. The rules on pre-trial in ordinary cases shall be applicable to the preliminary conference unless inconsistent with the provisions of the Rule.

The failure of the plaintiff to appear in the preliminary conference shall be cause for the dismissal of his complaint. The defendant who appears in the absence of the plaintiff shall be entitled to judgment on his counterclaim in accordance with Section 6. All cross-claims shall be dismissed.

If a sole defendant shall fail to appear, the plaintiff shall be entitled to judgment in accordance with Sec. 6. The Rule shall not apply where one of two or more defendants sued under a common cause of action who had pleaded a common defense shall appear at the preliminary conference *(Sec. 7)*.

(2) 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 *(Tereña vs. Desagun, GR No. 152131, 04/29/2009)*.

(3) Failure of one party to submit his position paper does not bar at all the MTC from issuing a judgment on the ejectment complaint. In such a case, what would be extant in the record and the bases for the judgment would be the complaint, answer, and the record of the preliminary conference *(Tereña vs. Desagun, supra)*.

(4) If a sole defendant shall fail to appear in the preliminary conference, the plaintiff shall be entitled to judgment in accordance with Section 6 of the Rule, that is, the court shall render judgment as may be warranted by the facts alleged in the complaint and limited to what is prayed for therein *(Sec.7)*. However, this rule shall *"not apply where one of two or more defendants sued under a common cause of action, who had pleaded a common defense, shall appear at the preliminary conference*". The Supreme Court held that the afore-quoted provision does not apply in the case where petitioner is not a co-defendant in the same case but actually sued in a separate case for ejectment *(Soriente vs. Estate of Concepcion, GR No. 160239, 11/25/2009)*.

KATARUNGANG PAMBARANGAY *(Sec. 399 - 422, LGC)*

Cases covered

(1) Except those enumerated as exceptions under Sec. 408, RA 7160, the following cases are cognizable with the *Katarungang Pambarangay*:

(a) Disputes between persons actually residing in the same barangay;

(b) Those involving actual residents of different barangays within the same city or municipality;

(c) All disputes involving real property or any interest therein where the real property or the larger portion thereof is situated;

(d) Those arising at the workplace where the contending parties are employed or at the institution where such parties are enrolled for study, where such workplace or institution is located.

Subject matter for amicable settlement

(1) The *lupon* of each barangay shall have authority to bring together the parties actually residing in the same municipality or city for amicable settlement of all disputes except:

(a) Where one party is the government or any subdivision or instrumentality thereof;

(b) Where one party is a public officer or employee, and the dispute relates to the performance of his official functions;

(c) Offenses punishable by imprisonment exceeding one (1) year or a fine exceeding P5,000;

(d) Offenses where there is no private offended party;

(e) Where the dispute involves real properties located in different cities or municipalities unless the parties thereto agree to submit their differences to amicable settlement by an appropriate *lupon*;

(f) Disputes involving parties who actually reside in *barangays* of different cities or municipalities, except where such barangay units adjoin each other and the parties thereto agree to submit their differences to amicable settlement by an appropriate *lupon*;

(g) Such other classes of disputes which the President may determine in the interest of justice or upon the recommendation of the Secretary of Justice;

(h) Any complaint by or against corporations, partnerships, or juridical entities. The reason is that only individuals shall be parties to *barangay* conciliation proceedings either as complainants or respondents;

(i) Disputes where urgent legal action is necessary to prevent injustice from being committed or further continued, specially the following:

a) A criminal case where the accused is under police custody or detention;

b) A petition for *habeas corpus* by a person illegally detained or deprived of his liberty or one acting in his behalf;

c) Actions coupled with provisional remedies, such as preliminary injunction, attachment, replevin and support *pendente litem*;

d) Where the action may be barred by the statute of limitations;

(j) Labor disputes or controversies arising from employer-employee relationship *(Montoya vs. Escayo, 17 SCRA 442)*;

(k) Where the dispute arises from the Comprehensive Agrarian Reform Law *(Secs. 46 and 47, RA 6657)*;

(l) Actions to annul judgment upon a compromise which can be filed directly in court *(Sanchez vs. Tupas, 158 SCRA 459)*.

The court in which non-criminal cases not falling within the authority of the *lupon* under the Code are filed may, at any time before trial, *motu propio* refer the case to the *lupon* concerned for amicable settlement *(Sec. 408, RA 7160)*.

(2) The presiding judge was penalized for referring the case back to the barangay for conciliation during the preliminary conference, despite the manifestation of the plaintiff's counsel that there was already a prior unsuccessful barangay conciliation as shown by the certificate to file action. There was no reason anymore to refer the case back to the barangay for the sole purpose of amicable settlement, because Sections 7 and 8 of the RSP provided already for such action *(Diaz vs. MTC Naga Cebu, AM No. MTJ-11-1786, 06/22/2011)*.

Venue

(1) Rule on venue under Sec. 409, RA 7160:

(a) Disputes between persons actually residing in the same barangay shall be brought for amicable settlement before the *lupon* of said barangay.

(b) Those involving actual residents of different barangays within the same city or municipality shall be brought in the barangay where the respondent or any of the respondents actually resides, at the election of the complainant.

(c) All disputes involving real property or any interest therein shall be brought in the barangay where the real property or the larger portion thereof is situated.

(d) Those arising at the workplace where the contending parties are employed or at the institution where such parties are enrolled for study, shall be brought in the barangay where such workplace or institution is located. Objections to venue shall be raised in the mediation proceedings before the punong barangay; otherwise, the same shall be deemed waived. Any legal question which may confront the punong barangay in resolving objections to venue herein referred to may be submitted to the Secretary of Justice, or his duly designated representative, whose ruling thereon shall be binding *(Sec. 409)*.

When parties may directly go to court

(1) Sec. 411 of RA 7160 provides:

(a) *Pre-condition to filing of complaint in court*. – No complaint, petition, action, or proceeding involving any matter within the authority of the *lupon* shall be filed or instituted directly in court or any other government office for adjudication, unless there has been a confrontation between the parties before the *lupon* chairman or the *pangkat*, and that no conciliation or settlement has been reached as certified by the *lupon* secretary or *pangkat* chairman as attested by the *lupon* or *pangkat* chairman or unless the settlement has been repudiated by the parties thereto.

(b) *Where parties may go directly to court*. – The parties may go directly to court in the following instances:

1) Where the accused is under detention;

2) Where a person has otherwise been deprived or personal liberty calling for *habeas corpus* proceedings;

3) Where actions are coupled with provisional remedies such as preliminary injunction, attachment, delivery of personal property, and support *pendente lite*; and
4) Where the action may otherwise be barred by the statute of limitations.

Execution

(1) The amicable settlement or arbitration award may be enforced by execution by the *lupon* within six (6) months from the date of the settlement. After the lapse of such time, the settlement may be enforced by action in the appropriate city or municipal court *(Sec. 417, RA 7160)*.

Repudiation

(1) Any party to the dispute may, within ten (10) days from the date of the settlement, repudiate the same by filing with the *lupon* chairman a statement to that effect sworn to before him, where the consent is vitiated by fraud, violence, or intimidation. Such repudiation shall be sufficient basis for the issuance of the certification for filing a complaint as hereinabove provided *(Sec. 418 RA 7160)*.

RULES OF PROCEDURE FOR SMALL CLAIMS CASES

AM No. 08-8-7-SC, as amended

Scope and applicability of the Rule

(1) SEC. 2. *Scope*.–This Rule shall govern the procedure in actions before the Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts and Municipal Circuit Trial Courts for payment of money where the value of the claim does not exceed One Hundred Thousand Pesos (P300,000.00) outside Metro Manila, nor four Hundred Thousand Pesos (P400,000) in Metro Manila, exclusive of interest and costs *(effective April 2019)*.

(2) SEC. 4. *Applicability*.–The Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts, and Municipal Circuit Trial Courts shall apply this Rule in all actions which are: (a) purely civil in nature where the claim or relief prayed for by the plaintiff is solely for payment or reimbursement of sum of money, and (b) the civil aspect of criminal actions, either filed before the institution of the criminal action, or reserved upon the filing of the criminal action in court, pursuant to Rule 111 of the Revised Rules of Criminal Procedure.

These claims or demands may be:

(a) For money owed under any of the following:
1. Contract of Lease;
2. Contract of Loan;
3. Contract of Services;
4. Contract of Sale; or
5. Contract of Mortgage;

(b) For damages arising from any of the following:
1. Fault or negligence;
2. Quasi-contract; or
3. Contract;

(c) The enforcement of a *barangay* amicable settlement or an arbitration award involving a money claim covered by this Rule pursuant to Sec. 417 of Republic Act 7160, otherwise known as the Local Government Code of 1991.

Commencement of small claims action; Response

(1) *Commencement of Small Claims Action*.–A small claims action is commenced by filing with the court an accomplished and verified Statement of Claim *(Form 1-SCC)* in duplicate, accompanied by a Certification of Non-forum Shopping (*Form 1-A, SCC*), and two (2) duly certified photocopies of the actionable document/s subject of the claim, as well as the affidavits of witnesses and other evidence to support the claim. No evidence shall be allowed during the hearing which was not attached to or submitted together with the Claim, unless good cause is shown for the admission of additional evidence. No formal pleading, other than the Statement of Claim described in this Rule, is necessary to initiate a small claims action *(Sec. 5)*.

(2) *Response*. – The defendant shall file with the court and serve on the plaintiff a duly accomplished and verified Response within a non-extendible period of ten (10) days from receipt of summons. The response shall be accompanied by certified photocopies of documents, as well as affidavits of witnesses and other evidence in support thereof. No

evidence shall be allowed during the hearing which was not attached to or submitted together with the Response, unless good cause is shown for the admission of additional evidence. The grounds for the dismissal of the claim, under Rule 16 of the Rules of Court, should be pleaded *(Sec. 11)*.

(3) *Effect of Failure to File Response*. – Should the defendant fail to file his Response within the required period, and likewise fail to appear at the date set for hearing, the court shall render judgment on the same day, as may be warranted by the facts. Should the defendant fail to file his Response within the required period but appears at the date set for hearing, the court shall ascertain what defense he has to offer and proceed to hear, mediate or adjudicate the case on the same day as if a Response has been filed *(Sec. 12)*.

Prohibited pleadings and motions

(1) *Prohibited Pleadings and Motions*. – The following pleadings, motions, or petitions shall not be allowed in the cases covered by this Rule:

(a) Motion to dismiss the complaint;
(b) Motion for a bill of particulars;
(c) Motion for new trial, or for reconsideration of a judgment, or for reopening of trial;
(d) Petition for relief from judgment;
(e) Motion for extension of time to file pleadings, affidavits, or any other paper;
(f) Memoranda;
(g) Petition for *certiorari*, *mandamus*, or prohibition against any interlocutory order issued by the court;
(h) Motion to declare the defendant in default;
(i) Dilatory motions for postponement;
(j) Reply;
(k) Third-party complaints; and
(l) Interventions *(Sec. 14)*.

Appearances

(1) *Appearance*. – The parties shall appear at the designated date of hearing personally. Appearance through a representative must be for a valid cause. The representative of an individual-party must not be a lawyer, and must be related to or next-of-kin of the individual-party. Juridical entities shall not be represented by a lawyer in any capacity. The representative must be authorized under a Special Power of Attorney (*Form 5-SCC)* to enter into an amicable settlement of the dispute and to enter into stipulations or admissions of facts and of documentary exhibits *(Sec. 16)*.

(2) *Appearance of Attorneys Not Allowed.* – No attorney shall appear in behalf of or represent a party at the hearing, unless the attorney is the plaintiff or defendant. If the court determines that a party cannot properly present his/her claim or defense and needs assistance, the court may, in its discretion, allow another individual who is not an attorney to assist that party upon the latter's consent *(Sec. 17)*.

(3) *Non-appearance of Parties.* – Failure of the plaintiff to appear shall be cause for the dismissal of the claim without prejudice. The defendant who appears shall be entitled to judgment on a permissive counterclaim. Failure of the defendant to appear shall have the same effect as failure to file a Response under Section 12 of this Rule. This shall not apply where one of two or more defendants who are sued under a common cause of action and have pleaded a common defense appears at the hearing. Failure of both

parties to appear shall cause the dismissal with prejudice of both the claim and counterclaim *(Sec. 18)*.

Hearing; duty of the judge

(1) *Duty of the Court.* – At the beginning of the court session, the judge shall read aloud a short statement explaining the nature, purpose and the rule of procedure of small claims cases *(Sec, 20)*.

(2) *Hearing*. – At the hearing, the judge shall exert efforts to bring the parties to an amicable settlement of their dispute. Any settlement (*Form 7-SCC*) or resolution (*Form 8-SCC*) of the dispute shall be reduced into writing, signed by the parties and submitted to the court for approval (*Form 12-SCC*) Settlement discussions shall be strictly confidential and any reference to any settlement made in the course of such discussions shall be punishable by contempt *(Sec. 21)*.

Finality of judgment

(1) *Decision* .– After the hearing, the court shall render its decision on the same day, based on the facts established by the evidence (*Form 13-SCC*). The decision shall immediately be entered by the Clerk of Court in the court docket for civil cases and a copy thereof forthwith served on the parties. The decision shall be final and unappealable *(Sec. 23)*.

RULES OF PROCEDURE FOR ENVIRONMENTAL CASES

AM No. 09-6-8-SC

A. Scope and applicability of the Rule

(1) These Rules shall govern the procedure in civil, criminal and special civil actions before the Regional Trial Courts, Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts and Municipal Circuit Trial Courts involving enforcement or violations of environmental and other related laws, rules and regulations such as but not limited to the following:

(a) Act 3572, Prohibition Against Cutting of Tindalo, Akli, and Molave Trees;
(b) PD 705, Revised Forestry Code;
(c) PD 856, Sanitation Code;
(d) PD 979, Marine Pollution Decree;
(e) PD 1067, Water Code;
(f) PD1151, Philippine Environmental Policy of 1977;
(g) PD 1433, Plant Quarantine Law of 1978;
(h) PD 1586, Establishing an Environmental Impact Statement System Including Other Environmental Management Related Measures and for Other Purposes;
(i) RA 3571, Prohibition Against the Cutting, Destroying or Injuring of Planted or Growing Trees, Flowering Plants and Shrubs or Plants of Scenic Value along Public Roads, in Plazas, Parks, School Premises or in any Other Public Ground;
(j) RA 4850, Laguna Lake Development Authority Act;
(k) RA 6969, Toxic Substances and Hazardous Waste Act;
(l) RA 7076, People's Small-Scale Mining Act;
(m) RA 7586, National Integrated Protected Areas System Act including all laws, decrees, orders, proclamations and issuances establishing protected areas;
(n) RA 7611, Strategic Environmental Plan for Palawan Act;
(o) RA 7942, Philippine Mining Act;
(p) RA 8371, Indigenous Peoples Rights Act;
(q) RA 8550, Philippine Fisheries Code;
(r) RA 8749, Clean Air Act;
(s) RA 9003, Ecological Solid Waste Management Act;
(t) RA 9072, National Caves and Cave Resource Management Act;
(u) RA 9147, Wildlife Conservation and Protection Act;
(v) RA 9175, Chainsaw Act;
(w) RA 9275, Clean Water Act;
(x) RA 9483, Oil Spill Compensation Act of 2007; and
(y) Provisions in CA 141, The Public Land Act;
(z) R.A. No. 6657, Comprehensive Agrarian Reform Law of 1988;
(aa) RA 7160, Local Government Code of 1991;
(bb) RA 7161, Tax Laws Incorporated in the Revised Forestry Code and Other Environmental Laws (Amending the NIRC);
(cc) RA 7308, Seed Industry Development Act of 1992;
(dd) RA 7900, High-Value Crops Development Act;
(ee) RA 8048, Coconut Preservation Act;
(ff) RA 8435, Agriculture and Fisheries Modernization Act of 1997;
(gg) RA 9522, The Philippine Archipelagic Baselines Law;
(hh) RA 9593, Renewable Energy Act of 2008;

(ii) RA 9637, Philippine Biofuels Act; and
(jj) Other existing laws that relate to the conservation, development, preservation, protection and utilization of the environment and natural resources.

B. Civil Procedure

Prohibition against Temporary Restraining Order and Preliminary Injunction *(Sec. 10, Part 2, Rule 2)*

(1) Except the Supreme Court, no court can issue a TRO or writ of preliminary injunction against lawful actions of government agencies that enforce environmental laws or prevent violations thereof *(Sec. 10, Part 2, Rule 2)*.

(2) The formulation of this section is derived from the provisions of PD 605 and likewise covers the provisions of PD 1818. To obviate future conflict between the present provision and these two laws, the prohibition on the issuance of TRO remains the general rule while its issuance is the exception. In availing of the exception, the movants must overcome the presumption of regularity in the performance of a duty by the respondent government agency or official. The judge must then require a higher standard and heavier burden of proof. This section is formulated to support government and its agencies in their responsibilities and tasks. Therefore, in the absence of evidence overcoming this presumption of regularity, no court can issue a TRO or injunctive writ. It is only the SC which can issue a TRO or an injunctive writ in exceptional cases.

Pre-trial Conference; Consent Decree *(Sec. 5, Rule 3)*

(1) The judge shall put the parties and their counsels under oath, and they shall remain under oath in all pre-trial conferences. The judge shall exert best efforts to persuade the parties to arrive at a settlement of the dispute. The judge may issue a consent decree approving the agreement between the parties in accordance with law, morals, public order and public policy to protect the right of the people to a balanced and healthful ecology. Evidence not presented during the pre-trial, except newly discovered evidence, shall be deemed waived.

(2) Consent Decree refers to a judicially-approved settlement between concerned parties based on public interest aspect in environmental cases and encourages the parties to expedite the resolution of litigation *(Sec. 4[b], Rule 1, Part 1)*.

(3) Sec. 5, Rule 3 encourages parties to reach an agreement regarding settlement through a consent decree, which gives emphasis to the public interest aspect in the assertion of the right to a balances and healthful ecology.

Prohibited Pleadings and Motions *(Sec. 2, Rule 2)*

(1) The following pleadings or motions shall not be allowed:
(a) Motion to dismiss the complaint;
(b) Motion for a bill of particulars;

(c) Motion for extension of time to file pleadings, except to file answer, the extension not to exceed fifteen (15) days;
(d) Motion to declare the defendant in default;
(e) Reply and rejoinder; and
(f) Third party complaint.

(2) While the enumeration have been adopted in part from the Rule on Summary Procedure in response to the question of delay which often accompanies regular cases, summary procedure is not adopted in its entirety given the complex and wide range of environmental cases. Procedural safeguards have been introduced for truly complex cases which may necessitate further evaluation from the court. Among these the exclusion of the motions for postponement, new trial and reconsideration, as well as the petition for relief from the prohibition.

(3) Motion for postponement, motion for new trial and petition for relief from judgment shall only be allowed in certain conditions of highly meritorious cases or to prevent a manifest miscarriage of justice. The satisfaction of these conditions is required since these motions are prone abuse during litigation.

(4) Motion for intervention is permitted in order to allow the public to participate in the filing and prosecution of environmental cases, which are imbued with public interest. Petitions for *certiorari* are likewise permitted since these raise fundamentally questions of jurisdiction. Under the Constitution, the SC may not be deprived of its *certiorari* jurisdiction.

Temporary Environmental Protection Order (TEPO)

(1) *Issuance of Temporary Environmental Protection Order (TEPO).*–If it appears from the verified complaint with a prayer for the issuance of an Environmental Protection Order (EPO) that the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the executive judge of the multiple sala court before raffle or the presiding judge of a single-sala court as the case may be, may issue *ex parte* a TEPO effective for only seventy-two (72) hours from date of the receipt of the TEPO by the party or person enjoined. Within said period, the court where the case is assigned, shall conduct a summary hearing to determine whether the TEPO may be extended until the termination of the case. The court where the case is assigned, shall periodically monitor the existence of acts that are the subject matter of the TEPO even if issued by the executive judge, and may lift the same at any time as circumstances may warrant. The applicant shall be exempted from the posting of a bond for the issuance of a TEPO *(Sec. 8, Rule 2)*.

(2) The Rules provide that an applicant who files for the issuance of a TEPO is exempt from the posting of a bond, but the Rules also provide for safeguards for the possible pernicious effects upon the party or person sought to be enjoined by the TEPO:
   (a) A TEPO may only be issued in matters of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the TEPO effective for only 72 hours; and
   (b) The court should periodically monitor the existence of acts which are the subject matter of the TEPO, the TEPO can be lifted anytime as the circumstances may warrant.

(3) While the TEPO may be issued *ex parte*, this is more of the exception. The general rule on the conduct of a hearing pursuant to due process remains.

Judgment and Execution *(Rule 5)*

(1) Any judgment directing the performance of acts for the protection, preservation or rehabilitation of the environment shall be executory pending appeal unless restrained by the appellate court *(Sec.*

(2) A judgment rendered pursuant to these Rules is immediately executor. It may not be stayed by the posting of a bond under Rule 39 of the Rules of Court and the sole remedy lies with the appellate court. the appellate court can issue a TRO to restrain the execution of the judgment and should the appellate court act with grave abuse of discretion in refusing to act on the application for a TRO, a petition for *certiorari* under Rule 65 can be brought before the Supreme Court.

Reliefs in a Citizen's Suit *(Sec. 5, Rule 2; Sec. 1, Rule 5)*

(1) Any Filipino citizen in representation of others, including minors or generations yet unborn, may file an action to enforce rights or obligations under environmental laws. Upon the filing of a citizen suit, the court shall issue an order which shall contain a brief description of the cause of action and the reliefs prayed for, requiring all interested parties to manifest their interest to intervene in the case within fifteen (15) days from notice thereof. The plaintiff may publish the order once in a newspaper of a general circulation in the Philippines or furnish all affected barangays copies of said order. Citizen suits filed under R.A. No. 8749 and R.A. No. 9003 shall be governed by their respective provisions *(Sec. 5, Rule 2)*.

(2) If warranted, the court may grant to the plaintiff proper reliefs which shall include the protection, preservation or rehabilitation of the environment and the payment of attorney's fees, costs of suit and other litigation expenses. It may also require the violator to submit a program of rehabilitation or restoration of the environment, the costs of which shall be borne by the violator, or to contribute to a special trust fund for that purpose subject to the control of the court *(Sec. 1, Rule 5)*.

Permanent Environmental Protection Order *(Sec. 3, Rule 5)*

(1) *Permanent EPO; writ of continuing mandamus.*– In the judgment, the court may convert the TEPO to a permanent EPO or issue a writ of continuing *mandamus* directing the performance of acts which shall be effective until the judgment is fully satisfied. The court may, by itself or through the appropriate government agency, monitor the execution of the judgment and require the party concerned to submit written reports on a quarterly basis or sooner as may be necessary, detailing the progress of the execution and satisfaction of the judgment. The other party may, at its option, submit its comments or observations on the execution of the judgment.

(2) In this provision, continuing mandamus is made available as a final relief. As a remedy, continuing mandamus is decidedly an attractive relief. Nevertheless, the monitoring function attached to the writ is decidedly taxing upon the court. Thus, it is meant to be an exceptional remedy. Among others, the nature of the case in which the judgment is issued will be a decisive factor in determining whether to issue a writ of continuing mandamus. A TEPO may be converted into a writ of continuing mandamus should the circumstances warrant.

Writ of Continuing Mandamus

(1) Continuing mandamus is a writ issued by a court in an environmental case directing any agency or instrumentality of the government or officer thereof to perform an act or series of acts decreed by final judgment which shall remain effective until judgment is fully satisfied *(Sec. 4[c], Rule 1, Part1)*.

(2) The concept of continuing mandamus was originally enunciated in the case of ***Concerned Residents of Manila Bay vs. MMDA, GR 171947-98, 12/18/2008***. The Rules now codify the Writ of Continuing Mandamus as one of the principal remedies which may be availed of in environmental cases.

Strategic Lawsuit Against Public Participation

(1) Strategic lawsuit against public participation (SLAPP) refers to an action whether civil, criminal or administrative, brought against any person, institution or any government agency or local government unit or its officials and employees, with the intent to harass, vex, exert undue pressure or stifle any legal recourse that such person, institution or government agency has taken or may take in the enforcement of environmental laws, protection of the environment or assertion of environmental rights *(Sec. 4[g], Rule 1)*.

(2) A legal action filed to harass, vex, exert undue pressure or stifle any legal recourse that any person, institution or the government has taken or may take in the enforcement of environmental laws, protection of the environment or assertion of environmental rights shall be treated as a SLAPP and shall be governed by these Rules *(Sec. 1, Rule 6)*.

(3) SLAPP as a defense; how alleged.—In a SLAPP filed against a person involved in the enforcement of environmental laws, protection of the environment, or assertion of environmental rights, the defendant may file an answer interposing as a defense that the case is a SLAPP and shall be supported by documents, affidavits, papers and other evidence; and, by way of counterclaim, pray for damages, attorney's fees and costs of suit. The court shall direct the plaintiff or adverse party to file an opposition showing the suit is not a SLAPP, attaching evidence in support thereof, within a non-extendible period of five (5) days from receipt of notice that an answer has been filed. The defense of a SLAPP shall be set for hearing by the court after issuance of the order to file an opposition within fifteen (15) days from filing of the comment or the lapse of the period *(Sec. 2, Rule 6)*.

(4) Summary hearing. The hearing on the defense of a SLAPP shall be summary in nature. The parties must submit all available evidence in support of their respective positions. The party seeking the dismissal of the case must prove by substantial evidence that his acts for the enforcement of environmental law is a legitimate action for the protection, preservation and rehabilitation of the environment. The party filing the action assailed as a SLAPP shall prove by preponderance of evidence that the action is not a SLAPP and is a valid claim *(Sec. 3, Rule 6)*.

(5) Resolution of the defense of a SLAPP. The defense of a SLAPP shall be resolved within thirty (30) days after the summary hearing. If the court dismisses the action, the court may award damages, attorney's fees and costs of suit under a counterclaim if such has been filed. The dismissal shall be with prejudice. If the court rejects the defense of a SLAPP, the evidence adduced during the summary hearing shall be treated as evidence of the parties on the merits of the case. The action shall proceed in accordance with the Rules of Court *(Sec. 4, Rule 6)*.

(6) Since a motion to dismiss is a prohibited pleading, SLAPP as an affirmative defense should be raised in an answer along with other defenses that may be raised in the case alleged to be a SLAPP.

C. Special Procedure

Writ of Kalikasan *(Rule 7)*

(1) The writ is a remedy available to a natural or juridical person, entity authorized by law, people's organization, non-governmental organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces *(Sec. 1, Rule 7)*.

(2) ***Extraordinary remedy***. The underlying emphasis in the Writ of Kalikasan is magnitude as it deals with damage that transcends political and territorial boundaries. Magnitude is thus measured according to the qualification set forth in this Rule—when there is environmental damage that prejudices the life, health or property of inhabitants in two or more cities or provinces.

(3) ***Who may avail of the writ***. The petition for the issuance of a WOK can be filed by any of the following: (a) a natural or juridical person; (b) entity authorized by law; (c) people's organization, non-government organization, or any public interest group accredited by or registered with any government agency "on behalf of persons whose constitutional right to a balanced and healthful ecology is violated…involving environmental damage of such magnitude as to prejudice life, health, or property of inhabitants in two or more cities or provinces." Those who may file for this remedy must represent the inhabitants prejudiced by the environmental damage subject of the writ. The requirement of accreditation of a group or organization is for the purpose of verifying its existence. The accreditation is a mechanism to prevent "fly by night" groups from abusing the writ.

(4) ***Acts covered by the writ***. The WOK is a special remedy available against an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

(5) ***Where to file***. The petition may be filed before the Supreme Court or the Court of Appeals..

(6) ***Exemption from payment of docket fees***. The exemption from payment of docket fees is consistent with the character of the reliefs available under the writ, which excludes damages for personal injuries. This exemption also encourages public participation in availing of the remedy.

(7) Under Section 1 of Rule 7, the following requisites must be present to avail of this extraordinary remedy: (1) there is an actual or threatened violation of the constitutional right to a balanced and healthful ecology; (2) the actual or threatened violation arises from an unlawful act or omission of a public official or employee, or private individual or entity; and (3) the actual or threatened violation involves or will lead to an environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces. The Rules do not define the exact nature or degree of environmental damage but only that it must be sufficiently grave, in terms of the territorial scope of such damage, so as tocall for the grant of this extraordinary remedy. The gravity of environmental damage sufficient to grant the writ is, thus, to be decided on a case-to-

case basis. Hence, we sustain the appellate court's findings that the Casiño Group failed to establish the alleged grave environmental damage which will be caused by the construction and operation of the power plant *(Paje v. Casiño, GR No. 207257, 02/03/2015).*

(8) Under the RPEC, the writ of *kalikasan* is an extraordinary remedy covering environmental damage of such magnitude that will prejudice the life, health or property ofinhabitants in two or more cities or provinces. It is designed for a narrow but special purpose: to accord a stronger protection for environmental rights, aiming, among others, to provide a speedy and effective resolution of a case involving the violation of one's constitutional right to a healthful and balanced ecology that transcends political and territorial boundaries, and to address the potentially exponential nature of large-scale ecological threats. At the very least, the magnitude of the ecological problems contemplated under the RPEC satisfies at least one of the exceptions to the rule on hierarchy of courts, as when direct resort is allowed where it is dictated by public welfare. Given that the RPEC allows direct resort to this Court, it is ultimately within the Court's discretion whether or not to accept petitions brought directly before it *(Segovia vs. The Climate Change Commission, EB, GR No. 211010, 03/07/2017).*

For a writ of *kalikasan* to issue, the following requisites must concur:

1. there is an actual or threatened violation of the constitutional right to a balanced and healthful ecology;
2. the actual or threatened violation arises from an unlawful act or omission of a public official or employee, or private individual or entity; and
3. the actual or threatened violation involves or will lead to an environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

It is well-settled that a party claiming the privilege for the issuance of a writ of *kalikasan* has to show that a law, rule or regulation was violated or would be violated.

(9) The RPEC did liberalize the requirements on standing, allowing the filing of citizen's suit for the enforcement of rights and obligations under environmental laws. This has been confirmed by this Court's rulings in *Arigo vs. Swift (GR No. 206510, 09/16/2014),* and *International Service for the Acquisition of Agri-BioTech Applications, Inc. v. Greenpeace Southeast Asia (Philippines) (GR No. 209271, 12/8/2015).* However, it bears noting that there is a difference between a petition for the issuance of a writ of *kalikasan,* wherein it is sufficient that the person filing represents the inhabitants prejudiced by the environmental damage subject of the writ; and a petition for the issuance of a writ of continuing *mandamus,* which is only available to one who is personally aggrieved by the unlawful act or omission *(Segovia, et al. vs. The Climate Change Commission, EB, GR No. 211010, 03/07/2017).*

Prohibited pleadings and motions *(Sec. 9, Rule 7)*

(1) The following pleadings and motions are prohibited:
- (a) Motion to dismiss;
- (b) Motion for extension of time to file return;
- (c) Motion for postponement;
- (d) Motion for a bill of particulars;
- (e) Counterclaim or cross-claim;
- (f) Third-party complaint;
- (g) Reply; and
- (h) Motion to declare respondent in default.

Discovery measures *(Sec. 12, Rule 7)*

(1) A party may file a verified motion for the following reliefs:

(a) Ocular Inspection; order. The motion must show that an ocular inspection order is necessary to establish the magnitude of the violation or the threat as to prejudice the life, health or property of inhabitants in two or more cities or provinces. It shall state in detail the place or places to be inspected. It shall be supported by affidavits of witnesses having personal knowledge of the violation or threatened violation of environmental law.

After hearing, the court may order any person in possession or control of a designated land or other property to permit entry for the purpose of inspecting or photographing the property or any relevant object or operation thereon. The order shall specify the person or persons authorized to make the inspection and the date, time, place and manner of making the inspection and may prescribe other conditions to protect the constitutional rights of all parties.

(b) Production or inspection of documents or things; order. The motion must show that a production order is necessary to establish the magnitude of the violation or the threat as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

After hearing, the court may order any person in possession, custody or control of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things, or objects in digitized or electronic form, which constitute or contain evidence relevant to the petition or the return, to produce and permit their inspection, copying or photographing by or on behalf of the movant. The production order shall specify the person or persons authorized to make the production and the date, time, place and manner of making the inspection or production and may prescribe other conditions to protect the constitutional rights of all parties.

Writ of Continuing Mandamus *(Rule 8)*

(1) Petition. When any agency or instrumentality of the government or officer thereof unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station in connection with the enforcement or violation of an environmental law rule or regulation or a right therein, or unlawfully excludes another from the use or enjoyment of such right and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty, attaching thereto supporting evidence, specifying that the petition concerns an environmental law, rule or regulation, and praying that judgment be rendered commanding the respondent to do an act or series of acts until the judgment is fully satisfied, and to pay damages sustained by the petitioner by reason of the malicious neglect to perform the duties of the respondent, under the law, rules or regulations. The petition shall also contain a sworn certification of non-forum shopping.

(2) Where to file the petition. The petition shall be filed with the Regional Trial Court exercising jurisdiction over the territory where the actionable neglect or omission occurred or with the Court of Appeals or the Supreme Court.

(3) No docket fees. The petitioner shall be exempt from the payment of docket fees.

(4) Order to comment. If the petition is sufficient in form and substance, the court shall issue the writ and require the respondent to comment on the petition within ten (10) days from

receipt of a copy thereof. Such order shall be served on the respondents in such manner as the court may direct, together with a copy of the petition and any annexes thereto.

(5) Expediting proceedings; TEPO. The court in which the petition is filed may issue such orders to expedite the proceedings, and it may also grant a TEPO for the preservation of the rights of the parties pending such proceedings.

(6) Proceedings after comment is filed. After the comment is filed or the time for the filing thereof has expired, the court may hear the case which shall be summary in nature or require the parties to submit memoranda. The petition shall be resolved without delay within sixty (60) days from the date of the submission of the petition for resolution.

(7) Judgment. If warranted, the court shall grant the privilege of the writ of continuing *mandamus* requiring respondent to perform an act or series of acts until the judgment is fully satisfied and to grant such other reliefs as may be warranted resulting from the wrongful or illegal acts of the respondent. The court shall require the respondent to submit periodic reports detailing the progress and execution of the judgment, and the court may, by itself or through a commissioner or the appropriate government agency, evaluate and monitor compliance. The petitioner may submit its comments or observations on the execution of the judgment.

(8) Return of the writ**.** The periodic reports submitted by the respondent detailing compliance with the judgment shall be contained in partial returns of the writ. Upon full satisfaction of the judgment, a final return of the writ shall be made to the court by the respondent. If the court finds that the judgment has been fully implemented, the satisfaction of judgment shall be entered in the court docket.

(9) Procedurally, its filing before the courts is similar to the filing of an ordinary writ of mandamus. However, the issuance of a TEPO is made available as an auxillary remedy prior to the issuance of the writ itself. As a special civil action, the WoCMa may be availed of to compel the performance of an act specifically enjoined by law. It permits the court to retain jurisdiction after judgment in order to ensure the successful implementation of the reliefs mandated under the court's decision. For this purpose, the court may compel the submission of compliance reports from the respondent government agencies as well as avail of other means to monitor compliance with its decision. Its availability as a special civil action likewise complements its role as a final relief in environmental civil cases and in the WOK, where continuing mandamus may likewise be issued should the facts merit such relief.

Writ of Continuing *Mandamus* vs. Writ of *Kalikasan*

(1) Subject matter. WoCMa is directed against the unlawful neglect in the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station in connection with the enforcement or violation of an environmental law rule or regulation or a right therein; or (a) the unlawful exclusion of another from the use or enjoyment of such right and in both instances, there is no other plain, speedy and adequate remedy in the ordinary course of law. A writ of kalikasan is available against unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces. In addition, magnitude of environmental damage is a condition *sine qua non* in a petition for the issuance of a writ of kalikasan and must be contained in the verified petition.

(2) Who may file. A writ of continuing mandamus is available to a broad range of persons such as natural or juridical person, entity authorized by law, people's organization, NGO, or any public interest group accredited by or registered with any government agency, on

behalf of persons whose right to a balanced and healthful ecology is violated or threatened to be violated.

(3) Respondent. The respondent in a petition for continuing mandamus is only the government or its officers, unlike in a petition for writ of kalikasan, where the respondent may be a private individual or entity.

(4) Exemption from docket fees. The application for either petition is exempted from the payment of docket fees.

(5) Venue. A petition for the issuance of a writ of continuing mandamus may be filed in the following: (a) the RTC exercising jurisdiction over the territory where the actionable neglect or omission occurred; (b) the CA; or (c) the SC. Given the magnitude of the damage, the application for the issuance of a writ of kalikasan can only be filed with the SC or any station of the CA.

(6) Discovery measures. The Rule on the WCM does not contain any provision for discovery measures, unlike the Rule on WOK which incorporates the procedural environmental right of access to information through the use of discovery measures such as ocular inspection order and production order.

(7) Damages for personal injury. The WCM allows damages for the malicious neglect of the performance of the legal duty of the respondent, identical Rule 65. In contrast, no damages may be awarded in a petition for the issuance of a WOK consistent with the public interest character of the petition. A party who avails of this petition but who also wishes to be indemnified for injuries suffered may file another suit for the recovery of damages since the Rule on WOK allows for the institution of separate actions.

D. Criminal Procedure

Who May File *(Sec. 1, Rule 9)*

(1) Any offended party, peace officer or any public officer charged with the enforcement of an environmental law may file a complaint before the proper officer in accordance with the Rules of Court *(Sec. 1, Rule 9)*.

Institution of Criminal and Civil Action *(Sec. 1, Rule 10)*

(1) When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged, shall be deemed instituted with the criminal action unless the complainant waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action. Unless the civil action has been instituted prior to the criminal action, the reservation of the right to institute separately the civil action shall be made during arraignment. In case civil liability is imposed or damages are awarded, the filing and other legal fees shall be imposed on said award in accordance with Rule 141 of the Rules of Court, and the fees shall constitute a first lien on the judgment award. The damages awarded in cases where there is no private offended party, less the filing fees, shall accrue to the funds of the agency charged with the implementation of the environmental law violated. The award shall be used for the restoration and rehabilitation of the environment adversely affected.

Arrest without Warrant; When Valid *(Sec. 1, Rule 11)*

(1) A peace officer or an individual deputized by the proper government agency may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing or is attempting to commit an offense; or

(b) When an offense has just been committed, and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it. Individuals deputized by the proper government agency who are enforcing environmental laws shall enjoy the presumption of regularity under Section 3(m), Rule 131 of the Rules of Court when effecting arrests for violations of environmental laws.

(2) *Warrant of arrest.* All warrants of arrest issued by the court shall be accompanied by a certified true copy of the information filed with the issuing court.

Procedure in the Custody and Disposition of Seized Items *(Sec. 2, Rule 12)*

(1) In the absence of applicable laws or rules promulgated by the concerned government agency, the following procedure shall be observed:

(a) The apprehending officer having initial custody and control of the seized items, equipment, paraphernalia, conveyances and instruments shall physically inventory and whenever practicable, photograph the same in the presence of the person from whom such items were seized.

(b) Thereafter, the apprehending officer shall submit to the issuing court the return of the search warrant within five (5) days from date of seizure or in case of warrantless arrest, submit within five (5) days from date of seizure, the inventory report, compliance report, photographs, representative samples and other pertinent documents to the public prosecutor for appropriate action.

(c) Upon motion by any interested party, the court may direct the auction sale of seized items, equipment, paraphernalia, tools or instruments of the crime. The court shall, after hearing, fix the minimum bid price based on the recommendation of the concerned government agency. The sheriff shall conduct the auction.

(d) The auction sale shall be with notice to the accused, the person from whom the items were seized, or the owner thereof and the concerned government agency.

(e) The notice of auction shall be posted in three conspicuous places in the city or municipality where the items, equipment, paraphernalia, tools or instruments of the crime were seized.

(f) The proceeds shall be held in trust and deposited with the government depository bank for disposition according to the judgment.

(2) The foregoing provisions concern two aspects of seizure. The first aspect concerns the chain of custody of the seized items, equipment, paraphernalia, conveyances, and instruments. Subparagraphs (a) and (b) are meant to assure the integrity of the evidence after seizure, for later presentation at the trial. The second aspect deals with the disposition of the seized materials. This addresses the concern of deterioration of the materials, most of which are perishable, while in *custodia legis*. The provision contains procedural safeguards to assure the preservation of the value of the seized materials, should the case eventually be decided in favor of their owner or possessor. Subparagraph (b) makes the provision cover both seizures with warrant and warrantless seizures. The

motion to direct the auction sale under subpara (c) may be filed by "any interested party" to obviate any oppressive use of seizure to the prejudice of any party.

Bail *(Rule 14)*

(1) *Bail, where filed*. Bail in the amount fixed may be filed with the court where the case is pending, or in the absence or unavailability of the judge thereof, with any regional trial judge, metropolitan trial judge, municipal trial judge or municipal circuit trial judge in the province, city or municipality. If the accused is arrested in a province, city or municipality other than where the case is pending, bail may also be filed with any Regional Trial Court of said place, or if no judge thereof is available, with any metropolitan trial judge, municipal trial judge or municipal circuit trial judge therein. If the court grants bail, the court may issue a hold-departure order in appropriate cases.

(2) *Duties of the court*. Before granting the application for bail, the judge must read the information in a language known to and understood by the accused and require the accused to sign a written undertaking, as follows:

(a) To appear before the court that issued the warrant of arrest for arraignment purposes on the date scheduled, and if the accused fails to appear without justification on the date of arraignment, accused waives the reading of the information and authorizes the court to enter a plea of not guilty on behalf of the accused and to set the case for trial;

(b) To appear whenever required by the court where the case is pending; and

(c) To waive the right of the accused to be present at the trial, and upon failure of the accused to appear without justification and despite due notice, the trial may proceed *in absentia.*

(3) A key innovation in this section is the execution of an undertaking by the accused and counsel, empowering the judge to enter a plea of not guilty, in the event the accused fails to appear at the arraignment. This authorization permits the court to try the case *in absentia*, within the period provided under these Rules. This addresses a fundamental concern surrounding the prosecution of criminal cases in general, where the accused jumps bail and the court unable to proceed with the disposition of the case in view of the absence of the accused and the failure to arraign the latter.

Arraignment and Plea *(Rule 15)*

(1) *Arraignment.* The court shall set the arraignment of the accused within fifteen (15) days from the time it acquires jurisdiction over the accused, with notice to the public prosecutor and offended party or concerned government agency that it will entertain plea-bargaining on the date of the arraignment.

(2) *Plea-bargaining.* On the scheduled date of arraignment, the court shall consider plea-bargaining arrangements. Where the prosecution and offended party or concerned government agency agree to the plea offered by the accused, the court shall:

(a) Issue an order which contains the plea-bargaining arrived at;

(b) Proceed to receive evidence on the civil aspect of the case, if any; and

(c) Render and promulgate judgment of conviction, including the civil liability for damages.

(3) This provision requires the consent of the prosecutor, the offended party or concerned government agency in order to successfully arrive at a valid plea-bargaining agreement.

Plea-bargaining is considered at arraignment in order to avoid the situation where an initial plea is changed in the course of the trial in view of a successful plea bargain.

Pre-trial *(Rule 16)*

(1) *Setting of pre-trial conference*. After the arraignment, the court shall set the pre-trial conference within thirty (30) days. It may refer the case to the branch clerk of court, if warranted, for a preliminary conference to be set at least three (3) days prior to the pre-trial.

(2) *Preliminary conference*.—The preliminary conference shall be for the following purposes:

(a) To assist the parties in reaching a settlement of the civil aspect of the case;

(b) To mark the documents to be presented as exhibits;

(c) To attach copies thereof to the records after comparison with the originals;

(d) To ascertain from the parties the undisputed facts and admissions on the genuineness and due execution of documents marked as exhibits;

(e) To consider such other matters as may aid in the prompt disposition of the case;

(f) To record the proceedings during the preliminary conference in the Minutes of Preliminary Conference to be signed by the parties and counsel;

(g) To mark the affidavits of witnesses which shall be in question and answer form and shall constitute the direct examination of the witnesses; and

(h) To attach the Minutes and marked exhibits to the case record before the pre-trial proper.

The parties or their counsel must submit to the branch clerk of court the names, addresses and contact numbers of the affiants.

(3) *Pre-trial duty of the judge.* During the pre-trial, the court shall:

(a) Place the parties and their counsels under oath;

(b) Adopt the minutes of the preliminary conference as part of the pre-trial proceedings, confirm markings of exhibits or substituted photocopies and admissions on the genuineness and due execution of documents, and list object and testimonial evidence;

(c) Scrutinize the information and the statements in the affidavits and other documents which form part of the record of the preliminary investigation together with other documents identified and marked as exhibits to determine further admissions of facts as to:

1. The court's territorial jurisdiction relative to the offense(s) charged;
2. Qualification of expert witnesses; and
3. Amount of damages;

(d) Define factual and legal issues;

(e) Ask parties to agree on the specific trial dates and adhere to the flow chart determined by the court which shall contain the time frames for the different stages of the proceeding up to promulgation of decision;

(f) Require the parties to submit to the branch clerk of court the names, addresses and contact numbers of witnesses that need to be summoned by subpoena; and

(g) Consider modification of order of trial if the accused admits the charge but interposes a lawful defense.

(4) *Manner of questioning*. All questions or statements must be directed to the court.

(5) *Agreements or admissions*. All agreements or admissions made or entered during the pre-trial conference shall be reduced in writing and signed by the accused and counsel; otherwise, they cannot be used against the accused. The agreements covering the matters referred to in Section 1, Rule 118 of the Rules of Court shall be approved by the court.

(6) *Record of proceedings*. All proceedings during the pre-trial shall be recorded, the transcripts prepared and the minutes signed by the parties or their counsels.

(7) *Pre-trial order*. The court shall issue a pre-trial order within ten (10) days after the termination of the pre-trial, setting forth the actions taken during the pre-trial conference, the facts stipulated, the admissions made, evidence marked, the number of witnesses to be presented and the schedule of trial. The order shall bind the parties and control the course of action during the trial.

Subsidiary Liability *(Rule 18)*

(1) In case of conviction of the accused and subsidiary liability is allowed by law, the court may, by motion of the person entitled to recover under judgment, enforce such subsidiary liability against a person or corporation subsidiarily liable under Article 102 and Article 103 of the Revised Penal Code.

SLAPP in Criminal Cases *(Rule 19)*

(1) *Motion to dismiss.* Upon the filing of an information in court and before arraignment, the accused may file a motion to dismiss on the ground that the criminal action is a SLAPP.

(2) *Summary hearing* The hearing on the defense of a SLAPP shall be summary in nature. The parties must submit all the available evidence in support of their respective positions. The party seeking the dismissal of the case must prove by substantial evidence that his acts for the enforcement of environmental law are a legitimate action for the protection, preservation and rehabilitation of the environment. The party filing the action assailed as a SLAPP shall prove by preponderance of evidence that the action is not a SLAPP.

(3) *Resolution.* The court shall grant the motion if the accused establishes in the summary hearing that the criminal case has been filed with intent to harass, vex, exert undue pressure or stifle any legal recourse that any person, institution or the government has taken or may take in the enforcement of environmental laws, protection of the environment or assertion of environmental rights. If the court denies the motion, the court shall immediately proceed with the arraignment of the accused.

E. Evidence

Precautionary Principle *(Rule 20)*

(1) Definition. Precautionary principle states that when human activities may lead to threats of serious and irreversible damage to the environment that is scientifically plausible but uncertain, actions shall be taken to avoid or diminish that threat *(Sec. 4[f], Rule 1, Part 1)*.

(2) The adoption of the precautionary principle as part of these Rules, specifically relating to evidence, recognizes that exceptional cases may require its application. the inclusion of a definition of this principle is an integral part of Part V, Rule on Evidence in environmental cases in order to ease the burden of the part of ordinary plaintiffs to prove their cause of action. In its essence, precautionary principle calls for the exercise of caution in the face of risk and uncertainty. While the principle can be applied in any setting in which risk and uncertainty are found, it has evolved predominantly in and today remains most closely associated with the environmental arena.

(3) Applicability. When there is a lack of full scientific certainty in establishing a casual link between human activity and environmental effect, the court shall apply the precautionary principle in resolving the case before it. The constitutional right of the people to a balanced and healthful ecology shall be given the benefit of the doubt *(Sec. 1, Rule 20, Part V)*.

(4) The precautionary principle bridges the gap in cases where scientific certainty in factual findings cannot be achieved. By applying this principle, the court may construe a set of facts as warranting either judicial action or inaction, with the goal of preserving and protecting the environment. This may be further evinced from the second paragraph of Sec. 1, Rule 20, where bias is created in favor of constitutional right of the people to a balanced and healthful ecology. In effect, this principle shifts the burden of evidence of harm away from those likely to suffer harm and onto those desiring to change the status quo. This principle should be treated as a principle of last resort, where application of the regular Rules of Evidence would cause in an inequitable result for the environmental plaintiff:

   (a) Settings in which the risks of harm are uncertain;

   (b) Settings in which harm might be irreversible and what is lost is irreplaceable; and

   (c) Settings in which the harm that might result would be serious.

(5) When these features–uncertainty, the possibility of irreversible harm, and the possibility of serious harm–coincide, the case for the precautionary principle is strongest. When in doubt, cases must be resolved in favor of the constitutional right to a balanced and healthful ecology. Parenthetically, judicial adjudication is one of the strongest for a in which the precautionary principle may find applicability.

(6) Standards for application. In applying the precautionary principle, the following factors, among others, may be considered: (a) threats to human life or health; (b) inequity to present or future generations; or (c) prejudice to the environment without legal consideration of the environmental rights of those affected *(Sec.* 2, Rule 20).

Documentary Evidence *(Rule 21)*

(1) Photographic, video and similar evidence of events, acts, transaction of wildlife, wildlife by-products or derivatives, forest products or mineral resources subject of a case shall be admissible when authenticated by the person who took the same, by some other person present when said evidence was taken, or by any other person competent to testify on the accuracy thereof *(Sec. 1)*.

(2) Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in performance of a duty especially enjoined by law, are *prima facie* evidence of the facts therein stated *(Sec. 2)*.

(3) These provisions seek to address specific evidentiary concerns in environmental litigation, where evidence is often difficult to obtain and preserve. They supplement the main Rules on Evidence, which shall have full applicability to environmental cases.

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JUDICIAL AFFIDAVIT RULE
A.M. No. 12-8-8-SC

Whereas, case congestion and delays plague most courts in cities, given the huge volume of cases filed each year and the slow and cumbersome adversarial syste1n that the judiciary has in place;

Whereas, about 40% of criminal cases are dismissed annually owing to the fact that complainants simply give up con1ing to court after repeated postponements;

Whereas, few foreign businessmen make long-term investments in the Philippines because its courts are unable to provide ample and speedy protection to their investments, keeping its people poor;

Whereas, in order to reduce the time needed for completing the testimonies of witnesses in cases under litigation, on February 21, 2012 the Supreme Court approved for piloting by trial courts in Quezon City the compulsory use of judicial affidavits in place of the direct testimonies of witnesses;

Whereas, it is reported that such piloting has quickly resulted in reducing by about two-thirds the time used for presenting the testimonies of witnesses, thus speeding up the hearing and adjudication of cases;

Whereas, the Supreme Court Committee on the Revision of the Rules of Court, headed by Senior Associate Justice Antonio T. Carpio, and the Sub-Committee on the Revision of the Rules on Civil Procedure, headed by Associate Justice Roberto A. Abad, have recommended for adoption a Judicial Affidavit Rule that will replicate nationwide the success of the Quezon City experience in the use of judicial affidavits; and

Whereas, the Supreme Court En Banc finds merit in the recommendation;

NOW, THEREFORE, the Supreme Court En Banc hereby issues and promulgates the following:

Section 1. ***Scope.*** - (a) This Rule shall apply to all actions, proceedings, and incidents requiring the reception of evidence before:

(1) The Metropolitan Trial Courts, the Municipal Trial Courts in Cities, the Municipal Trial Courts, the Municipal Circuit Trial Courts, and the Shari' a Circuit Courts but shall not apply to small claims cases under A.M. 08-8-7-SC;

(2) The Regional Trial Courts and the Shari'a District Courts;

(3) The Sandiganbayan, the Court of Tax Appeals, the Court of Appeals, and the Shari'a Appellate Courts;

(4) The investigating officers and bodies authorized by the Supreme Court to receive evidence, including the Integrated Bar of the Philippine (IBP); and

(5) The special courts and quasi-judicial bodies, whose rules of procedure are subject to disapproval of the Supreme Court, insofar as their existing rules of procedure contravene the provisions of this Rule.

(b) For the purpose of brevity, the above courts, quasi-judicial bodies, or investigating officers shall be uniformly referred to here as the "court."

Section 2. *Submission of Judicial Affidavits and Exhibits in lieu of direct testimonies.* - (a) The parties shall file with the court and serve on the adverse party, personally or by licensed courier service, not later than five days before pre-trial or preliminary conference or the scheduled hearing with respect to motions and incidents, the following:

(1) The judicial affidavits of their witnesses, which shall take the place of such witnesses' direct testimonies; and

(2) The parties' docun1entary or object evidence, if any, which shall be attached to the judicial affidavits and marked as Exhibits A, B, C, and so on in the case of the complainant or the plaintiff, and as Exhibits 1, 2, 3, and so on in the case of the respondent or the defendant.

(b) Should a party or a witness desire to keep the original document or object evidence in his possession, he may, after the same has been identified, marked as exhibit, and authenticated, warrant in his judicial affidavit that the copy or reproduction attached to such affidavit is a faithful copy or reproduction of that original. In addition, the party or witness shall bring the original document or object evidence for comparison during the preliminary conference with the attached copy, reproduction, or pictures, failing which the latter shall not be admitted.

This is without prejudice to the introduction of secondary evidence in place of the original when allowed by existing rules.

Section 3. ***Contents of judicial Affidavit.*** - A judicial affidavit shall be prepared in the language known to the witness and, if not in English or Filipino, accompanied by a translation in English or Filipino, and shall contain the following:

(a) The name, age, residence or business address, and occupation of the witness;

(b) The name and address of the lawyer who conducts or supervises the examination of the witness and the place where the examination is being held;

(c) A statement that the witness is answering the questions asked of him, fully conscious that he does so under oath, and that he may face criminal liability for false testimony or perjury;

(d) Questions asked of the witness and his corresponding answers, consecutively numbered, that:

(1) Show the circumstances under which the witness acquired the facts upon which he testifies;

(2) Elicit from him those facts which are relevant to the issues that the case presents; and

(3) Identify the attached documentary and object evidence and establish their authenticity in accordance with the Rules of Court;

(e) The signature of the witness over his printed name; and

(f) A jurat with the signature of the notary public who administers the oath or an officer who is authorized by law to administer the same.

Section 4. ***Sworn attestation of the lawyer.*** - (a) The judicial affidavit shall contain a sworn attestation at the end, executed by the lawyer who conducted or supervised the examination of the witness, to the effect that:

(1) He faithfully recorded or caused to be recorded the questions he asked and the corresponding answers that the witness gave; and

(2) Neither he nor any other person then present or assisting him coached the witness regarding the latter's answers.

(b) A false attestation shall subject the lawyer mentioned to disciplinary action, including disbarment.

Section 5. ***Subpoena.*** - If the government employee or official, or the requested witness, who is neither the witness of the adverse party nor a hostile witness, unjustifiably declines to execute a judicial affidavit or refuses without just cause to make the relevant books, documents, or other things under his control available for copying, authentication, and eventual production in court, the requesting party may avail himself of the issuance of a subpoena *ad testificandum* or *duces tecum* under Rule 21 of the Rules of Court. The rules governing the issuance of a subpoena to the witness in this case shall be the same as when taking his deposition except that the taking of a judicial affidavit shal1 be understood to be *ex parte*.

Section 6. ***Offer of and objections to testimony in judicial affidavit.*** - The party presenting the judicial affidavit of his witness in place of direct testimony shall state the purpose of such testimony at the start of the presentation of the witness. The adverse party may move to disqualify the witness or to strike out his affidavit or any of the answers found in it on ground of inadmissibility. The court shall promptly rule on the motion and, if granted, shall cause the marking of any excluded answer by placing it in brackets under the initials of an authorized court personnel, without prejudice to a tender of excluded evidence under Section 40 of Rule 132 of the Rules of Court.

Section 7. ***Examination of the witness on his judicial affidavit.*** - The adverse party shall have the right to cross-examine the witness on his judicial affidavit and on the exhibits attached to the same. The party who presents the witness may also examine him as on re-direct. In every case, the court shall take active part in examining the witness to determine his credibility as well as the truth of his testimony and to elicit the answers that it needs for resolving the issues.

Section 8. ***Oral offer of and objections to exhibits.*** - (a) Upon the termination of the testimony of his last witness, a party shall immediately make an oral offer of evidence of his documentary or object exhibits, piece by piece, in their chronological order, stating the purpose or purposes for which he offers the particular exhibit.

(b) After each piece of exhibit is offered, the adverse party shall state the legal ground for his objection, if any, to its admission, and the court shall immediately make its ruling respecting that exhibit.

(c) Since the documentary or object exhibits form part of the judicial affidavits that describe and authenticate them, it is sufficient that such exhibits are simply cited by their markings during the offers, the objections, and the rulings, dispensing with the description of each exhibit.

Section 9. ***Application of rule to criminal actions.*** - (a) This rule shall apply to all criminal actions:

(1) Where the maximum of the imposable penalty does not exceed six years;

(2) Where the accused agrees to the use of judicial affidavits, irrespective of the penalty involved; or

(3) With respect to the civil aspect of the actions, whatever the penalties involved are.

(b) The prosecution shall submit the judicial affidavits of its witnesses not later than five days before the pre-trial, serving copies if the same upon the accused. The complainant or public prosecutor shall attach to the affidavits such documentary or object evidence as he may have, marking them as Exhibits A, B, C, and so on. No further judicial affidavit, documentary, or object evidence shall be admitted at the trial.

(c) If the accused desires to be heard on his defense after receipt of the judicial affidavits of the prosecution, he shall have the option to submit his judicial affidavit as well as those of his witnesses to the court within ten days from receipt of such affidavits and serve a copy of each on the public and private prosecutor, including his documentary and object evidence previously

marked as Exhibits 1, 2, 3, and so on. These affidavits shall serve as direct testimonies of the accused and his witnesses when they appear before the court to testify.

Section 10. *Effect of non-compliance with the judicial Affidavit Rule.* - (a) A party who fails to submit the required judicial affidavits and exhibits on time shall be deemed to have waived their submission. The court may, however, allow only once the late submission of the same provided, the delay is for a valid reason, would not unduly prejudice the opposing party, and the defaulting party pays a fine of not less than ₱ 1,000.00 nor more than ₱5,000.00 at the discretion of the court.

(b) The court shall not consider the affidavit of any witness who fails to appear at the scheduled hearing of the case as required. Counsel who fails to appear without valid cause despite notice shall be deemed to have waived his client's right to confront by cross-examination the witnesses there present.

(c) The court shall not admit as evidence judicial affidavits that do not conform to the content requirements of Section 3 and the attestation requirement of Section 4 above. The court may, however, allow only once the subsequent submission of the compliant replacement affidavits before the hearing or trial provided the delay is for a valid reason and would not unduly prejudice the opposing party and provided further, that public or private counsel responsible for their preparation and submission pays a fine of not less than ₱1,000.00 nor more than ₱ 5,000.00, at the discretion of the court.

Section 11. *Repeal or modification of inconsistent rules.* - The provisions of the Rules of Court and the rules of procedure governing investigating officers and bodies authorized by the Supreme Court to receive evidence are repealed or modified insofar as these are inconsistent with the provisions of this Rule

The rules of procedure governing *quasi-judicial* bodies inconsistent herewith are hereby disapproved.

Section 12. *Effectivity.* - This rule shall take effect on January 1, 2013 following its publication in two newspapers of general circulation not later than September 15, 2012. It shall also apply to existing cases.

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EFFICIENT USE OF PAPER RULE

A.M. No. 11-9-4-SC

Whereas, to produce 500 reams o~ paper, twenty trees are cut and 100,000 liters of water are used, water that is no longer reusable because it is laden with chemicals and is just released to the environment to poison our rivers and seas;

Whereas, there is a need to cut the judicial system's use of excessive quantities of costly paper, save our forests, avoid landslides, and mitigate the worsening effects of climate change that the world is expenenc1ng; Whereas, the judiciary can play a big part in sav1ng our trees, conserving precious water, and helping mother earth;

NOW, THEREFORE, the Supreme Court En Bane hereby issues and promulgates the following:

Sec. 1. *Title of the Rule.* - This rule shall be known and cited as the Efficient Use of Paper Rule.

Sec. 2. *Applicability.* -This rule shall apply to all courts and quasijudicial bodies under the administrative supervision of the Supreme Court.

Sec. 3. *Format and Style.* - a) All pleadings, motions, and similar papers intended for the court and quasi-judicial body's consideration and action (court-bound papers) shall be written in single space with a oneand-a-half space between paragraphs, using an easily readable font style of the party's choice, of 14-size font, and on a 13-inch by 8.5-inch white bond paper; and

b) All decisions, resolutions, and orders issued by courts and by quasi-judicial bodies under the administrative supervision of the Supreme Court shall comply with these requirements. Similarly covered are the reports submitted to the courts and transcripts of stenographic notes.

Sec. 4. *Margins and Prints.* - The parties shall maintain the following margins on all court-bound papers: a left hand margin of 1.5 inches from the edge; an upper margin of 1.2 inches from the edge; a right hand margin of 1.0 inch from the edge; and a lower margin of 1.0 inch from the edge. Every page must be consecutively numbered. Sec. 5. Copies to be Filed. - Unless otherwise directed by the court, the number of court~bound papers that a party is required or desires to file shall be as follows:

a. In the Supreme Court, one original (properly marked) and four copies, unless the case is referred to the Court En Bane, in which event, the parties shall file ten additional copies. For the En Bane, the parties need to submit only two sets of annexes, one attached to the original and an extra copy. For the Division, the parties need to submit also two sets of annexes, one attached to the original and an extra copy. All members of the Court shall share the extra copies of annexes in the interest of economy of paper.

Parties to cases before the Supreme Court are further required, on voluntary basis for the first six months following the effectivity of this Rule and compulsorily afterwards unless the period is extended, to submit, simultaneously with their court-bound papers, soft copies of the same and their annexes (the latter in PDF format) either by email to the Court's e-mail address or by compact

disc (CD). This requirement is in preparation for the eventual establishment of an e-filing paperless system in the judiciary.

b. In the Court of Appeals and the Sandiganbayan, one original (properly marked) and two copies with their annexes;

c. In the Court of Tax Appeals, one original (properly marked) and two copies with annexes. On appeal to the En Bane, one original (properly marked) and eight copies with annexes; and

d. In other courts, one original (properly marked) with the stated annexes attached to it.

Sec. 6. *Annexes Served on Adverse Party.* - A party required by the rules to serve a copy of his court-bound paper on the adverse party need not enclose copies of those annexes that based on the record of the court such party already has in his possession .. In the event a party l requests a set of the annexes actually filed with the court, the party who filed the paper shall comply with the request within five days from receipt.

Sec. 7. *Date of Effectivity.* -This rule shall take effect on January 1, 2013 after publication in two newspa.pers of general circulation in the Philippines.

PART VII
BAR QUESTIONS
IN REMEDIAL LAW
2000 - 2018

2018 BAR EXAMS QUESTIONS

I

Danielle, a Filipino citizen and permanent resident of Milan, Italy, filed with the Regional Trial Court (RTC) Of Davao City, where she owns a rest house, a complaint for ejectment against Dan, a resident of Barangay Daliao, Davao del Sur, has an assessed value of PhP 25,000. Appended to the complaint was Danielle's certification on non-forum shopping executed in Davao City duly notarized by Atty. Dane Danoza, a notary public.

(a) Was there a need to refer the case to the *Lupong Tagapamayapa* for prior *barangay* conciliation before the court can take cognizance of the case? (2.5%)

(b) Was the action properly instituted before the RTC of Davao City? (2.5%)

(c) Should the complaint be verified or is the certification sufficient? (2.5%)

II

Dendenees, Inc. and David, both stockholders owning collectively 25% of Darwinkle Inc., filed an action before the RTC of Makati to compel its Board of Directors (BOD) to hold the annual stockholders'meeting (ASM) on June 21, 2017, as required by Darwinkle Inc.'s By-Laws, with prayer for preliminary mandatory injunction to use as record date April 30, 2017. The complaint alleged, among others, that the refusal to call the ASM on June 21, 2017 was rooted in the plan of the BOD to allow Databank Inc. (which would have owned 50% of Darwinkle Inc. after July 15, 2017) to participate in the ASM to effectively dilute the complainants' shareholdings and ease them out of the BOD. Dendenees Inc. and David paid the amont of PhP 7,565 as filing fees based on the assessment of the Clerk of Court. The BOD filed a motion to dismiss on the ground of lack of jurisdiction. They averred that the filing fees should have been based on the actual value of the shares of Dendenees Inc. and David, which were collectively worth PhP 450 million.

If you were the Judge, [would] you grant the motion to dismiss? (5%)

III

On February 23, 2018, Danny Delucio, sheriff of the RTC of Makati, served the Order granting the ex-parte application for preliminary attachment of Dinggoy against Dodong. The Order, together with the writ, was duly received by Dodong. On March 1, 2018, the Sheriff served upn Dodong the complaint and summons in connection with the same case. The counsel of Dodong filed a motion to dissolve the writ.

(a) Can the preliminary attachment issued by the Court in favor of Dinggoy be dissolved? What ground/s can Dodong's counsel invoke? (2.5%)

(b) If Dodong posts a counter bond, is he deemed to have waived any of his claims for damages arising from the issuance of the Order and writ of attachment? (2.5%)

IV

Dick Dixson had sons with different woman – (i) Dexter with longtime partner Delia and (ii) Dongdong and Dingdong with his housemaid Divina. When Dick fell ill in 2014, he entrusted all his property titles and shares of stock in various companies to Delia who, in turn, handed them to Dexter for safekeeping. After the death of Dick, Dexter induced Dongdong and Dingdong to sign an agreement and waiver of their right to Dick's estate in consideration of PhP 45 million. As Dexter reneged on his promise to pay, Dongdong and Dingdong filed a complaint with the RTC of Manila for annulment of the agreement and waiver. The summons and complaint were received by Dalia, the housemaid of Dexter, on the day it was first served. Dexter filed a motion to dismiss on the ground of lack of jurisdiction over his person. The RTC of Manila granted the motion to dismiss.

Dongdong and Dingdong thereafter filed a new complaint against Dexter for annulment of the agreement and waiver. Before Dexter could file his answer, Dongdong and Dingdong filed a motion to withdraw their complaint prauing that it be dismissed without prejudice. An Order was issued granting the motion to withdraw without prejudice on the basis that the summons had not yet been served on Dexter. Dexter filed a motion for reconsideration of the order of dismissal. He argued that the dismissal should have been with prejudice under the "two-dismissal rule" of Rule 17, Section 1 of the Rules of Court, in view of the previous dismissal of the first case.

Will the two-dismissal rule apply making the second dismissal with prejudice? (2.5%)

V

Dorton Inc. (Dorton) sued Debra Commodities Inc. (Debra). Daniel, and Debbie in the RTC of Manila for recovery of money. The complaint alleged that, on October 14, 2017, Debra obtained a lona from Dorton in the amount of PhP 10 million with interest of 9% *per annum.* The loan was evidenced by a prommisory note (PN) payable on demand signed by Daniel and Debbie, the principal stockholders of Debra, who also executed a surety agreement binding themselves as sureties. Copies of both the PN and the surety agreemtn were attached to the complaint. Dorton further alleged that it made a final demand on March 1, 2018 for Debra and the sureties to pay, but the demand was not heeded.

Debra, Daniel, and Debbie filed their answer, and raised the affirmative defense that, while the PN and the surety agreement appeared to exist, Daniel and Debbie were uncertain whether the signatures on the documents were theirs. The PN and the sureties were pre-marked during pre-trial, identified but not authenticated during trial, and formally offered.

Can the RTC of Manila consider the PN and the surety agreement in rendering its decision? (2.5%)

VI

Daribell Inc. (Daribell) filed a complaint for sum of money and damages against spouses Dake and Donna Dimapilis for unpaid purchases of construction materials in the sum of PhP 250,000. In their answer, spouses Dimapilis admitted the purchases from Daribell, but alleged that they could not remember the exact amount since no copies of the document swere attached to the complaint. They nevertheless claimed that they made previous payments in the amounts of PhP 110,000 and PhP 20,000 and that they were willing to pay the balance of their indebtedness after account verification. In a written manifestation, spouses Demapilis stated that, in order to buy peace, they were willing to pay the sum of PhP 250,000, but without interests and costs.

Subsequently, Daribell filed a complaint, alleging that the total purchases of construction materials were PhP 280,000 and only PhP 20,000 had been paid. Daribell also served upon the spouses Demapilis a request for admission asking them to admit to the genuineness of the statement of accounts, delivery receipts and invoices, as well as to the value of the principal obligation and the amount paid as stated in the amended complaint.

Daribell thereafter amended the complaint anew. The amendment modified the period covered and confirmed the partial payment of PhP 110,000 but alleged that this payment was applied to the spouses' other existing obligations. Daribell however reiterated that the principal amount remained unchanged.

(a) Is the request for admission deemed bandoned or withdrawn by the filing of the second amended complaints? (2.5%)

(b) Can the amendment of the complaint be allowed if it substantially alters the cause of action? (2.5%)

(c) Can the facts subnect of an unanswered request for admission be the basis of a summary judgment? (2.5%)

VII

Dory enterprises Inc. Dory leased to Digna Corporation a parcel of land located in Diliman, Quezon City. During the term of the lease, Digna was informed by DBS Banking Corporation (DBS) that it had acquired the leased property from the former owner, Dory, and required Digna to pay the rentals directly to it. Digna promptly informed Dory of DBS' claims of ownership. In respone, Dory insisted on its right to collect rent on the leased property.

Due to conflicting claims of Dory and DBS over the rental payments, Digna filed a complaitn for interpleader in the RTC of Manila. Digna prayed that it be allowed to consign in court the succeeding monthly rentals, and that Dory and DBS be required to litigate their conflicting claims. It later appeared that an action for nullification of a *dacion en pago* was filed by Dory raised the issue as to which of the two (2) corporations had a better right to the rental payments. Dory argued that, to avoid conflicting decisions, the interpleader case must be dismissed.

Does the action for nullification of the *dacion en pago* bar the filing of the interpleader case? (2.5%)

VIII

Spouses Dondon and Donna Dumdum owned a residential lot in Dapitan City. Doy Dogan bought said lot and took possession thereof with the promise to pay the purchase price of PhP 2 million within a period of six (6) months. After receiving only PhP 500,000, spouses Dumdum executed the deed of absolute sale and transferred the title to Doy Dogan. The balance was not paid at all. Spouses Dumdum, through counsel, sent a demand letter to Dory Dogan for him to pay the balance of PhP 1.5 million plus interest of PhP 150,000. Dory Dogan responded in a leter by saying that "while the remaining balance is admitted, the interest charged is excessive." There being no payment, spoiuses Dumdum filed with the RTC of Dapitan City a complaint for reconveyance with damages against Doy Dogan.

In his answer, Doy Dogan raised, by way affirmative defense that the purchase price had been fully paid and, for this reason, the complaint should have been dismissed. Spouses Dumdum then filed a motion for judgment on the pleadings which was granted by the RTC of Dapitan City. The Court awarded PhP 1.5 million actual damages representing the balance of the purchase price, PhP 200,000 as moral damages, PhP 200,000 as exemplary damages, PhP 90,000 as interest, PhP 50,000 as attorney's fees, and PhP 5,000 as cost of suit.

Was it proper for the RTC of Dapitan City to grant the motion for judgment on the pleadings? (25%)

IX

In 2015, Dampsey purchased from Daria a parcel of land located in dumaguete, Negros Oriental. The latter executed a deed of absolute sale and handed to Dampsey the owner's duplicate copy of TCT No. 777 covering the property. Since he was working in Manila and still had to raise funds to cover taxes, registration and transfer costs, Dempsey kept the TCT in his possession without having transferred it to his name. a few years thereafter, when he already had the funds to pay the transfer costs, Dempsey went to the Register of Deeds of Dumeaguete and discovered that, after the sale, Daria had filed a petition for reconstitution of the owner's duplicate copy of TCT No. 777 which the RTC granted. Thus, unknown to Dempsey, Daria was able to secure a new TCT in her name.

What is Dempsey's remedy to have the reconstituted title in the name of Daria nullified? (5%)

X

In a buy-bust operation, 30 kilos of *shabu* were seized from Dave and Daryll. They were arrested and placed on inquest before Prosecutor Danilo Doon who ordered their continued detention. Thereafter, the information for the sale and distribution of *shabu* was filed in court. When arraigned, Dave and Daryll pleaded not guilty to the charge. During pre-trial, counsel for both of the accused raised, for the first time, the illegality of the arrest. The case proceeded to trial. After trial, the court scheduled the promulgation of judgment with notice to both the accused and their counsel, Atty. Dimayuga. During the promulgation, only Dave and Atty. Dimayuga were present. Both the accused were convicted of the crime charged.

(a) Was the challenge to the validity of the arrest timely raised? (2.5%)

(b) What is the remedy available to Daryll, if any, to be able to file an appeal? (2.5%)

XI

In 2007, Court of Appeals Justice (CA Justice) Dread Dong (J. Dong) was appointed to the Supreme Court (Court) as Associate Justice. Immediately after the appointment was announced, several groups questioned his qualification to the position on the ground that he was not a natural born Filipino citizen. In the same year, the Court issued an Order enjoining him from accepting the appointment or assuming the position and discharging the functions of his office until he is able to successfully complete all the necessary steps to show that he is a natural born citizen of the Philippines. However, he continued to exercise his functions as CA Justice.

Since the qualification of a natural born citizen applies as well to CA Justices, Aty. Dacio, a practicing lawyer, asked the Office of the Solicitor General (OSG), through a verified request, to initiate a *quo warranto* proceeding against J. Dong in the latter's capacity as incumbent CA Justice. The OSG refused to initiate the action on the ground that the issue of J. Dong's citizenship was still being litigated in another case.

When the OSG refused to initiate a *quo warranto* proceeding, Atty. Dacio filed a petition for *certiorari* and prohibition against J. Dong. The petition for *certiorari* against OSG alleged that the OSG committed grave abuse of discretion when it deferred the filing of a *quo warranto* proceeding against J. Dong, while the petition for *certiorari* and prohibition against J. Dong asked the Court to order him to cease and desist from furthere exercising his powers, duties and responsibilities as CA Justice. In both instances, Atty. Dacio relied on the fact that, at the time of J. Dong's

appointment as CA Justice, his birth certificate indicated that he was a Chinese citizen and his bar records showed that he was a naturalized Filipino citizen.

(a) May the OSG be compelled, in an action for *certiorari*, to initiate a *quo warranto* proceeding against J. Dong? (2.5%)

(b) Does Atty. Dacio have the legal personality to inititate the action for *certiorari* and prohibition against J. Dong? (2.5%)

XII

Dodo was knocked unconscious in a fist fight with Dindo. He was rushed to the emergency room of the Medical City where he was examined and treated by Dr. Daty. As he was being examined, a plastic sachet appearing to contain *shabu* fell from Dodo's jacket which was on a chair beside him. Dodo was thus arrested by the same policemen who assisted him to the hospital. At Dodo's trial, the public prosecutor called Dr. Datu to the witness stand. When the public prosecutor asked Dr. Datu as to what he saw in the emergency room, Dodo's counsel objected, claiming doctor-patient privilege rule.

How would you rule on the objection? (2.5%)

XIII

Denny is on trial for homicide. The prosecution calls Danilo, a police officer, who interviewed the victim, Drew, shortly after the shooting. Danilo's testimony is being offered by the prosecution for purposes of proving that (i) Drew is now dead; (ii) while in the emergency room, Drew was posting his medical condition on Facebook and was "liking" the posts of his Facebook friends; (iii) Drew asked the nurse for water but was refused because he was bleeding, which subsequently angered Drew; and (iv) that before dying, Drew signed a statement in which he identified Denny as the shooter.

Is the proposed testimony of Danilo admissible? (2.5%)

XIV

Dave is on trial for sexual assault of Delly, a law student who sidelines as a call center agent. Dave offers the testimony of Denny who says that Dave is known in the community as decent and discerning person. The prosecution presents a rebuttal witness, Dovie, who testifies that, if Dave was reputed to be a good person, that reputation was a misperception because Dave had been previously convicted of homicide.

Is Dovie's testimony admissible as to the character of Dave? (2.5%)

XV

Atty. Dalmacio, the Director of the National Bureau of Investigation, applied for a search warrant before the Executive Judge of RTC Manila. He alleged in his application that a certain alias Django was keeping about 10 kilos of *shabu* in a wooden cabinet located at Dillian's Store in Paseo de Sta. Rosa, Laguna. The Executive Judge of Manila personally examined Atty. Dalmacio and his witnesses and thereafter issued the search warrant particularly describing the place to be searched and the items to be seized.

(a) Can the search warrant issued by the Executive Judge of Manila be enforced in Laguna? (2.5%)

(b) Can the legal concept of "venue is jurisdictional" be validly raised in applications for search warrants? (2.5%)

XVI

Danjo. A stay-in gardener at the Dy family home in Quezon City, applied for overseas employment in Riyadh as a fllower arranger. After he left for abroad, Dino Dy, head of the family, discovered that all his wristwatches were missing. Dino followed Danjo's Instagram account and in one instance saw Danjo wearing his Rolex watch. He filed a complaint for qualified theft against Danjo with the Office of the Prosecutor (OP), Quezon City. The subpoena with the affidavit-complaint was served on Denden, Danjo's wife, at their house. No counter-affidavit was filed by Danjo who continued to work in Riyadh. After conducting a preliminary investigation, the OP found probable cause against Danjo and subsequently filed the information for qualified theft before the RTC of Quezon City. The court likewise found probable cause and issued in 2016 a warrant for Danjo's arrest.

Danjo was repatriated to the Philippines in 2018. While Danjo was lurking outside outside the Dys' house, which was only about 100 meters away from the police station, SPO1 Dody recognized Danjo. Realizing that the police station had a copy of Danjo's warrant of arrest, SPO1 dody immediately pursued and arrested Danjo.

(a) Was the warrant of arrest issued against Danjo who was not in the Philippines valid? (2.5%)

(b) Can the warrant of arrest be served on Danjo upon his return? (2.5%)

XVII

Don Deles, a contractor, was sued together w ith Mayor Dante Dungo and Congressman Dal Dilim for malversation of public funds before the Office of the Ombudsman. Danny Din, a material witness of the complaint Diego Domingo was hired as an engineer by a construction company in Qatar, and had to depart in two (2) months. To perpetuate Danny Din's testimony, Diego Domingo applied for his conditional examination before the Sandiganbayan.

Should the application for conditional examination of Danny Din be granted? (2.5%)

XVIII

The Republic of the Philippines (republic) filed a complaint with the Sandiganbayan in connection with the sequestered assets and properties of Demo companies Inc. (Demo) and impleaded its officers and directors. Since the complaint did not include Demo as defendant, the Sandiganbayan issued a Resolution where it ordered Demo to be impleaded. Thereafter, the Republic filed an amended complaint naming Demo as additional defendant, which amendment was later admitted.

Demo filed a motion for bill of particulars for the Republic to clarify certain matters in its amended complaint. The Sandiganbayan immediately granted the motion. Upon submission of

the bill of particulars by the Republic, Demo filed a motion to dismiss arguing that the answers in the bill of particulars were indefinite and deficient responses to the question of what the alleged illegally acquired funds or properties of Demo were. The Sandiganbayan dismissed the case.

(a) Was the Sandiganbayan correct in dismissing the case? (2.5%)

(b) What can the defendant, in a civil case, do in the event that his motion for bill of particulars is denied? (2.5%)

XIX

Drylvik, a German national, married Dara, a Filipina, in Dusseldorf, Germany. When the marriage collapsed, Dara filed a petition for declaration of nullity of marriage before the RTC of Manila. Drylvik, on the other hand, was able to obtain a divorece decree from the German Family Court. The decree, in essence, states:

> The marriage of the Parties contracted on xxx before the Civil Registrar of Dusseldorf is hereby dissolved. The parental custody of the children Diktor and Daus is granted to the father.

Drylvik filed a motion to dismiss in the RTC of Manila on the ground that the court no longer had jurisdiction over the matter as a decree of divorce had already been promulgated dissolving his marriage to Dara. Dara objected, saying that while she was not challenging the divorce decree, the case in the RTC still had to proceed for the purpose of determining the issue of the children's custody. Drylvik counters that the issue had been disposed of in the divorce decree, thus constituting a *res judicata*.

(a) Should Drylvik's motion to dismiss be granted? (2.5%)

(b) Is a foreign divorce decree between a foreign spouse and a Filipino spouse, uncontested by both parties, sufficient by itself to cancel the entry in the civil registry pertaining to the spouses' marriage? (2.5%)

XX

Dominic was appointed special administrator of the Estate of Dakota Dragon. Delton, husband of Dakota, together with their five (5) children, opposed the appointment of Dominic claiming that he (Dominic) was just a stepbrother of Dakota. After giving Domins the chance to comment, the court issued an Order affirming the appointment of Dominic.

(a) What is the remedy available to the oppositors? (2.5%)

(b) If there are no qualified heirs, can the government initiate escheat proceedings over the assets of the deceased? To whon, in particular, shall the estate of the deceased go and for whose benefit? (2.5%)

XXI

The municipality of Danao, Cebu was a quiet and peaceful town until a group of miners from Denmark visited the area and discovered that it was rich in nickel. In partnership with the municipal mayor, the Danish miners had to flatten 10 hectares of forest land by cutting all the

trees before starting their mining operations. The local DENR, together with the *Samahan Laban sa Sumisira sa Kalikasan*, filed a petition for writ of *kalikasan* against the municipal mayor and the Danish miners in the RTC of Cebu.

(a) Is the petition within the jurisdiction of the RTC of Cebu? (2.5%)

(b) What is the Precautionary Principle? (2.5%)

XXII

Danica obtained a personal loan of PhP 180,000 from Dinggoy, payable in 18 equal monthly installments of PhP 10,000 until fully paid. In order to complete her payment at an earlier date, Danica instead paid PhP 20,000 monthly, and continued doing so until the 18th month, which payments Dinggoy all accepted. Later on, she realized that she had overpaid Dinggoy by 100% as she should have already completed payment in nine (9) months. She demanded the return of the excess payment, but Dinggoy completely ignored her. Thus, Danica availed of the Rules of Procedure for Small Claims Cases by filing before the Municipal Trial Court (MTC) a statement of claim, together with the rerequired documents.

Should the MTC proceed with the cse under the: (i) Revised Rules on Summary Procedure; (ii) the Rules of Procedure for Small Claims; or (iii) the regular procedure for civil cases? (2.5%)

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2017 BAR EXAMS QUESTIONS

I

What trial court outside Metro Manila has exclusive original jurisdiction over the following cases? Explain briefly your answers.

(a) An action filed on November 13, 2017 to recover the possession of an apartment unit being occupied by the defendant by mere tolerance of the plaintiff, after the former ignored the last demand to vacate that was duly served upon and received by him on July 6, 2016. (2.5%)

(b) A complaint in which the principal relief sought is the enforcement of a seller's contractual right to repurchase a lot with an assessed value of ₱15,000.00. (2.5%)

II

Santa filed against Era in the RTC of Quezon City an action for specific performance praying for the delivery of a parcel of land subject of their contract of sale. Unknown to the parties, the case was inadvertently raffled to an RTC designated as a *special commercial court*. Later, the RTC rendered judgment adverse to Era, who, upon realizing that the trial court was not a *regular* RTC, approaches you and wants you to file a petition to have the judgment annulled for lack of jurisdiction.

What advice would you give to Era? Explain your answer. (2.5%)

III

Answer the following briefly:

(a) What elements should concur for circumstantial evidence to be sufficient for conviction?. (2%)

(b) When is bail a matter of judicial discretion? (2%)

(c) Give at least two instances when a peace officer or a private person may make a valid warrantless arrest. (2%)

[d] What is a *tender of excluded evidence*? (2%)

IV

Give brief answers to the following:

(a)] What is the doctrine of hiercarchy of courts? (2%)

(b) What is the *Harmless Error Rule* in relation to appeals? (2%)

(c) When does a public presecutor conduct an inquest instead of a preliminary investigation? (2%)

V

After working for 25 years in the Middle East, Evan returned to the Philippines to retire in Manila, the place of his birth and childhood. Ten years before his retirement, he bought for cash in his name a house and lot in Malate, Manila. Six months after his return, he learned that his house and lot were the subject of foreclosure proceedings commenced by ABC Bank on the basis of a promissory note and deed of real estate mortgage he had allegedly executed in favor of ABC Bank five years earlier.

Knowing that he was not in the country at the time the promissory note and deed of mortgage were supposedly executed, Evan forthwith initiated a complaint in the RTC of Manila praying that the subject documents be declared null and void.

ABC Bank filed a motion to dismiss Evan's complaint on the ground of improper venue on the basis of a stipulation in both documents designating Quezon City as the exclusive venue in the event of litigation between the parties arising our ot the loan and mortgage.

Should the motion to dimiss of ABC Bank be granted? Explain your answer. (5%)

VI

Hanna, a resident of Manila, filed a complaint for the partition of a large tract of land located in Oriental Mindoro. She impleaded her two bothers John and Adrian as defendants but did not implead Leica and Agatha, her two sisters who were permanent redients of Australia.

Arguing that there could be no final detmination of the case without impleading all indispensable parties, John and Adrian moved to dismiss the complaint.

Does the trial court have a reason to deny the motion? Explain your answer. (4%)

VII

Elise obtained a loan of ₱3 Million from Merchant Bank. Aside from executing a promissory note in favor of Merchant Bank, she executed a deed of real estate mortgage over her house and lot as security for her obligation. The loan fell due but remained unpaid; hence, Merchant Bank filed an actioipn against Elise to foreclose the real estate mortgage. A month after, and while the foreclosure suit was pending, Merchant Bank also filed an action to recover the principal sum of ₱3 Million against Elise based on the same promissory note previously excuted by the latter.

In opposing the motion of Elise to dismiss the second action on the ground of splitting of a single cause of action, Merchant Bank argued that the ground relied upon by Elise was devoid of any legal basis considering that the two actions were based on separate contracts, namely, the contract of loan evidenced by the promissory note, and the deed of real estate mortgage.

Is there a splitting of single cause of action? Explain your answer. (4%)

VIII

A

Laura was the lessee of an apartment unit owned by Louie. When the lease expired, Laura refused to vacate the property. Her refusal prompted Louie to file an action for unlawful detainer against Laura who failed to answer the complaint within ther rglementary period.

Louie then filed a motion to declare Laura in default. Should the motion be granted? Explain your answer? (3%)

B

Agatha filed a complaint against Yana in the RTC in Makati City to collect ₱350,000.00, an amount representing the unpaid balance on the price of the car Yana had bought from Agatha. Realizing a jurisdictional error I filing the complaint in the RTC, Agatha filed a notice of dismissal before she was served with the answer of Yana. The RTC issued an order confirming the dismissal.

Three months later, Agatha filed another complaint against Yana based on the same cause of action this time in the MeTC of Makati City. However, for reasons personal to her, Agatha decided to have the complaint dismissed without prejudice by filing a notice of dismissal prior to the service of the answer of Yana. Hence, the case was dismissed by the MeTC.

A month later, Agatha refilled the complaint against Yana in the same MeTC.

May Yana successfully invoke the *Two-Dismissal Rule* to bar Agatha's third complaint? Explain your answer. (3%)

IX

Abraham filed a complaint for damages in the amount of ₱750,000.00 against Salvador in the RTC in Quezon City for the latter's alleged breach of their contract of services. Salvador promptly filed his answer, and included a counterclaim for ₱250,000.00 arising from the allegedly baseless and malicious claims of Abraham that compelled him to litigate and to engage the services of counsel, and thus caused him to suffer mental anguish.

Noting that the amount of the counterclaim was below the exclusive original jurisdiction of the RTC, Abaraham filed a motion to dismiss vis-à-vis the counterclaim on that ground.

Should the counterclaim of Salvador be dismissed? Explain your answer. (4%)

X

On the basis of an alleged promissory note executed by Harold in facor of Ramon, the latter filed a complaint for ₱950,000.00 against the former in the RTC of Davao City. In an unverified answer, Harold specifically denied the genuineness of the promissory note. During the trial, Harold sought to offer the testimonies of the following: (1) the testimony of an NBI handwriting expert to prove the forgery of his signature; and (2) the testimony of a credible witness to prove that if ever Harold had executed the note in favor of Ramon, the same was not supported by a consideration.

May Ramon validly object to the proposed testimonies? Give a brief explanation of your answer. (5%)

XI

A.

Teddy filed against Buboy an action for rescission of a contract for the sale of a commercial lot. After having been told by the wife of Buboy that her husband was out of twon and would not be back until after a couple of days, the sheriff requested the wife to just receive the summons in behalf of her husband. The wife acceded to the request, receiged the summons and a copu of the complaint, and signed for the same.

(a) Was there a valid service of summons upon Buboy? Explain your answer briefly. (3%)

(b) If Buboy files a motion to dismiss the complaint based on the twin grounds of lack of jurisdiction over his person and prescriptioin of the cause of action, may he be deemed to have voluntarily submitted himself to the jurisdiction of the court? Explain your answer briefly. (3%)

B.

What is the mode of appeal applicable to the following cases, and what issues may be raised before the reviewing court/tribunal?

(a) The decision or final order of the National Labor Relations. (1.5%)

(b) The judgment or final order of the RTC in the exercise of its appellate jurisdiction. (1.5%)

XII

A.

Judgment was rendered against defendant Jaypee in an action for unlawful detainer. The judgment ordered Jaypee to vacate and to pay attorney's fees in favor of Bart, the plaintiff.

To prevent the immediate execution of the judgment, would you advise the posting of a *supersedeas* bond as counsel for Jaypee? Explain your answer briefly. (2%)

B.

A temporary restraining order (TRO) was issued on September 20, 2017 by the RTC against defendant Jeff enjoining him from entering the land of Regan, the plaintiff.

On October 9, 2017, upon application of Regan, the trial court allegedly in the interest of justice, extended the TRO for another 20 days based on the same ground for which the TRO was issued.

On October 15, 2017, Jeff entered the land subject of the TRO.

May Jeff be liable for contempt of court? Why? (4%)

XIII

Police officers arrested Mr. Druggie in a buy-bust operation and confiscated from him 10 sachets of *shabu* and several marked genuine peso bills worth P5,000.00 used as the buy-bust money during the buy-bust operation.

At the trial of Mr. Druggie for violation of R.A. No. 9165 *(Comprehensive Dangerous Drugs Act of 2002)*, the Prosecution offered in evidence, among others, photocopies of the confiscated marked genuine peso bills. The photocopies were offered to prove that Mr. Druggie had engaged at the time of his arrest in the illegal selling of dangerous drugs.

Invoking the *Best Evidence Rule*, Atty. Maya Bang, the defense counsel, objected to the admissibility of the photocopies of the confiscated marked genuine peso bills.

Should the trial judge sustain the objection of the defense counsel? Briefly explain you answer. (5%)

XIV

Immediately before he died of gunshot wounds to his chest, Venancio told the attending physician, in a very feeble voice, that is was Arnulfo, his co-worker, who had shot him. Venancio added that it was also Arnulfo who had shot Vicente, the man whose cadaver was lying on the bed beside him.

In the prosecution of Arnulfo for the criminal killing of Venancio and Vicente, are all the statements of Venancio admissible as dying declarations? Explain your answer. (5%)

XV

In an attempt to discredit and impeach a Prosecution witness in a homicide case, the defense counsel called to the stand a person who had been the boyhood friend and next-door neighbor of the Prosecution witness for 30 years. One question that the defense counsel asked of the impeaching witness was: "*Can you tell this Honorable Court about the general reputation of the prosecution witness in your community for aggressiveness and violent tendencies?"*

Would you, as the trial prosecutor, interpose your objection to the question of the defense counsel? Explain your answer. (4%)

XVI

Engr. Magna Nakaw, the District Engineer of the DPWH in the Province of Walang Progreso, and Mr. Pork Chop, a private contractor, were both charged in the office of the Ombudsman for violation of the *Anti-Graft and Corrupt Practices Act* (R.A. No 3019) under a conspiracy theory.

While the charges were undergoing investigation in the Office of the Ombudsman, Engr. Magna Nakaw passed away. Mr. Pork Chop immediately filed a motion to terminate the investigation and to dismiss the charges against him, arguing that because he was charged in conspiracy with deceased, there was no longer a conspiracy to speak of and, consequently, any legal ground to hold him for trial had been extinguished.

Rule on the motion to terminate filed by Mr. Pork Chop, with brief reasons. (5%)

XVII

Juancho entered a plea of guilty when he was arraigned under an information for homicide. To determine the penalty to be imposed, the trial court allowe Juancho to present evidence proving any mitigating circumstance in his favor. Juancho was able to establish complete self-defense.

Convinced by the evidence adduced by Juancho, the trial court rendered a verdict of acquittal.

May the Prosecution assail the acquittal without infringing the constitutional guarantee against double jeopardy in favor of Juancho? Explain your answer. (5%)

XVIII

Tomas was criminally charged with serious physical injuries allegedly committed against Darvin. During the pendencyof the criminal case, Darvin filed a separate civil action for damages based on the injuries he had sustained.

Tomas filed a motion to dismiss the separate civil action on the ground of *litis pendentia*, pointing out that when the criminal action was filed against him, the civil action to recover the civil liability from the offense charged was also deemed instituted. He insisted that the basis of the separate civil action was the very same act that gave rise to the criminal action.

Rue on Tomas' motion to dismiss, with brief reasons. (5%)

XIX

Boy Maton, a neighborhood tough guy, was arrested by police officer on suspicion that he was keeping prohibited drugs in his clutch bag. When Boy Maton was searched immediately after the arrest, the officer found and recovered 10 sachets of *shabu* neatly tucked in the inner linings of the clutch bag. At the time of his arrest, Boy Maton was watching a basketball game being played in the town plaza, and he was cheering for his favorite team. He was subsequently chaged with illegal possession of dangerous drugs, and he entered a plea of *not guilty* when he was arraigned.

Durng the trial, Boy Maton moved for the dismissal of the information on the ground that the facts revealed that he had been illegally arrested. He further moved for the suppression of the evidence confiscated from him as being the consequence of the illegal arrest, hence, the *fruit of the poisonous tree*.

The trial court, denying the motions by Boy Maton, explained that at the time the motions were filed by Boy Maton had already waived the right to raise the issue of the legality of the arrest. The trial court observed that, pursuant to the *Rules of Court*, Boy Maton, as the accused, should have assailed the validity of the arrest before entering his plea to the information. Hence, the trial court opined that any adverse consequences of the alleged illegal arrest had also been equally waived.

Comment on the ruling of the trial court. (5%)

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I

State at least five (5) civil cases that fall under the exclusive original jurisdiction of the Regional Trial Courts (RTCs). (5%)

II

(A) Briefly explain the procedure on "Interrogatories to Parties" under Rule 25 and state the effect of failure to serve written interrogatories. (2.5%)

(B) Briefly explain the procedure on "Admission by Adverse Party" under Rule 26 and the effect of failure to file and serve the request. (2.5%)

III

What are the contents of a judicial affidavit? (5%)

IV

Eduardo, a resident of the City of Manila, filed before the Regional Trial Court (R TC) of Manila a complaint for the annulment of a Deed of Real Estate Mortgage he signed in favor of Galaxy Bank (Galaxy), and the consequent foreclosure and auction sale of his mortgaged Makati property. Galaxy filed a Motion to Dismiss on the ground of improper venue alleging that the complaint should be filed with the RTC of Makati since the complaint involves the ownership and possession of Eduardo's lot. Resolve the motion with reasons. (5%)

V

(A) What is the "most important witness" rule pursuant to the 2004 Guidelines of Pretrial and Use of Deposition; Discovery Measures? Explain. (2.5%)

(B) What is the "one day examination of witness" rule pursuant to the said 2004 Guidelines? Explain. (2.5%)

VI

Pedro and Juan are residents of Barangay Ifurug, Municipality of Dupac, Mountain Province. Pedro owes Juan the amount of P50,000.00. Due to nonpayment, Juan brought his complaint to the Council of Elders of said barangay which implements the *bodong* justice system. Both appeared before the council where they verbally agreed that Pedro will pay in installments on specific due dates. Pedro reneged on his promise. Juan filed a complaint for sum of money before the Municipal Trial Court (MTC). Pedro filed a Motion to Dismiss on the ground that the case did not pass through the barangay conciliation under R.A. No. 7160 and that the RTC, not the MTC, has jurisdiction. In his opposition, Juan argued that the intervention of the Council of Elders is substantial compliance with the requirement ofR.A. No. 7160 and the claim of P50,000.00 is clearly within the jurisdiction of the MTC. As MTC judge, rule on the motion and explain. (5%)

VII

Spouses Marlon and Edith have three (3) children ages 15, 12 and 7, who are studying at public schools. They have a combined gross monthly income of P30,000.00 and they stay in an apartment in Manila with a monthly rent of PS,000.00. The monthly minimum wage per employee in Metro Manila does not exceed P13,000.00. They do not own any real property. The spouses want to collect a loan of P25,000.00 from Jojo but do not have the money to pay the filing fees.

(A) Would the spouses qualify as indigent litigants under Section 19, Rule 141 on Legal Fees? (2.5%)

(B) If the spouses do not qualify under Rule 141, what other remedy can they avail of under the rules to exempt them from paying the filing fees? (2.5%)

VIII

Juan sued Roberto for specific performance. Roberto knew that Juan was going to file the case so he went out of town and temporarily stayed in another city to avoid service of summons. Juan engaged the services of Sheriff Matinik to serve the summons but when the latter went to the residence of Roberto, he was told by the caretaker thereof that his employer no longer resides at the house. The caretaker is a high school graduate and is the godson of Roberto. Believing the caretaker's story to be true, Sheriff Matinik left a copy of the summons and complaint with the caretaker. Was there a valid substituted service of summons?

Discuss the requirements for a valid service of summons. (5%)

IX

(A) Is the buyer in the auction sale arising from an extra-judicial foreclosure entitled to a writ of possession even before the expiration of the redemption period? If so, what is the action to be taken? (1%)

(B) After the period of redemption has lapsed and the title to the lot is consolidated in the name of the auction buyer, is he entitled to the writ of possession as a matter of right? If so, what is the action to be taken? (2%)

(C) Suppose that after the title to the lot has been consolidated in the name of the auction buyer, said buyer sold the lot to a third party without first getting a writ of possession. Can the transferee exercise the right of the auction buyer and claim that it is a ministerial duty of the court to issue a writ of possession in his favor? Briefly explain. (2%)

X

Hannibal, Donna, Florence and Joel, concerned residents of Laguna de Bay, filed a complaint for mandamus against the Laguna Lake Development Authority, the Department of Environment and Natural Resources, the Department of Public Work and Highways, Department of Interior and Local Government, Department of Agriculture, Department of Budget, and Philippine National Police before the R TC of Laguna alleging that the continued neglect of defendants in performing their duties has resulted in serious deterioration of the water quality of the lake and the degradation of the marine life in the lake. The plaintiffs prayed that said government agencies be ordered to clean up Laguna de Bay and restore its water quality to Class C waters as prescribed by Presidential Decree No. 1152, otherwise known as the Philippine Environment Code. Defendants raise the defense that the cleanup of the lake is not a ministerial function and they

cannot be compelled by mandamus to perform the same. The RTC of Laguna rendered a decision declaring that it is the duty of the agencies to clean up Laguna de Bay and issued a permanent writ of mandamus ordering said agencies to perform their duties prescribed by law relating to the cleanup of Laguna de Bay.

(A) Is the RTC correct in issuing the writ of mandamus? Explain. (2.5%)

(B) What is the writ of continuing mandamus? (2.5%)

XI

Miguel filed a Complaint for damages against Jose, who denied liability and filed a Motion to Dismiss on the ground of failure to state a cause of action. In an Order received by Jose on January 5, 2015, the trial court denied the Motion to Dismiss. On February 4, 2015, Jose sought reconsideration of that Order through a Motion for Reconsideration. Miguel opposed the Motion for Reconsideration on the ground that it was filed out of time. Jose countered that the 15-day rule under Section 1 of Rule 52 does not apply where the Order sought to be reconsidered is an interlocutory order that does not attain finality. Is Jose correct? Explain. (5%)

XII

Tailors Toto, Nelson and Yenyen filed a special civil action for certiorari under Rule 65 from an adverse decision of the National Labor Relations Commission (NLRC) on the complaint for illegal dismissal against Empire Textile Corporation. They were terminated on the ground that they failed to meet the prescribed production quota at least four (4) times. The NLRC decision was assailed in a special civil action under Rule 65 before the Court of Appeals (CA). In the verification and certification against forum shopping, only Toto signed the verification and certification, while Atty. Arman signed for Nelson. Empire filed a motion to dismiss on the ground of defective verification and certification. Decide with reasons. (5%)

XIII

The officers of *"Ang Kapaligiran ay Alagaan, Inc."* engaged your services to file an action against ABC Mining Corporation which is engaged in mining operations in Sta. Cruz, Marinduque. ABC used highly toxic chemicals in extracting gold. ABC's toxic mine tailings were accidentally released from its storage dams and were discharged into the rivers of said town. The mine tailings found their way to Calancan Bay and allegedly to the waters of nearby Romblon and Quezon. The damage to the crops and loss of earnings were estimated at Pl Billion. Damage to the environment is estimated at Pl Billion. As lawyer for the organization, you are requested to explain the advantages derived from a petition for writ of kalikasan before the Supreme Court over a complaint for damages before the RTC of Marinduque or vice-versa. What action will you recommend? Explain. (5%)

XIV

Pedro, the principal witness in a criminal case, testified and completed his testimony on direct examination in 2015. Due to several postponements by the accused, grounded on his recurring illness, which were all granted by the judge, the cross-examination of Pedro was finally set on October 15, 2016. Before the said date, Pedro died. The accused moved to expunge Pedro's testimony on the ground that it violates his right of confrontation and the right to cross-examine the witness. The prosecution opposed the motion and asked that Pedro's testimony on direct examination be admitted as evidence. Is the motion meritorious? Explain. (5%)

XV

Chika sued Gringo, a Venezuelan, for a sum of money. The Metropolitan Trial Court of Manila (MeTC) rendered a decision ordering Gringo to pay Chika P50,000.00 plus legal interest. During its pendency of the appeal before the RTC, Gringo died of acute hemorrhagic pancreatitis. Atty. Perfecto, counsel of Gringo, filed a manifestation attaching the death certificate of Gringo and informing the RTC that he cannot substitute the heirs since Gringo did not disclose any information on his family. As counsel for Chika, what remedy can you recommend to your client so the case can move forward and she can eventually recover her money? Explain. (5%)

XVI

Under Section 5, Rule 113 a warrantless arrest is allowed when an offense has just been committed and the peace officer has probable cause to believe, based on his personal knowledge of facts or circumstances, that the person to be arrested has committed it. A policeman approaches you for advice and asks you how he will execute a warrantless arrest against a murderer who escaped after killing a person. The policeman arrived two (2) hours after the killing and a certain Max was allegedly the killer per information given by a witness. He asks you to clarify the following:

(A) How long after the commission of the crime can he still execute the warrantless arrest? (2.5%)

(B) What does "personal knowledge of the facts and circumstances that the person to be arrested committed it" mean? (2.5%)

XVII

The information against Roger Alindogan for the crime of acts of lasciviousness under Article 336 of the Revised Penal Code avers:

> "That on or about 10:30 o'clock in the evening of February 1, 2010 at Barangay Matalaba, Imus, Cavite and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, through force and intimidation, did then and there, willfully, unlawfully and feloniously commit sexual abuse on his daughter, Rose Domingo, a minor of 11 years old, either by raping her or committing acts of lasciviousness on her, against her will and consent to her damage and prejudice.
>
> ACTS CONTRARY TO LAW."

The accused wants to have the case dismissed because he believes that the charge is confusing and the information is defective. What ground or grounds can he raise in moving for the quashal of the information? Explain. (5%)

XVIII

John filed a petition for declaration of nullity of his marriage to Anne on the ground of psychological incapacity under Article 36 of the Family Code. He obtained a copy of the confidential psychiatric evaluation report on his wife from the secretary of the psychiatrist. Can he testify on the said report without offending the rule on privileged communication? Explain. (5%)

XIX

Tristan filed a suit with the RTC of Pasay against Arthur King and/or Estate of Arthur King for reconveyance of a lot declared in the name of Arthur King under TCT No. 1234. The complaint alleged that "on account Arthur King's residence abroad up to the present and the uncertainty of whether he is still alive or dead, he or his estate may be served with summons by publication." Summons was published and nobody filed any responsive pleading within sixty (60) days therefrom. Upon motion, defendants were declared in default and judgment was rendered declaring Tristan as legal owner and ordering defendants to reconvey said lot to Tristan.

Jojo, the court-designated administrator of Arthur King's estate, filed a petition for annulment of judgment before the CA praying that the decision in favor of Tristan be declared null and void for lack of jurisdiction. He claims that the action filed by Tristan is an action *in personam* and that the court did not acquire jurisdiction over defendants Arthur King and/or his estate. On the other hand, Tristan claims that the suit is an action *in rem* or at least an action *quasi in rem*. Is the RTC judge correct in ordering service of summons by publication? Explain. (5%)

XX

Royal Bank (Royal) filed a complaint for a sum of money against Ervin and Jude before the RTC of Manila. The initiatory pleading averred that on February 14, 2010, Ervin obtained a loan from Royal in the amount of Pl Million, as evidenced by Promissory Note No. 007 (PN) signed by Ervin. Jude signed a Surety Agreement binding herself as surety for the loan. Royal made a final demand on February 14, 2015 for Ervin and Jude (defendants) to pay, but the latter failed to pay. Royal prayed that defendants Ervin and Jude be ordered to pay the amount of Pl Million plus interests.

In their answer, Ervin admitted that he obtained the loan from Royal and signed the PN. Jude also admitted that she signed the Surety Agreement. Defendants pointed out that the PN did not provide the due date for payment, and that the loan has not yet matured as the maturity date was left blank to be agreed upon by the parties at a later date. Defendants filed a Motion for a Judgment on the Pleadings on the ground that there is no genuine issue presented by the parties' submissions. Royal opposed the motion on the ground that the PN' s maturity is an issue that must be threshed out during trial.

(A) Resolve the motion with reasons. (2.5%)

(B) Distinguish "Summary Judgment" and "Judgment on the Pleadings." (2.5%)

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I

Lender extended to Borrower a P100,000.00 loan covered by a promissory note. Later, Borrower obtained another P100,000.00 loan again covered by a promissory note. Still later, Borrower obtained a P300,000.00 loan secured by a real estate mortgage on his land valued at P500,000.00. Borrower defaulted on his payments when the loans matured. Despite demand to pay the P500,000.00 loan, Borrower refused to pay. Lender, applying the totality rule, filed against Borrower with the Regional Trial Court (RTC) of Manila, a collection suit for P500,000.00.

(A) Did Lender correctly apply the totality rule and the rule on joinder of causes of action? (2%)

At the trial, Brrower's laywer, while cross-examining Lender, successfully elicited an admission from the latter that the two promissory notes have been paid. Thereafter, Borrower's lawyer filed a motion to dismiss the case on the ground that as proven only P300,000.00 was the amout due to Lender and which claim is within the exclusive original jurisdiction of the Metropolitan Trial Court. He further argued that lack of jurisdiction over the subject matter can be raised at any stage of the proceedings.

(B) Should the court dismiss the case? (3%)

II

Circe filed with the RTC a complaint for the foreclosure of real estate mortgage against siblings Scylla and Charybdis, co-owners of the property and co-signatories to the mortgage deed. The siblings permanently reside in Athens, Greece. Circe tipped off Sheriff Pluto that Scylla is on a balikbayan trip and is billeted at the Century Plaze Hotel in Pasay City. Sheriff Pluto went to the hotel and personally served Scylla the summons, but the latter refused to receive summons for Charybdis as she was not authorized to do so. Sheriff Pluto requested Scylla for the email address and fax number of Charybdis which the latter readily gave. Sheriff Pluto, in his return of the summons, stated that "Summons for Scylla was served personally as shown by her signature on the receiving copy of the summons. Summons to Charybdis was served pursuant to the amendment of Rule 14 by facsimile transmittal of the summons and complaint on defendant's fax number as evidenced by the fax machine indicating that it was received by the fax number to which it was sent on the date and time indicated therein."

Circe, sixty (60) days after her receipt of Sheriff Pluto's return, filed a Motion to Declare Charybdis in default as Charybdis did not file any respective pleading.

(A) Should the court declare Charybdis in default? (2%)

Scylla seasonably filed her answer setting forth therein as a defense that Charybdis had paid the mortgage debt.

(B) On the premise that Charybdis was properly declared in default, what is the effect of Scylla's answer to the complaint? 92%)

III

Juliet invoking the provisions of the rule on Violence Against Women and their Children filed with the RTC designated as a Family court a petition for issuance of a Temporary Protection Order (TPO) against her husband, Romeo. The Family court issued a 30-day TPO against Romeo. A day before the expiration of the TPO, Juliet filed a motion for extension. Romeo in his opposition raised, among others, the constitutionality of RA 9262, (the VAWC Law) arguing that the law

authorizing the issuance of a TPO violates the equal protection and due process clauses of the 1987 Constitution. The Family Court judge, in granting the motion for extension of the TPO, declined to rule on the constitutionality of RA 9262. The Family Court judge reasoned that Family Courts are without jurisdiction to pass upon constitutional issues, being a special court of limited jurisdiction and RA 8369, the law creating the Family Courts, does not provide for such jurisdiction. Is the Family Court judge correct when he declined to resolve the constitutionality of RA 9262? (3%)

IV

Strauss filed a complaint against Wagner for cancellation of title. Wagner moved to dismiss the complaint because Grieg, to whom he mortgaged the property as duly annonated in the TCT, was not impleaded as defendant.

(A) Should the complaint be dismissed? (3%)

(B) If the case should proceed to trial without Grieg being impleaded as a party to the case, what is his remedy to protect his interest? (2%)

V

Ernie filed a petition for guardianship over the person and properties of his father, Ernesto. Upon receipt of the notice of hearing, Ernesto filed an opposition to the petition. Ernie, before the hearing of the petition, filed a motion to order Ernesto to submit himself for mental and physical examination which the court granted.

After Ernie's lawyer completed the presentation of evidence in support of the petition and the court's ruling on the formal offer of evidence, Ernesto's lawyer filed a demurrer to evidence.

Ernesto's lawyer objected on the ground that a demurrer to evidence is not proper in a special proceeding.

(A) Was Ernie's counsel's objection proper? (2%)

(B) If Ernesto defies the court's order directing him to submit to physical and mental examinations, can the court order his arrest? (2%)

VI

A law was passed declaring Mt. Karbungko as a protected since it was a major watershed. The protected area covered a portion in Municipality A of the Province I and a portion located in the City of Z of Province II. Maingat is the leader of Samahan ng Tagapag-ingat ng Karbungko (STK), a people's organization. He learned that a portion of the mountain located in the City of Z of Province II was extremely damaged when it was bulldozed and leveled to the ground, and several trees and plants were cut down and burned by workers of World Pleasure Resorts, Inc. (WPRI) for the construction of a hotel and golf course. Upon inquiry with the project site engineer if they had a permit for the project, Maingat was shown a copy of the Environmental Compliance Certificate (ECC) issued by the DENR-EMB, Regional Director (RD-DENR-EMB). Immediatlely, Maingat and STK filed a petition for the issuance of a writ of continuing mandamus against RD-DENR-EMB and WPRI with the RTC of Province I, a designated environmental court, as the RD-DENR-EMB negligently issued the ECC to WPRI.

On scrutinyof the petition, the court determined that the area where the alleged actionable neglect or omission subject of the petition took place in the City of Z of Province II, and therefore cognizable by the RTC of Province II. Thus, the court dismissed outright the petition for lack of jurisdiction.

(A) Was the court correct in motu propio dismissing the petition? (3%)

Assuming that the court did not dismiss the petition, the RD-DENR-EMB in his Comment moved to dismiss the petition on the ground that petitioners failed to appeal the issuance of the ECC and to exhaust administrative remedies provided in the DENR Rules and Regulations.

(B) Should the court dismiss the petition? (3%)

VII

Plaintiff sued defendant for collection of P1 million based on the latter's promissory note. The complaint alleges, among others:

1. Defendant borrowed P1 million formplaintiff as evidenced by a duly executed promissory note;

2. The promissory note reads:

> "Makati, Philippines
> Dec. 30, 2014
>
> For value received from plaintiff, defendant promises to pay plaintiff P1 million, twelve (12) months from the above indicated date without necessity of demand.
>
> Signed
> Defendant"

A copy of the promissory note is attached as Annex "A".

Defendant, in his verified answer, alleged among others:

> 1) Defendant specifically denies the allegation in paragraphs 1 and 2 of the complaint, the truth being defendant did not execute any promissory note in favor of plaintiff, or
>
> 2) Defendant has paid the P1 million claimed in the promissory note (Annex "A" of the Complaint) as evidenced by an "Acknowledgment Receipt" duly executed by plaintiff on January 30, 2015 Manila with his spouse signing as witness.
>
> A copy of the "Acknowledgment Receipt" is attached as annex "1" hereof.

Plaintiff filed a motion for judgment on the pleadings on the ground that defendant's answer failed to tender an issue as the allegations therein on his defense are sham for being inconsistent; hence, no defense at all. Defendant filed an opposition claiming his answer tendered an issue.

(A) Is judgment on the pleading proper? (3%)

Defendant filed a motion for summary judgment on the ground that there are no longer any triable genuine issues of facts.

(B) Should the court grant defendant's motion for summary judgment? (3%)

VIII

Aldrin entered into a contract to sell with Neil over a parcel of land. The contract stipulated a P500,000.00 downpayment upon signing and the balance payable in twelve (12) monthly installments of P100,000.00. Aldrin paid the down payment and had paid three (3) monthly installments when he found out that Neil had sold the same property to Yuri for P1.5 million paid in cash. Aldrin sued Neil for specific performance with damages with the RTC. Yuri, with leave of court, filed an answer-in-intervention as he had already obtained a TCT in his name. After trial,

the court rendered judgment ordering Aldrin to pay all the installments due, the cancellation of Yuri's title, and Neil to execute a deed of sale in favor of Aldrin. When the judgment became final and executor, Aldrin paid Neil all the installments but the latter refused to execute the deed of sale in favor of the former.

Aldrin filed a "Petition for the Issuance of a Writ of Execution" with proper notice of hearing. The petition alleged, among others, that the decision had become final and executor and he is entitled to the issuance of the writ of execution as a matter of right. Neil filed a motion to dismiss the petition on the ground that it lacked the required certification against forum shopping.

(A) Should the court grant Neil's Motion to Dismiss? (3%)

Despite the issuance of the writ of execution directing Neil to execute the deed of sale in favor of Aldrin, the former obstinately refused to execute the deed.

(B) What is Aldrin's remedy? (2%)

IX

Hades, an American citizen, through a dating website, got acquainted with Persephone, a Filipina. Hades came to the Philippines and proceeded to Baguio City where Persephone resides. Hades and Persephone contracted marriage, solemnized by the Metropolitan Trial Court judge of Makati City. After the wedding, hades flew back to California, United States of America, to wind up his business affairs. On his return to the Philippines, Hades discovered that Persephone had an illicit affair with Phanes. Immediately, Hades returned to the United States and was able to obtain a valid divorce decree from the Superior Court of the County of San Mateo, California, a court of competent jurisdiction against Persephone. Hades desires to marry Hestia, also a Filipina, whom he met at Baccus Grill in Pasay City.

(A) As Hades lawyer, what petition should you file in order that your client can avoid prosecution for bigamy if he desires to marry Hestia? (2%)

(B) In what court should file the petition? (1%)

(C) What is the essential requisite that you must comply with for the purpose of establishing jurisdictional facts before the court can hear the petition? (3%)

X

An information for murder was filed against Rapido. The RTC judge, after personally evaluating the procutor's resolution, documents and parties' affidavits submitted by the prosecutor, found probable cause and issued a warrant of arrest. Rapido's lawyer examined the rollo of the case and found that it only contained the copy of the information, the submissions of the prosecutor and a copy of the warrant of arrest. Immediately, Rapido's counsel filed a motion to quash the arrest warrant for being void, citing as grounds:

1) The judge before issuing the warrant did not personally conduct a searcbhing examnination of the prosecution witnesses in violation of his client's constitutionally-mandated rights;

2) There was no prior order finding probable cause before the judge issued the arrest warrant.

May the warrant of arrest be quashed on the grounds cited byRapido's counsel? State ych ground. (4%)

XI

The Ombudsman found probable cause to charge with plunder the provincial governor, vice governor, treasurer, budget officer, and accountant. An Information for plunder was filed with the Sandiganbayan against the provincial officials except for the treasurer who was granted immunity when he agreed to cooperate with the Ombudsman in the prosecution of the case. Immediately,

the governor filed with the Sandiganbayan a petition for certiorari against the Ombudsman claiming there was grave abuse of discretion in excluding the treasurer from the Information.

(A) Was the remedy taken by the governor correct? (2%)

(B) Will the writ of mandamus lie to compel the Ombudsman to include the treasurer in the Information?

(C) Can the Special Prosecutor move for the discharge of the budget officer to corroborate the testimony of the treasurer in the course of presenting its evidence? (2%)

XII

Paz was awakened by the commotion coming from a condo unit next to hers. Alarmed, she called up the nearby police station. PO1 Ramus and PO2 Romulus proceeded to the condo unit identified by Paz. PO1 Remus knocked at the door and when a man opened the door, PO1 Remus and his companions introduced themselves as plice officers. The man readily identified himself as Oasis Jung and gestured to them to come in. Inside, the police officers saw a young lady with her nose bleeding and face swollen. Asked by PO2 Romulus what happened, the lady responded that she was beaten up by Oasis Jung. The police officers arrested Oasis Jung and brought him and the young lady back to the police station. PO1 Remus took the young lady's statement who identified herself as AA. She narrated that she is a sixteen-year-old high school student; that previous to the incident, she had sexual intercourse with Oasis Jung at least five times on different occasions and she was paid P5,000.00 each time and it was the first time that Oasis Jung hysicallyhurt her. PO2 Romulus detained Oasis Jung at the station's jail. After the inquest proceeding, the public prosecutor filed an information for Violation of RA 9262 (the VAWC Law) for physical violence and five separate informations for violation of RA 7610 (the Child Abuse Law). Oasis Jung's lawyer filed a motion to be admitted to bail but the court issued an order that approval of his bail bond shall be made onlyafter his arraignment.

(A) Did the court properly impose the bail condition? (3%)

Before arraignment, Oasis Jung's lawyer moved to quash the other four separate informations for violation of the Child Abuse Law invoking the single larceny rule.

(B) Should the motion to quash be granted? (2%)

(C) After his release from detention on bail, can Oasis Jung still question the validity of his arrest? (2%)

XIII

Jaime was convicted for murder by the Regional Trial Court of Davao City in a decision promulgated on September 30, 2015. On October 5, 2015, Jaime filed a Motion for New Trial on the ground that errors of law and irregularities prejudicial to his rights were committed during his trial. On October 7, 2015, the private prosecutor, with the conformity of the public prosecutor, filed an Opposition to Jaime's motion. On October 12, 2015, the public prosecutor filed a motion for reconsideration. The court issued an Order dated October 16, 2015 denying the public prosecutor's motion for reconsideration. The public prosecutor received his copy of the order od denial on October 20, 2o015 while the private prosecutor received his copy on October 26, 2015.

(A) What is the remedy available to the prosecution from the court's order granting Jaime's motion for new trial? (3%)

(B) In what court and within what period should a remedy be availed of? (1%)

(C) Who should pursue the remedy? (2%)

XIV

Pedro was charged with theft for stealing Juan's cellphone worth P20,000.00. Prosecutor Marilag at the pre-trial submitted the judicial affidavit of Juan attaching the receipt for the purchase of the sellphone to prove civil liability. She also submitted the judicial affidavit of Mario, an eyewitness who narrated therein how Pedro stole Juan's cellphone.

At the trial, Pedro's lawyer objected to the prosecution's use of judicial affidavits of her witnesses considering the imposable penalty on the offense with which his client was charged.

(A) Is Pedro's lawyer correct in objecting to the judicial affidavit of Mario? (2%)

(B) Is Pedro's lawyer correct in objecting to the judicial affidavit of Juan? (2%)

At the conclusion of the prosecution's presentation of evidence, Prosecutor Marilag orallyoffered the receipt attached to Juan's judicial affidavit, which the court admitted over the objection of Pedro's lawyer.

After Pedro's presentation of his evidence, the court rendered judgment finding him guilty as charged and holding him civilly libale for P20,000.00.

Pedro's lawyer seasonably filed a motion for reconsideration of the decision asserting that the court erred in awarding the civil liability on the basis of Juan's judicial affidavit, a documentary evidence which Prosecutor failed to orally offer.

(C) Is the motion for reconsideration meritorious? (2%)

XV

Water Builders, a construction company based in Makati City, entered into a construction agreemenbt with Super Powers, Inc., an energy company based in Manila, for the construction of a mini hydro electric plant. Water Builders failed to complete the project within the stipulated duration. Super Powers cancelled the contract. Water Builders filed a request for arbitration with the Construction Industry Arbitration Commission (CIAC). After due proceedings, CIAC rendered judgment in favor of Super Powers, Inc. ordering Water Builders to pay the former liquidated damages. Dissatisfied with the CIAC's judgment, Water Builders, pursuant to the Special Rules of Court on Alternative Dispute Resolution (ADR Rules) filed with the RTC of Pasay City a petition to vacate the arbitral award. Super Powers, Inc., in its opposition, moved to dismiss the petition, invoking the ADR Rules, on the ground of improper venue as neither of the parties were doing business in Pasay City.

Should Water Builder's petition be dismissed? (3%)

XVI

AA, a twelve-year-old girl, while walking alone met BB, a teenage boywho befriended her. Later, BB brought AA to a nearby shanty where he raped her. The Information for rape filed against BB states:

> "On or about October 30, 2015, in the City of S.P. and within the jurisdiction of this Honorable Court, the accused, a minor, fifteen (15) years old with lewd design and by means of force, violence and intimidation, did then and there, willfully, unlawfully and feloniously had sexual intercourse with AA, a minor, twelve (12) years old against the latter's will and consent."

At the trial, the prosecutor called to the winess stand AA as his first witness and manifested that he be allowed to ask leading questions in conducting his direct examination pursuant to the Rule on the Examination of a Child Witness. BB's counsel objected on the ground that the prosecutor has not conducted a competency examination on the witness, a requirement before the rule cited can be applied in the case.

(A) Is BB's counsel correct? (3%)

In order to obviate the counsel's argument on the competency of AA as prosecution witness, the judge motu propio conducted his *voir dire* examination on AA.

(B) Was the action taken by the judge proper? (2%)

After the prosecution had rested its case, BB's counsel filed with leave a demurrer to evidence, seeking the dismissal of the case on the ground that the prosecutor failed to present any evidence on BB's minority as alleged in the Information.

(C) Should the court grant the demurrer? (3%)

XVII

Hercules was walking near a police station when a police officer signaled for him to approach. As soon as Hercules came near, the police officer frisked him but the latter found no contraband. The police officer told Hercules to get inside the police station. Inside the police station, Hercules asked the police officer, "Sir, may problema po ba?" Instead of replying, the police officer locked up Hercules inside the police station jail.

(A) What is the remedy available to Hercules to secure his immediate release from detention? (2%)

(B) If Hercules filed with the Ombudsman a complaint for warrantless search, as counsel for the police officer, what defense will you raise for the dismissal of the complaint? (3%)

(C) If Hercules opts to file a civil action against the police officer, will he have a cause of action? (3%)

XVII

The residents of Mt. Ahohoy, headed by Masigasig, formed a non-governmental organization–Alyansa Laban sa Minahan sa Ahohoy (ALMA) to protest the mining operations of Oro Negro Mining in the mountain. ALMA members picketed daily at the entrance of the minig site blocking the ingress and egress of trucks and equipment of Oro Negro, hampering its operations. Masigasig had an altercation with Mapusok arising from the complaint of the mining engineer of Oro Negro that one of their tracks was destroyed by ALMA members. Mapusok is the leader of the Association of Peace Keepers of Ahohoy (APKA), a civilian volunteer organization serving auxillary force of the local police to maintain peace and order in the area. Subsequently, Masigasig disappeared. Mayumi, the wife of Masigasig, and the members of ALMA searched for Masigasig, but all their efforts proved futile. Mapagmatyag, a member of ALMA, learned from Maingay, a member of APKA, during their bige drinking that Masigasig was abducted by other members of APKA, on order of Mapusok. Mayumi and ALMA sought the assistance of the local police to search for Masigasig, but they refused to extend their cooperation.

Immediately, Mayumi filed with the RTC, a petition for the issuance of the writ of amparo against Mapusok and APKA. ALMA also filed a petition for the issuance of the writ of amparo with the Court of Appeals against Mapusok and APKA. Respondents Mapusok and APKA, in their Return filed with the RTC, raised amont their defenses that they are not agents of the State; hence, cannot be impleaded as respondents in amparo petition.

(A) Is their defense tenable? (3%)

Respondents mapusok and APKA, in their Return filed with the Court of Appeals, raised as theif defense that the petition should be dismissed on the ground that ALMA cannot file the petition because of the earlier petition filed by Mayumi with the RTC.

(B) Are respondents correct in raising theif defense? (3%)

(C) Maymi later filed separate criminal and civil actions against Mapusok. How will the cases affect the amparo petition she earlier filed? (1%)

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2014 BAR EXAMS QUESTIONS

I.

Ludong, *Balatong*, and *Labong* were charged with murder. After trial, the court announced that the case was considered submitted for decision. Subsequently, the Clerk of Court issued the notices of promulgation of judgment which were duly received. On promulgation day, *Ludong* and his lawyer appeared. The lawyers of *Balatong* and *Labong* appeared but without their clients and failed to satisfactorily explain their absence when queried by the court. Thus, the judge ordered the Clerk of Court to proceed with the reading of the judgment convicting all the accused. With respect to *Balatong* and *Labong*, the judge ordered that the judgment be entered in the criminal docket and copies be furnished their lawyers. The lawyers of *Ludong*, *Balatong*, and *Labong* filed within the reglementary period a Joint Motion for Reconsideration. The court favorably granted the motion of *Ludong* downgrading his conviction from murder to homicide but denied the motion as regards *Balatong* and *Labong*. (4%)

(A)

Was the court correct in taking cognizance of the Joint Motion for Reconsideration?

(B)

Can *Balatong* and *Labong* appeal their conviction in case *Ludong* accepts his conviction for homicide?

II.

McJolly is a trouble-maker of sorts, always getting into brushes with the law. In one incident, he drove his Humvee recklessly, hitting a pedicab which sent its *river* and *passengers* in different directions. The *pedicab driver* died, while two (2) of the *passengers* suffered slight physical injuries. Two (2) Informations were then filed against *McJolly*. One, for *Reckless Imprudence Resulting in Homicide and Damage to Property*, and two, for *Reckless Imprudence Resulting in Slight Physical Injuries*. The latter case was scheduled for arraignment earlier, on which occasion *McJolly* immediately pleaded guilty. He was meted out the penalty of public censure. A month later, the case for reckless imprudence resulting in homicide was also set for arraignment. Instead of pleading, *McJolly* interposed the defense of double jeopardy. Resolve. (4%)

III.

While passing by a dark uninhabited part of their *barangay*, *PO2 Asintado* observed shadows and heard screams from a distance. *PO2 Asintado* hid himself behind the bushes and saw a man beating a woman whom he recognized as his neighbor, *Kulasa*. When *Kulasa* was already in agony, the man stabbed her and she fell on the ground. The man hurriedly left thereafter.

PO2 Asintado immediately went to *Kulasa*'s rescue. *Kulasa*, who was then in a state of hysteria, kept mentioning to *PO2 Asintado* "*Si Rene, gusto akong patayin! Sinaksak niya ako!*" When *PO2 Asintado* was about to carry her, *Kulasa* refused and said "*Kaya ko. Mababaw lang to. Habulin mo si Rene.*"

The following day, *Rene* learned of *Kulasa*'s death and, bothered by his conscience, surrendered to the authorities with his counsel. As his surrender was broadcasted all over media, *Rene* opted to release his statement to the press which goes:

"I believe that I am entitled to the presumption of innocence until my guilt is proven beyond reasonable doubt. Although I admit that I performed acts that may take one's life away, I hope and pray that justice will be served the right way. God bless us all. (Sgd.) Rene"

The trial court convicted *Rene* of homicide on the basis of *PO2 Asintado*'s testimony, *Kulasa's* statements, and *Rene*'s statement to the press. On appeal, *Rene* raises the following errors:

1. The trial court erred in giving weight to *PO2 Asintado's* testimony, as the latter did not have any personal knowledge of the facts in issue, and violated *Rene*'s right to due process when it considered *Kulasa*'s statements despite lack of opportunity for her cross-examination.

2. The trial court erred in holding that *Rene*'s statement to the press was a confession which, standing alone, would be sufficient to warrant conviction. Resolve. (4%)

IV.

An order of the court requiring a retroactive re-dating of an order, judgment or document filing be entered or recorded in a judgment is: (1%)

(A) *pro hac vice*
(B) *non pro tunc*
(C) *confession relicta verificatione*
(D) *nolle prosequi*

V.

Landlord, a resident of Quezon City, entered into a lease contract with *Tenant*, a resident of Marikina City, over a residential house in Las Piñas City. The lease contract provided, among others, for a monthly rental of P25,000.00, plus ten percent (10%) interest rate in case of non-payment on its due date. Subsequently, *Landlord* migrated to the United States of America (*USA*) but granted in favor of his sister *Maria*, a special power of attorney to manage the property and file and defend suits over the property rented out to *Tenant*. *Tenant* failed to pay the rentals due for five (5) months.

Maria asks your legal advice on how she can expeditiously collect from *Tenant* the unpaid rentals plus interests due. (6%)

(A)

What judicial remedy would you recommend to *Maria*?

(B)

Where is the proper venue of the judicial remedy which you recommended?

(C)

If *Maria* insists on filing an ejectment suit against *Tenant,* when do you reckon the one (1)-year period within which to file the action?

VI.

As a rule, courts may not grant an application for provisional remedy without complying with the requirements of notice and hearing. These requirements, however, may be dispensed with in an application for: (1%)

(A) writ of preliminary injunction
(B) writ for preliminary attachment
(C) an order granting support *pendente lite*
(D) a writ of replevin

VII.

Co Batong, a Taipan, filed a civil action for damages with the Regional Trial Court (*RTC*) of Parañaque City against *Jose Penduko*, a news reporter of the Philippine Times, a newspaper of general circulation printed and published in Parañaque City. The complaint alleged, among others, that *Jose Penduko* wrote malicious and defamatory imputations against *Co Batong*; that *Co Batong*'s business address is in Makati City; and that the libelous article was first printed and published in Parañaque City. The complaint prayed that *Jose Penduko* be held liable to pay P200,000.00, as moral damages; P150,000.00, as exemplary damages; and P50,000.00, as attorney's fees.

Jose Penduko filed a Motion to Dismiss on the following grounds:

1. The RTC is without jurisdiction because under the Totality Rule, the claim for damages in the amount of P350,000.00 fall within the exclusive original jurisdiction of the Metropolitan Trial Court (*MeTC*) of Parañaque City.

2. The venue is improperly laid because what the complaint alleged is *Co Batong*'s business address and not his residence address.

Are the grounds invoked in the Motion to Dismiss proper? (4%)

VIII.

Johnny, a naturalized citizen of the United States of America (*USA*) but formerly a Filipino citizen, executed a notarial will in accordance with the laws of the State of California, USA. *Johnny*, at the time of his death, was survived by his niece *Anastacia*, an American citizen residing at the condominium unit of *Johnny* located at Fort Bonifacio, Taguig City; a younger brother, *Bartolome*, who manages *Johnny's* fish pond in Lingayen, Pangasinan; and a younger sister, *Christina*, who manages *Johnny's* rental condominium units in Makati City. *Johnny's* entire estate which he inherited from his parents is valued at P200 million. *Johnny* appointed *Anastacia* as executrix of his will. (4%)

(A) Can *Johnny*'s notarial will be probated before the proper court in the Philippines?

(B) Is *Anastacia* qualified to be the executrix of *Johnny*'s notarial will?

IX.

Bayani, an overseas worker based in Dubai, issued in favor of *Agente*, a special power of attorney to sell his house and lot. *Agente* was able to sell the property but failed to remit the proceeds to *Bayani*, as agreed upon. On his return to the Philippines, *Bayani*, by way of a demand letter duly received by *Agente*, sought to recover the amount due him. *Agente* failed to return the amount as he had used it for the construction of his own house. Thus, *Bayani* filed an action against *Agente* for sum of money with damages. *Bayani* subsequently filed an *ex-parte* motion for the issuance of a writ of preliminary attachment duly supported by an affidavit. The court granted the *ex-parte* motion and issued a writ of preliminary attachment upon *Bayani*'s posting of the required bond. *Bayani* prayed that the court's sheriff be deputized to serve and implement the writ of attachment. On November 19, 2013, the Sheriff served upon *Agente* the writ of attachment and levied on the latter's house and lot. On November 20, 2013, the Sheriff served on *Agente* summons and a copy of the complaint. On November 22, 2013, *Agente* filed an *Answer with Motion to Discharge the Writ of Attachment* alleging that at the time the writ of preliminary attachment was issued, he has not been served with summons and, therefore, it was improperly issued. (4%)

(A) Is *Agente* correct?

(B) Was the writ of preliminary attachment properly executed?

X.

Prince Chong entered into a lease contract with *King Kong* over a commercial building where the former conducted his hardware business. The lease contract stipulated, among others, a monthly rental of P50,000.00 for a four (4)-year period commencing on January 1, 2010. On January 1, 2013, *Prince Chong* died. *Kin Il Chong* was appointed administrator of the estate of *Prince Chong*, but the former failed to pay the rentals for the months of January to June 2013 despite *King Kong's* written demands. Thus, on July 1, 2013, *King Kong* filed with the Regional Trial Court (*RTC*) an action for rescission of contract with damages and payment of accrued rentals as of June 30, 2013. (4%)

(A) Can *Kin Il Chong* move to dismiss the complaint on the ground that the RTC is without jurisdiction since the amount claimed is only P300,000.00?

(B) If the rentals accrued during the lifetime of *Prince Chong,* and *King Kong* also filed the complaint for sum of money during that time, will the action be dismissible upon *Prince Chong*'s death during the pendency of the case?

XI.

A search warrant was issued for the purpose of looking for unlicensed firearms in the house of *Ass-asin*, a notorious gun for hire. When the police served the warrant, they also sought the assistance of *barangay tanods* who were assigned to look at other portions of the premises around the house. In a *nipa* hut thirty (30) meters away from the house of *Ass-asin*, a *barangay tanod* came upon a kilo of marijuana that was wrapped in newsprint. He took it and this was later used by the authorities to charge *Ass-asin* with illegal possession of marijuana. *Ass-asin* objected to the introduction of such evidence claiming that it was illegally seized. Is the objection of *Assasin* valid? (4%)

XII.

Mary Jane met *Shiela May* at the recruitment agency where they both applied for overseas employment. They exchanged pleasantries, including details of their personal circumstances. Fortunately, *Mary Jane* was deployed to work as front desk receptionist at a hotel in Abu Dhabi where she met *Sultan Ahmed* who proposed marriage, to which she readily accepted. Unfortunately for *Shiela May*, she was not deployed to work abroad, and this made her envious of *Mary Jane*.

Mary Jane returned to the Philippines to prepare for her wedding. She secured from the National Statistics Office (*NSO*) a Certificate of No Marriage. It turned out from the NSO records that *Mary Jane* had previously contracted marriage with *John Starr*, a British citizen, which she never did. The purported marriage between *Mary Jane* and *John Starr* contained all the required pertinent details on *Mary Jane*. *Mary Jane* later on learned that *Shiela May* is the best friend of *John Starr*.

As a lawyer, *Mary Jane* seeks your advice on her predicament. What legal remedy will you avail to enable *Mary Jane* to contract marriage with *Sultan Ahmed*? (4%)

XIII.

A foreign *dog* trained to sniff dangerous drugs from packages, was hired by *FDP Corporation*, a door to door forwarder company, to sniff packages in their depot at the international airport. In one of the routinary inspections of packages waiting to be sent to the United States of America (*USA*), the *dog* sat beside one of the packages, a signal that the package contained dangerous drugs. Thereafter, the guards opened the package and found two (2) kilograms of cocaine. The *owner* of the package was arrested and charges were filed against him. During the trial, the prosecution, through the trainer who was present during the incident and an expert in this kind of field, testified that the *dog* was highly trained to sniff packages to determine if the contents were dangerous drugs and the sniffing technique of these highly trained dogs was accepted worldwide and had been successful in dangerous drugs operations. The prosecution moved to admit this

evidence to justify the opening of the package. The accused objected on the grounds that: (i) the guards had no personal knowledge of the contents of the package before it was opened; (ii) the testimony of the trainer of the *dog* is hearsay; and (iii) the accused could not cross-examine the *dog*. Decide. (4%)

XIV.

When a Municipal Trial Court (*MTC*), pursuant to its delegated jurisdiction, renders an adverse judgment in an application for land registration, the aggrieved party's remedy is: (1%)

(A) ordinary appeal to the Regional Trial Court
(B) petition for review on *certiorari* to the Supreme Court
(C) ordinary appeal to the Court of Appeals
(D) petition for review to the Court of Appeals

XV.

The Ombudsman, after conducting the requisite preliminary investigation, found probable cause to charge *Gov. Matigas* in conspiracy with *Carpintero*, a private individual, for violating Section 3(e) of Republic Act (*RA*) No. 3019 (*Anti-Graft and Corrupt Practices Act*, as amended). Before the information could be filed with the Sandiganbayan, *Gov. Matigas* was killed in an ambush. This, notwithstanding, an information was filed against *Gov. Matigas* and *Carpintero*.

At the Sandiganbayan, *Carpintero* through counsel, filed a Motion to Quash the Information, on the ground of lack of jurisdiction of the Sandiganbayan, arguing that with the death of *Gov. Matigas*, there is no public officer charged in the information. Is the motion to quash legally tenable? (4%)

XVI.

Plaintiff filed a complaint denominated as *accion publiciana*, against *defendant*. In his answer, *defendant* alleged that he had no interest over the land in question, except as lessee of *Z*. *Plaintiff* subsequently filed an affidavit of *Z*, the lessor of *defendant*, stating that *Z* had sold to *plaintiff* all his rights and interests in the property as shown by a deed of transfer attached to the affidavit. Thus, *plaintiff* may ask the court to render: (1%)

(A) summary judgment
(B) judgment on the pleadings
(C) partial judgment
(D) judgment by default

XVII.

A was charged before the Sandiganbayan with a crime of plunder, a non-bailable offense, where the court had already issued a warrant for his arrest. Without *A* being arrested, his lawyer filed a *Motion to Quash Arrest Warrant and to Fix Bail*, arguing that the allegations in the

information did not charge the crime of plunder but a crime of malversation, a bailable offense. The court denied the motion on the ground that it had not yet acquired jurisdiction over the person of the accused and that the accused should be under the custody of the court since the crime charged was nonbailable The accused's lawyer counter-argued that the court can rule on the

motion even if the accused was at-large because it had jurisdiction over the subject matter of the case. According to said lawyer, there was no need for the accused to be under the custody of the court because what was filed was a *Motion to Quash Arrest and to Fix Bail*, not a *Petition for Bail*.

(A) If you are the Sandiganbayan, how will you rule on the motion? (3%)

(B) If the Sandiganbayan denies the motion, what judicial remedy should the accused undertake? (2%)

XVIII.

A was charged with murder in the lower court. His *Petition for Bail* was denied after a summary hearing on the ground that the prosecution had established a strong evidence of guilt. No *Motion for Reconsideration* was filed from the denial of the *Petition for Bail*. During the reception of the evidence of the accused, the accused reiterated his petition for bail on the ground that the witnesses so far presented by the accused had shown that no qualifying aggravating circumstance attended the killing. The court denied the petition on the grounds that it had already ruled that: (i) the evidence of guilt is strong; (ii) the resolution for the *Petition for Bail* is solely based on the evidence presented by the prosecution; and (iii) no Motion for Reconsideration was filed from the denial of the *Petition for Bail*. (6%)

(A) If you are the Judge, how will you resolve the incident?

(B) Suppose the accused is convicted of the crime of homicide and the accused filed a Notice of Appeal, is he entitled to bail?

XIX.

A vicarious admission is considered an exception to the hearsay rule. It, however, does not cover: (1%)

(A) admission by a conspirator
(B) admission by a privy
(C) judicial admission
(D) adoptive admission

XX.

Tom Wallis filed with the Regional Trial Court (*RTC*) a Petition for Declaration of Nullity of his marriage with *Debi Wallis* on the ground of psychological incapacity of the latter. Before filing the petition, *Tom Wallis* had told *Debi Wallis* that he wanted the annulment of their marriage because he was already fed up with her irrational and eccentric behaviour. However, in the petition for declaration of nullity of marriage, the correct residential address of *Debi Wallis* was deliberately not alleged and instead, the residential address of their married son was stated. Summons was

served by substituted service at the address stated in the petition. For failure to file an answer, *Debi Wallis* was declared *in default* and *Tom Wallis* presented evidence *ex-parte*. The RTC rendered judgment declaring the marriage null and void on the ground of psychological incapacity of *Debi Wallis*. Three (3) years after the RTC judgment was rendered, *Debi Wallis* got hold of a copy thereof and wanted to have the RTC judgment reversed and set aside. If you are the lawyer of *Debi Wallis*, what judicial remedy or remedies will you take? Discuss and specify the ground or grounds for said remedy or remedies. (5%)

XXI.

Goodfeather Corporation, through its President, *Al Pakino*, filed with the Regional Trial Court (*RTC*) a complaint for specific performance against *Robert White*. Instead of filing an answer to the complaint, *Robert White* filed a motion to dismiss the complaint on the ground of lack of the appropriate board resolution from the Board of Directors of *Goodfeather Corporation* to show the authority of *Al Pakino* to represent the corporation and file the complaint in its behalf. The RTC granted the motion to dismiss and, accordingly, it ordered the dismissal of the complaint. *Al Pakino* filed a motion for reconsideration which the RTC denied. As nothing more could be done by *Al Pakino* before the RTC, he filed an appeal before the Court of Appeals (*CA*). *Robert White* moved for dismissal of the appeal on the ground that the same involved purely a question of law and should have been filed with the Supreme Court (*SC*). However, *Al Pakino* claimed that the appeal involved mixed questions of fact and law because there must be a factual determination if, indeed, *Al Pakino* was duly authorized by *Goodfeather Corporation* to file the complaint. Whose position is correct? Explain. (4%)

XXII.

Which of the following decisions may be appealed directly to the Supreme Court (*SC*)? (Assume that the issues to be raised on appeal involve purely questions of law) (1%)

(A) Decision of the Regional Trial Court (*RTC*) rendered in the exercise of its appellate jurisdiction

(B) Decision of the RTC rendered in the exercise of its original jurisdiction

(C) Decision of the Civil Service Commission

(D) Decision of the Office of the President

XXIII.

Mr. Humpty filed with the Regional Trial Court (*RTC*) a complaint against *Ms. Dumpty* for damages. The RTC, after due proceedings, rendered a decision granting the complaint and ordering *Ms. Dumpty* to pay damages to *Mr. Humpty*. *Ms. Dumpty* timely filed an appeal before the Court of Appeals (*CA*), questioning the RTC decision. Meanwhile, the RTC granted *Mr. Humpty's* motion for execution pending appeal. Upon receipt of the RTC's order granting execution pending appeal, *Ms. Dumpty* filed with the CA another case, this time a special civil action for *certiorari* assailing said RTC order. Is there a violation of the rule against forum shopping considering that two (2) actions emanating from the same case with the RTC were filed by *Ms. Dumpty* with the CA? Explain. (4%)

XXIV.

Solomon and *Faith* got married in 2005. In 2010, *Solomon* contracted a second marriage with *Hope*. When *Faith* found out about the second marriage of *Solomon* and *Hope*, she filed a criminal case for bigamy before the Regional Trial Court (*RTC*) of Manila sometime in 2011. Meanwhile, *Solomon* filed a petition for declaration of nullity of his first marriage with *Faith* in 2012, while the case for bigamy before the RTC of Manila is ongoing. Subsequently, *Solomon* filed a motion to suspend the proceedings in the bigamy case on the ground of prejudicial question. He asserts that the proceedings in the criminal case should be suspended because if his first marriage with *Faith* will be declared null and void, it will have the effect of exculpating him from the crime of bigamy. Decide. (4%)

XXV.

Mr. Boaz filed an action for ejectment against *Mr. Jachin* before the Metropolitan Trial Court (*MeTC*). *Mr. Jachin* actively participated in every stage of the proceedings knowing fully well that the MeTC had no jurisdiction over the action. In his mind, *Mr. Jachin* was thinking that if the MeTC rendered judgment against him, he could always raise the issue on the jurisdiction of the MeTC. After trial, the MeTC rendered judgment against *Mr. Jachin*. What is the remedy of *Mr. Jachin*? (1%)

(A) File an appeal
(B) File an action for nullification of judgment
(C) File a motion for reconsideration
(D) File a petition for *certiorari* under Rule 65

XXVI.

Parole evidence is an: (1%)

(A) agreement not included in the document
(B) oral agreement not included in the document
(C) agreement included in the document
(D) oral agreement included in the document

XXVII.

Mr. Avenger filed with the Regional Trial Court (*RTC*) a complaint against *Ms. Bright* for annulment of deed of sale and other documents. *Ms. Bright* filed a motion to dismiss the complaint on the ground of lack of cause of action. *Mr. Avenger* filed an opposition to the motion to dismiss. State and discuss the appropriate remedy/remedies under each of the following situations: (6%)

(A) If the RTC grants *Ms. Bright*'s motion to dismiss and dismisses the complaint on the ground of lack of cause of action, what will be the remedy/remedies of *Mr. Avenger*?

(B) If the RTC denies *Ms. Bright*'s motion to dismiss, what will be her remedy/remedies?

(C) If the RTC denies *Ms. Bright*'s motion to dismiss and, further proceedings, including trial on the merits, are conducted until the RTC renders a decision in favor of *Mr. Avenger*, what will be the remedy/remedies of *Ms. Bright*?

XXVIII.

A was adopted by *B* and *C* when *A* was only a toddler. Later on in life, *A* filed with the Regional Trial Court (*RTC*) a petition for change of name under Rule 103 of the Rules of Court, as he wanted to reassume the surname of his natural parents because the surname of his adoptive parents sounded offensive and was seriously affecting his business and social life. The adoptive parents gave their consent to the petition for change of name. May *A* file a petition for change of name? If the RTC grants the petition for change of name, what, if any, will be the effect on the respective relations of *A* with his adoptive parents and with his natural parents? Discuss. (4%)

XXIX.

Estrella was the registered owner of a huge parcel of land located in a remote part of their *barrio* in *Benguet*. However, when she visited the property after she took a long vacation abroad, she was surprised to see that her childhood friend, *John*, had established a vacation house on her property. Both *Estrella* and *John* were residents of the same *barangay*.

To recover possession, *Estrella* filed a complaint for ejectment with the Municipal Trial Court (*MTC*), alleging that she is the true owner of the land as evidenced by her certificate of title and tax declaration which showed the assessed value of the property as P21,000.00. On the other hand, *John* refuted *Estrella's* claim of ownership and submitted in evidence a Deed of Absolute Sale between him and *Estrella*. After the filing of *John*'s answer, the MTC observed that the real issue was one of ownership and not of possession. Hence, the MTC dismissed the complaint for lack of jurisdiction.

On appeal by *Estrella* to the Regional Trial Court (*RTC*), a full-blown trial was conducted as if the case was originally filed with it. The RTC reasoned that based on the assessed value of the property, it was the court of proper jurisdiction. Eventually, the RTC rendered a judgment declaring *John* as the owner of the land and, hence, entitled to the possession thereof. (4%)

(A) Was the MTC correct in dismissing the complaint for lack of jurisdiction? Why or why not?

(B) Was the RTC correct in ruling that based on the assessed value of the property, the case was within its original jurisdiction and, hence, it may conduct a full-blown trial of the appealed case as if it was originally filed with it? Why or why not?

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I.

Alfie Bravo filed with the Regional Trial Court of Caloocan, a complaint for a sum of money against Charlie Delta. The claim is for Php1.5Million. The complaint alleges that Charlie borrowed the amount from Alfie and duly executed a promissory note as evidence of the loan. Charlie's office secretary, Esther, received the summons at Charlie's office.

Charlie failed to file an answer within the required period, and Alfie moved to declare Charlie in default and to be allowed to present evidence ex parte. Ten days later, Charlie filed his verified answer, raising the defense of full payment with interest.

(A) Was there proper and valid service of summons on Charlie? (3%)

(B) If declared in default, what can Charlie do to obtain relief? (4%)

II.

Yvonne, a young and lonely OFW, had an intimate relationship abroad with a friend, Percy. Although Yvonne comes home to Manila every six months, her foreign posting still left her husband Dario lonely so that he also engaged in his own extramarital activities. In one particularly exhilarating session with his girlfriend, Dario died. Within 180 days from Dario's death, Yvonne gives birth in Manila to a baby boy. Irate relatives of Dario contemplate criminally charging Yvonne for adultery and they hire your law firm to handle the case.

(A) Is the contemplated criminal action a viable option to bring? (3%)

(B) Is a civil action to impugn the paternity of the baby boy feasible, and if so, in what proceeding may such issue be determined? (5%)

III.

While in his Nissan Patrol and hurrying home to Quezon City from his work in Makati, Gary figured in a vehicular mishap along that portion of EDSA within the City of Mandaluyong. He was bumped from behind by a Ford Expedition SUV driven by Horace who was observed using his cellular phone at the time of the collision. Both vehicles - more than 5 years old – no longer carried insurance other than the compulsory third party liability insurance. Gary suffered physical injuries while his Nissan Patrol sustained damage in excess of Php500,000.

(A) As counsel for Gary, describe the process you need to undertake starting from the point of the incident if Gary would proceed criminally against Horace, and identify the court with jurisdiction over the case. (3%)

(B) If Gary chooses to file an independent civil action for damages, explain briefly this type of action: its legal basis; the different approaches in pursuing this type of action; the evidence you would need; and types of defenses you could expect. (5%)

IV.

At the Public Attorney's Office station in Taguig where you are assigned, your work requires you to act as public defender at the local Regional Trial Court and to handle cases involving indigents.

(A) In one criminal action for qualified theft where you are the defense attorney, you learned that the woman accused has been in detention for six months, yet she has not been to a courtroom nor seen a judge.

What remedy would you undertake to address the situation and what forum would you use to invoke this relief? (3%)

(B) In another case, also for qualified theft, the detained young domestic helper has been brought to court five times in the last six months, but the prosecution has yet to commence the presentation of its evidence. You find that the reason for this is the continued absence of the employer-complainant who is working overseas.

What remedy is appropriate and before which forum would you invoke this relief? (3%)

(C) Still in another case, this time for illegal possession of dangerous drugs, the prosecution has rested but you saw from the records that the illegal substance allegedly involved has not been identified by any of the prosecution witnesses nor has it been the subject of any stipulation.

Should you now proceed posthaste to the presentation of defense evidence or consider some other remedy? Explain the remedial steps you propose to undertake. (3%)

(D) In one other case, an indigent mother seeks assistance for her 14-year old son who has been arrested and detained for malicious mischief.

Would an application for bail be the appropriate remedy or is there another remedy available? Justify your chosen remedy and outline the appropriate steps to take. (3%)

V.

The spouses Juan reside in Quezon City. With their lottery winnings, they purchased a parcel of land in Tagaytay City for P100,000.00. In a recent trip to their Tagaytay property, they were surprised to see hastily assembled shelters of light materials occupied by several families of informal settlers who were not there when they last visited the property three (3) months ago.

To rid the spouses' Tagaytay property of these informal settlers, briefly discuss the legal remedy you, as their counsel, would use; the steps you would take; the court where you would file your remedy if the need arises; and the reason/s for your actions. (7%)

VI.

While leisurely walking along the street near her house in Marikina, Patty unknowingly stepped on a garden tool left behind by CCC, a construction company based in Makati. She lost her balance as a consequence and fell into an open manhole. Fortunately, Patty suffered no major injuries except for contusions, bruises and scratches that did not require any hospitalization. However, she lost self-esteem, suffered embarrassment and ridicule, and had bouts of anxiety and bad dreams about the accident. She wants vindication for her uncalled for experience and hires you to act as counsel for her and to do whatever is necessary to recover at least Php100,000 for what she suffered.

What action or actions may Patty pursue, against whom, where (court and venue), and under what legal basis? (7%)

VII.

You are the defense counsel of Angela Bituin who has been charged under RA 3019 (Anti-Graft and Corrupt Practices Act) before the Sandiganbayan. While Angela has posted bail, she has yet to be arraigned. Angela revealed to you that she has not been investigated for any offense and that it was only when police officers showed up at her residence with a warrant of arrest that she learned of the pending case against her. She wonders why she has been charged before the Sandiganbayan when she is not in government service.

(A) What "before-trial" remedy would you invoke in Angela's behalf to address the fact that she had not been investigated at all, and how would you avail of this remedy? (4%)

(B) What "during-trial" remedy can you use to allow an early evaluation of the prosecution evidence without the need of presenting defense evidence; when and how can you avail of this remedy? (4%)

VIII.

On his way to the PNP Academy in Silang, Cavite on board a public transport bus as a passenger, Police Inspector Masigasig of the Valenzuela Police witnessed an on-going armed robbery while the bus was traversing Makati. His alertness and training enabled him to foil the robbery and to subdue the malefactor. He disarmed the felon and while frisking him, discovered another handgun tucked in his waist. He seized both handguns and the malefactor was later charged with the separate crimes of robbery and illegal possession of firearm.

(A) Where should Police Inspector Masigasig bring the felon for criminal processing? To Silang, Cavite where he is bound; to Makati where the bus actually was when the felonies took place; or back to Valenzuela where he is stationed? Which court has jurisdiction over the criminal cases? (3%)

(B) May the charges of robbery and illegal possession of firearm be filed directly by the investigating prosecutor with the appropriate court without a preliminary investigation? (4%)

IX.

For over a year, Nenita had been estranged from her husband Walter because of the latter's suspicion that she was having an affair with Vladimir, a barangay kagawad who lived in nearby Mandaluyong. Nenita lived in the meantime with her sister in Makati. One day, the house of Nenita's sister inexplicably burned almost to the ground. Nenita and her sister were caught inside the house but Nenita survived as she fled in time, while her sister tried to save belongings and was caught inside when the house collapsed.

As she was running away from the burning house, Nenita was surprised to see her husband also running away from the scene. Dr. Carlos, Walter's psychiatrist who lived near the burned house and whom Walter medically consulted after the fire, also saw Walter in the vicinity some minutes before the fire. Coincidentally, Fr. Platino, the parish priest who regularly hears Walter's confession and who heard it after the fire, also encountered him not too far away from the burned house.

Walter was charged with arson and at his trial, the prosecution moved to introduce the testimonies of Nenita, the doctor and the priest-confessor, who all saw Walter at the vicinity of the fire at about the time of the fire.

(A) May the testimony of Nenita be allowed over the objection of Walter? (3%)

(B) May the testimony of Dr. Carlos, Walter's psychiatrist, be allowed over Walter's objection? (3%)

(C) May the testimony of Fr. Platino, the priest-confessor, be allowed over Walter's objection? (3%)

X.

As a new lawyer, Attorney Novato limited his practice to small claims cases, legal counseling and the notarization of documents. He put up a solo practice law office and was assisted by his wife who served as his secretary/helper. He used a makeshift hut in a vacant lot near the local courts and a local transport regulatory agency. With this practice and location, he did not have big-time clients but enjoyed heavy patronage assisting walk-in clients.

(A) What role can Attorney Novato play in small claims cases when lawyers are not allowed to appear as counsel in these cases? (3%)

(B) What legal remedy, if any, may Attorney Novato pursue for a client who loses in a small claims case and before which tribunal or court may this be pursued? (4%)

MULTIPLE CHOICE QUESTIONS

I. In a complaint filed by the plaintiff, what is the effect of the defendant's failure to file an answer within the reglementary period? (1%)

(A) The court is allowed to render judgment motu proprio in favor of the plaintiff.
(B) The court motu proprio may declare the defendant in default, but only after due notice to the defendant.
(C) The court may declare the defendant in default but only upon motion of the plaintiff and with notice to the defendant.
(D) The court may declare the defendant in default but only upon motion of the plaintiff, with notice to the defendant, and upon presentation of proof of the defendant's failure to answer.
(E) The above choices are all inaccurate.

II. Which of the following is admissible? (1%)

(A) The affidavit of an affiant stating that he witnessed the execution of a deed of sale but the affiant was not presented as a witness in the trial.
(B) The extra judicial admission made by a conspirator against his co-conspirator after the conspiracy has ended.
(C) The testimony of a party's witness regarding email messagesthe witness received from the opposing party.
(D) The testimony of a police officer that he had been told by his informants that there were sachets of shabu in the pocket of the defendant.
(E) None of the above.

III. Leave of court is required to amend a complaint or information before arraignment if the amendment _____. (1%)

(A) upgrades the nature of the offense from a lower to a higher offense and excludes any of the accused
(B) upgrades the nature of the offense from a lower to a higher offense and adds another accused
(C) downgrades the nature of the offense from a higher to a lower offense or excludes any accused
(D) downgrades the nature of the offense from a higher to a lower offense and adds another accused
(E) All the above choices are inaccurate.

IV. A Small Claims Court _____. (1%)

(A) has jurisdiction over ejectment actions
(B) has limited jurisdiction over ejectment actions
(C) does not have any jurisdiction over ejectment actions
(D) does not have original, but has concurrent, jurisdiction over ejectment actions
(E) has only residual jurisdiction over ejectment actions

V. Character evidence is admissible _____. (1%)

(A) in criminal cases – the accused may prove his good moral character if pertinent to the moral trait involved in the offense charged
(B) in criminal cases – the prosecution may prove the bad moral character of the accused to prove his criminal predisposition
(C) in criminal cases under certain situations, but not to prove the bad moral character of the offended party
(D) when it is evidence of the good character of a witness even prior to his impeachment as witness
(E) In none of the given situations above.

VI. When the court renders judgment in a judicial foreclosure proceeding, when is the mortgaged property sold at public auction to satisfy the judgment? (1%)

(A) After the decision has become final and executory.
(B) At any time after the failure of the defendant to pay the judgment amount.
(C) After the failure of the defendant to pay the judgment amount within the period fixed in the decision, which shall not be less than ninety (90) nor more than one hundred twenty (120) days from entry of judgment.
(D) The mortgaged property is never sold at public auction.
(E) The mortgaged property may be sold but not in any of the situations outlined above.

VII. The signature of counsel in the pleading constitutes a certification that _____. (1%)

(A) both client and counsel have read the pleading, that to the best of their knowledge, information and belief there are good grounds to support it, and that it is not interposed for delay
(B) the client has read the pleading, that to the best of the client's knowledge, information and belief, there are good grounds to support it, and that it is not interposed for delay
(C) the counsel has read the pleading, that to the best of the client's knowledge, information and belief, there are good grounds to support it, and that it is not interposed for delay
(D) the counsel has read the pleading, that based on his personal information, there are good grounds to support it, and that it is not interposed for delay
(E) The above choices are not totally accurate.

VIII. Which among the following is a requisite before an accused may be discharged to become a state witness? (1%)

(A) The testimony of the accused sought to be discharged can be substantially corroborated on all points.
(B) The accused does not appear to be guilty.
(C) There is absolute necessity for the testimony of the accused whose discharge is requested.
(D) The accused has not at any time been convicted of any offense.
(E) None of the above.

IX. Which of the following distinguishes a motion to quash from a demurrer to evidence? (1%)

(A) A motion to quash a complaint or information is fi led before the prosecution rests its case.
(B) A motion to quash may be fi led with or without leave of court, at the discretion of the accused.
(C) When a motion to quash is granted, a dismissal of the case will not necessarily follow.
(D) The grounds for a motion to quash are also grounds for a demurrer to evidence.
(E) The above choices are all wrong.

X. Which among the following is not subject to mediation for judicial dispute resolution? (1%)

(A) The civil aspect of B.P. Blg. 22 cases.
(B) The civil aspect of theft penalized under Article 308 of the Revised Penal Code.
(C) The civil aspect of robbery.
(D) Cases cognizable by the Lupong Tagapamayapa under the Katarungang Pambarangay Law.
(E) None of the above.

XI. What is the effect of the pendency of a special civil action under Rule65 of the Rules of Court on the principal case before the lower court? (1%)

(A) It always interrupts the course of the principal case.
(B) It interrupts the course of the principal case only if the higher court issues a temporary restraining order or a writ of preliminary injunction against the lower court.
(C) The lower court judge is given the discretion to continue with the principal case.
(D) The lower court judge will continue with the principal case if he believes that the special civil action was meant to delay proceedings.
(E) Due respect to the higher court demands that the lower court judge temporarily suspend the principal case.

XII. Findings of fact are generally not disturbed by the appellate court except in cases _____. (1%)

(A) where the issue is the credibility of the witness
(B) where the judge who heard the case is not the same judge who penned the decision
(C) where the judge heard several witnesses who gave conflicting testimonies
(D) where there are substantially overlooked facts and circumstances that, if properly considered, might affect the result of the case
(E) None of the above.

XIII. Contempt charges made before persons, entities, bodies and agencies exercising quasi-judicial functions against the parties charged, shall be filed with the Regional Trial Court of the place where the _____. (1%)

(A) person, entity or agency exercising quasi-judicial function is located
(B) person who committed the contemptuous act resides
(C) act of contempt was committed
(D) party initiating the contempt proceeding resides

(E) charging entity or agency elects to initiate the action

XIV. When may a party fi le a second motion for reconsideration of a final judgment or final order? (1%)

(A) At anytime within 15 days from notice of denial of the first motion for reconsideration.
(B) Only in the presence of extraordinarily persuasive reasons and only after obtaining express leave from the ruling court.
(C) A party is not allowed to fi le a second motion for reconsideration of a final judgment or final order.
(D) A party is allowed as a matter of right to fi le a second motion for reconsideration of a judgment or final order.
(E) None of the above.

XV. In an original action for certiorari, prohibition, mandamus, or quo warranto , when does the Court of Appeals acquire jurisdiction over the person of the respondent? (1%)

(A) Upon the service on the respondent of the petition for certiorari, prohibition, mandamus or quo warranto, and his voluntary submission to the jurisdiction of the Court of Appeals.
(B) Upon service on the respondent of the summons from the Court of Appeals.
(C) Upon the service on the respondent of the order or resolution of the Court of Appeals indicating its initial action on the petition.
(D) By respondent's voluntary submission to the jurisdiction of the Court of Appeals.
(E) Under any of the above modes.

XVI. Extra-territorial service of summons is proper in the following instances, except _____. (1%)

(A) when the non-resident defendant is to be excluded from any interest on a property located in the Philippines
(B) when the action against the non-resident defendant affects the personal status of the plaintiff and the defendant is temporarily outside the Philippines
(C) when the action is against a non-resident defendant who is formerly a Philippine resident and the action affects the personal status of the plaintiff
(D) when the action against the non-resident defendant relates to property within the Philippines in which the defendant has a claim or lien
(E) All of the above.

XVII. When is attachment improper in criminal cases? (1%)

(A) When the accused is about to abscond from the Philippines.
(B) When the criminal action is based on a claim for money or property embezzled or fraudulently misapplied or converted to the use of the accused who is a broker, in the course of his employment as such.
(C) When the accused is about to conceal, remove, or dispose of his property.
(D) When the accused resides outside the jurisdiction of the trial court.

XVIII. Maria was accused of libel. While Maria was on the witness stand, the prosecution asked her to write her name and to sign on a piece of paper, apparently to prove that she authored the libelous material. Maria objected as writing and signing her name would violate her right against self-incrimination. Was Maria's objection proper? (1%)

(A) No, she can be cross examined just like any other witness and her sample signature may be taken to verify her alleged authorship of the libelous statements.
(B) No, her right against self-incrimination is waived as soon as she became a witness.
(C) No, this privilege may be invoked only by an ordinary witness and not by the accused when she opts to take the witness stand.

(D) The objection was improper under all of A, B, and C.
(E) The objection was proper as the right to self-incrimination is a fundamental right that affects liberty and is not waived simply because the accused is on the witness stand.

XIX. Danny filed a complaint for damages against Peter. In the course of the trial, Peter introduced evidence on a matter not raised in the pleadings. Danny promptly objected on the ground that the evidence relates to a matter not in issue. How should the court rule on the objection? (1%)

(A) The court must sustain the objection.
(B) The court must overrule the objection.
(C) The court, in its discretion, may allow amendment of the pleading if doing so would serve the ends of substantial justice.
(D) The court, in its discretion, may order that the allegation in the pleadings which do not conform to the evidence presented be stricken out.
(E) The matter is subject to the complete discretion of the court.

XX. The Labor Arbiter, ruling on a purely legal question, ordered a worker's reinstatement and this ruling was affirmed on appeal by the NLRC whose decision, under the Labor Code, is final. The company's recourse under the circumstances is to _____. (1%)

(A) file a motion for reconsideration and if denied, file a petition for review with the Court of Appeals on the pure legal question the case presents.
(B) file a motion for reconsideration and if denied, appeal to the Secretary of Labor since a labor policy issue is involved.
(C) file a motion for reconsideration and if denied, file a petition for certiorari with the Court of Appeals on the ground of grave abuse of discretion by the NLRC.
(D) file a motion for reconsideration and if denied, file a petition for review on certiorari with the Supreme Court since a pure question of law is involved.
(E) directly file a petition for certiorari with the Court of Appeals since a motion for reconsideration would serve no purpose when a pure question of law is involved.

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I

a) After an information for rape was filed in the RTC, the DOJ Secretary, acting on the accused's petition for review, reversed the investigating prosecutor's finding of probable cause. Upon order of the DOJ Secretary, the trial prosecutor filed a Motion to Withdraw Information which the judge granted. The order of the judge stated only the following:

> "Based on the review by the DOJ Secretary of the findings of the investigating prosecutor during the preliminary investigation, the Court agrees that there is no sufficient evidence against the accused to sustain the allegation in the information. The motion to withdraw information is, therefore, granted."

If you were the private prosecutor, what should you do? Explain. (5%)

b) A was charged with a non-bailable offense. At the time when the warrant of arrest was issued, he was confined in the hospital and could not obtain a valid clearance to leave the hospital. He filed a petition for bail sahying therein that he be considered as having placed himself under the jurisdiction of the court. May the court entertain his petition? Why or why not? (5%)

II

a) Discuss the "Chain of custody" principle with respect to evidence seized under R.A. 9165 or the Comprehensive Dangerous Drugs Act of 2002. (2%)

b) What do you understand about the "precautionary principle" under the Rules of Procedure for Environmental Cases? (5%)

III

a) Distinguish error of jurisdiction from error of judgment. (5%)

b) A, a resident of Quezon city, wants to file an action agasinst B, a resident of Pasay, to compel the latter to execute a Deed of Sale covering a lot situated in Marikina and that transfer of title be issued to him claiming ownership of the land. Where should A file the case?

IV

a) A bought a Volvo Sedan from ABC Cars for P5.0M. ABC Cars, before delivering to A, had the car rust proofed and tinted by XYZ Detailing. When delivered to A, the car's upholstery was found to be damaged. ABC Cars and XYZ Detailing both deny any liability. Who can A sue and on what cause(s) of action? Explain. (5%)

b) Mr. Sheriff attempts to enforce a Writ of Execution against X, a tenant in a condominium unit, who lost in an ejectment case. X does not want to budge and refuses to leave. Y, the winning party, moves that X be declared in contempt and after hearing, the court held X guilty of indirect contempt. If you were X's lawyer, what would you do? Why? (5%)

V

X was arrested, en flagrante, for robbing a bank. After an investigation, he was brought before the office of the prosecutor for inquest, but unfortunately no inquest prosecutor was available. May the bank directly file the complaint with the proper court? If in the affirmative, what document should be filed? (5%)

VI

A PDEA asset/informant tipped the PDEA Director Shabunot that a shabu laboratory was operating in a house at Sta. Cruz, laguna, rented by two (2) Chinese nationals, Ho Pia and Sio Pao. PDEA Director Shabunot wants to apply for a search warrant, but he is worried that if he applies for a search warrant in any Laguna court, their plan might leak out.

a) Where can he file an application for search warrant? (2%)

b) What documents should he prepare in his application for search warrant? (2%)

c) Describe the procedure that should be taken by the judge on the application. (2%)

Suppose the judge issues the search warrant worded this way:

PEOPLE OF THE PHILIPPINES
Plantiff

Criminal Case No. 007

versus

for

Violation of R.A. 9165

Ho Pia and Sio Pao,
Accused

TO ANY PEACE OFFICER

Greetings:

It appearing to the satisfaction of the undersigned after examining under oath PDEA Director shabunot that there is probable cause to believe the violations of Section 18 and 16 of RA 9165 have been committed and that there are good and sufficient reasons to believe that Ho Pia and Sio Pao have in their possession or control, in a two (2) door apartment with an iron gate located at Jupiter St., Sta. Cruz, Laguna, un determined amount of “shabu” and drug manufacturing implements and paraphernalia which should be seized and brought to the undersigned,

You are hereby commanded to make an immediate search, at any time in the day or night, of the premises above described and forthwith seize and take possession of the abovementioned personal property, and bring said property to the undersigned to be dealt with as the law directs.

Witness my hand this 1st day of March, 2012.

(signed)
Judge XYZ

d) Cite/enumerate the defects, if any, of the search warrant. (3%)

e) Suppose the search warrant was served on march 15, 2012, and the search yielded the described contraband and a case was filed against the accused in the RTC, Sta. Cruz, Laguna, and you are the lawyer of Sio Pao and Ho Pia, what will you do? (3%)

f) Suppose an unlicensed armalite was found in plain view by the searches and the warrant was ordered quashed, should the court order the return of the same to the Chinese nationals? Explain your answer. (3%)

VII

a) Counsel a objected to a question posed by opposing Counsel B on the grounds that it was hearsay and it assumed a fact not yet established. The judge banged his gavel and ruled by saying "Objection sustained". Can Counsel B ask for a reconsideration of the ruling? (5%)

b) Plaintiff files a request for admission and serves the same on Defendant who fails, within the time prescribed by the rules, to answer the request. Suppose the request for admission asked for the admission of the entire material allegations stated in the complaint, what should plaintiff do? (5%)

VIII

a) A sues B for collection of a sum of money. Alleging fraud in the contracting of the loan, A applies for preliminary attachment with the court. The Court issues the preliminary attachment after A files a bond. While summons on B was yet unserved, the sheriff attached B's properties. Afterwards, summons was duly served on B. B moves to lift the attachment. Rule on this. (5%)

b) Discuss the three (3) Stages of Court Diversion in connection with Alternative Dispute Resolution. (5%)

IX

a) X, an undersecretary of DENR, was charged before the Sandiganbayan for malversation of public funds allegedly committed when he was still the Mayor of a townb in Rizal. After arraignment, the prosecution moved that X be preventively suspended. X opposed the motion arguing that he was now occupying a position different from that which the Information charged him and therefore, there is no more possibility that he can intimidate witnesses and hamper the prosecution. Decide. Suppose X files a Motion to Quash challenging the validity of the Information and the Sandiganbayan denies the same, will there will be a need to conduct a pre-suspension hearing? Explain. (5%)

b) Briefly discuss/differentiate the following kinds of Attachment: preliminary attachment, garnishment, levy on execution, warrant of seizure and warrant of distraint and levy. (5%)

X

a) Where and how will you appeal the following:

(1) An order of execution issued by the RTC. (1%)

(2) Judgment of RTC denying a petition for Writ of Amparo. (1%)

(3) Judgment of MTC on a land registration case based on its delegated jurisdiction. (1%)

(4) A decision of the Court of Tax Appeals' Fifth Division. (1%)

b) A files a Complaint against B for recovery of title and possession of land situated in Makati with the RTC of Pasig. B files a Motion to Dismiss for improper venue. The RTC Pasig Judge denies B's Motion to Dismiss, which obviously was incorrect. Alleging that the RTC Judge "unlawfully neglected the performance of an act which the law specifically enjoins as a duty resulting from an office," B files a Petition for Mandamus against the judge. Will Mandamus lie? Reasons. (3%)

c) What are the jurisdictional facts that must be alleged in a petition for probate of a will? How do you bring before the court these jurisdictional facts? (3%)

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2011 BAR EXAMS QUESTIONS

Set A

1. Anna filed a petition for appointment as regular administratrix of her fathers' estate. Her sister Sophia moved to dismiss the petition on the ground that the parties, as members of the same family, have not exerted earnest effort toward a compromise prior to the filing of the petition. Should the petition be dismissed?

   A. Yes, since such earnest effort is jurisdictional in all estate cases.

   B. No, since such earnest effort is not required in special proceedings.

   C. Yes, since such earnest effort is required prior to the filing of the case.

   D. No, since such earnest effort toward a compromise is not required in summary proceedings.

2. A pending criminal case, dismissed provisionally, shall be deemed permanently dismissed if not revived after 2 years with respect to offenses punishable by imprisonment

   A. of more than 12 years.

   B. not exceeding 6 years or a fine not exceeding P1,000.00.

   C. of more than 6 years or a fine in excess of P1,000.00.

   D. of more than 6 years.

3. Angie was convicted of false testimony and served sentence. Five years later, she was convicted of homicide. On appeal, she applied for bail. May the Court of Appeals deny her application for bail on ground of habitual delinquency?

   A. Yes, the felonies are both punishable under the Revised Penal Code.

   B. Yes, her twin convictions indicated her criminal inclinations.

   C. No, the felonies fall under different titles in the Revised Penal Code.

   D. No, the charges are both bailable.

4. Which of the following is NOT CONSISTENT with the rules governing expropriation proceedings?

A. The court shall declare the defendant who fails to answer the complaint in default and render judgment against him.

B. The court shall refer the case to the Board of Commissioners to determine the amount of just compensation.

C. The plaintiff shall make the required deposit and forthwith take immediate possession of the property sought to be expropriated.

D. The plaintiff may appropriate the property for public use after judgment and payment of the compensation fixed in it, despite defendant's appeal.

5. Which of the following is a correct statement of the rule on amendment of the information in a criminal proceeding?

A. An amendment that downgrades the offense requires leave of court even before the accused pleads.

B. Substantial amendments are allowed with leave of court before the accused pleads.

C. Only formal amendments are permissible before the accused pleads.

D. After the plea, a formal amendment may be made without leave of court.

6. Gary who lived in Taguig borrowed P1 million from Rey who lived in Makati under a contract of loan that fixed Makati as the venue of any action arising from the contract. Gary had already paid the loan but Rey kept on sending him letters of demand for some balance. Where is the venue of the action for harassment that Gary wants to file against Rey?

A. In Makati since the intent of the party is to make it the venue of any action between them whether based on the contract or not.

B. In Taguig or Makati at the option of Gary since it is a personal injury action.

C. In Taguig since Rey received the letters of demand there.

D. In Makati since it is the venue fixed in their contract.

7. Which of the following is NOT within the power of a judicial receiver to perform?

A. Bring an action in his name.

B. Compromise a claim.

C. Divide the residual money in his hands among the persons legally entitled to the same.

D. Invest the funds in his hands without court approval.

8. Which of the following precepts forms part of the rules governing small claims?

A. Permissive counterclaim is not allowed.

B. The court shall render its decision within 3 days after hearing.

C. Joinder of separate claims is not allowed.

D. Motion to declare defendant in default is allowed.

9. The Metropolitan Trial Court convicted Virgilio and Dina of concubinage. Pending appeal, they applied for bail, claiming they are entitled to it as a matter of right. Is their claim correct?

A. No, bail is not a matter of right after conviction.

B. Yes, bail is a matter of right in all cases not involving moral turpitude.

C. No, bail is dependent on the risk of flight.

D. Yes, bail is a matter of right in the Metropolitan Trial Court before and after conviction.

10. As a rule, the judge shall receive the evidence personally. In which of the following circumstances may the court delegate the reception of evidence to the clerk of court?

A. When a question of fact arises upon a motion.

B. When the trial of an issue of fact requires the examination of a long account.

C. In default or ex-parte hearings.

D. Upon motion of a party on reasonable grounds.

11. Which of the following is in accord with the applicable rules on receivership?

A. The court may appoint the plaintiff as receiver of the property in litigation over the defendant's objection.

B. A receiver may be appointed after judgment if the judgment obligor refuses to apply his property to satisfy the judgment.

C. The trial court cannot appoint a receiver when the case is on appeal.

D. The filing of bond on appointment of a receiver is mainly optional.

12. Bearing in mind the distinction between private and public document, which of the following is admissible in evidence without further proof of due execution or genuineness?

A. Baptismal certificates.

B. Official record of the Philippine Embassy in Singapore certified by the Vice-Consul with official seal.

C. Documents acknowledged before a Notary Public in Hong Kong.

D. Unblemished receipt dated December 20, 1985 signed by the promisee, showing payment of a loan, found among the well-kept file of the promissor.

13. Ramon witnessed the commission of a crime but he refuses to testify for fear of his life despite a subpoena being served on him. Can the court punish him for contempt?

A. No, since no person can be compelled to be a witness against another.

B. Yes, since public interest in justice requires his testimony.

C. No, since Ramon has a valid reason for not testifying.

D. Yes, since litigants need help in presenting their cases.

14. The right to intervene is not absolute. In general, it CANNOT be allowed where

A. the intervenor has a common interest with any of the parties.

B. it would enlarge the issues and expand the scope of the remedies.

C. the intervenor fails to put up a bond for the protection of the other parties.

D. the intervenor has a stake in the property subject of the suit.

15. Which of the following grounds for dismissal invoked by the court will NOT PRECLUDE the plaintiff from refiling his action?

A. Res judicata.

B. Lack of jurisdiction over the subject matter.

C. Unenforceability under the Statutes of Fraud.

D. Prescription.

16. When may a co-owner NOT demand the partition of the thing owned in common?

A. When the creditor of one of the co-owners has attached the property.

B. When the property is essentially indivisible.

C. When related co-owners agreed to keep the property within the family.

D. When a co-owner uses the property as his residence.

17. The city prosecutor of Manila filed, upon Soledad's complaint, a criminal action for estafa against her sister, Wella, before the RTC of Manila for selling to Victor a land that she previously sold to Soledad. At the same time Soledad filed a civil action to annul the second

sale before the RTC of Quezon City. May the Manila RTC motu proprio suspend the criminal action on ground of prejudicial question?

A. Yes, if it may be clearly inferred that complainant will not object to the suspension of the criminal case.

B. No, the accused must file a motion to suspend the action based on prejudicial question.

C. Yes, if it finds from the record that such prejudicial question exists.

D. Yes, if it is convinced that due process and fair trial will be better served if the criminal case is suspended.

18. Which of the following conforms to the applicable rule on replevin?

A. The applicant must file a bond executed to the adverse party in an amount equal to the value of the property as determined by the court.

B. The property has been wrongfully detained by the adverse party.

C. The applicant has a contingent claim over the property object of the writ.

D. The plaintiff may apply for the writ at any time before judgment.

19. Gerry sued XYZ Bus Co. and Rico, its bus driver, for injuries Gerry suffered when their bus ran off the road and hit him. Of the two defendants, only XYZ Bus Co. filed an answer, alleging that its bus ran off the road because one of its wheels got caught in an open manhole, causing the bus to swerve without the driver's fault. Someone had stolen the manhole cover and the road gave no warning of the danger it posed. On Gerry's motion and over the objection of XYZ Bus Co., the court declared Rico, the bus driver, in default and rendered judgment ordering him to pay P50,000 in damages to Gerry. Did the court act correctly?

A. No, since the court should have tried the case against both defendants upon the bus company's answer.

B. No, the court should have dropped Rico as defendant since the moneyed defendant is the bus company.

C. Yes, the court can, under the rules, render judgment against the defendant declared in default.

D. Yes, since, in failing to answer, Rico may be deemed to have admitted the allegations in the complaint.

20. Which of the following has NO PLACE in an application for a replevin order? A statement

A. that the property is wrongfully detained by the adverse party.

B. that the property has not been distrained for a tax assessment or placed under custodia legis.

C. of the assessed value of the property.

D. that the applicant owns or has a right to the possession of the property.

21. In which of the following instances is the quantum of evidence ERRONEOUSLY applied?

A. in Writ of Amparo cases, substantial evidence.

B. to satisfy the burden of proof in civil cases, preponderance of evidence.

C. to overcome a disputable presumption, clear and convincing evidence.

D. to rebut the presumptive validity of a notarial document, substantial evidence.

22. The accused jumps bail and fails to appear on promulgation of judgment where he is found guilty. What is the consequence of his absence?

A. Counsel may appeal the judgment in the absence of the accused.

B. The judgment shall be promulgated in his absence and he loses his right of appeal.

C. The promulgation of the judgment shall be suspended until he is brought to the jurisdiction of the court.

D. The judgment shall be void.

23. What should the court sheriff do if a third party serves on him an affidavit of claim covering the property he had levied?

A. Ask the judgment obligee to file a court-approved indemnity bond in favor of the third-party claimant or the sheriff will release the levied property.

B. Ask the judgment obligee to file a court-approved bond for the sheriff's protection in case he proceeds with the execution.

C. Immediately lift the levy and release the levied property.

D. Ask the third-party claimant to support his claim with an indemnity bond in favor of the judgment obligee and release the levied property if such bond is filed.

24. Which of the following is NOT REGARDED as a sufficient proof of personal service of pleadings?

A. Official return of the server.

B. Registered mail receipt.

C. Written admission of the party served.

D. Affidavit of the server with a statement of the date, place and manner of service.

25. A sued B for ejectment. Pending trial, B died, survived by his son, C. No substitution of party defendant was made. Upon finality of the judgment against B, may the same be enforced against C?

A. Yes, because the case survived B's death and the effect of final judgment in an ejectment case binds his successors in-interest.

B. No, because C was denied due process.

C. Yes, because the negligence of B's counsel in failing to ask for substitution, should not prejudice A.

D. No, because the action did not survive B's death.

26. What is the proper remedy to secure relief from the final resolutions of the Commission On Audit?

A. Petition for review on certiorari with the Supreme Court.

B. Special civil action of certiorari with the Court of Appeals.

C. Special civil action of certiorari with the Supreme Court.

D. Appeal to the Court of Appeals.

27. Which of the following is a duty enjoined on the guardian and covered by his bond?

A. Provide for the proper care, custody, and education of the ward.

B. Ensure the wise and profitable investment of the ward's financial resources.

C. Collect compensation for his services to the ward.

D. Raise the ward to become a responsible member of society.

28. Berto was charged with and convicted of violating a city ordinance against littering in public places punishable by imprisonment of one month or a fine of P1,000.00. But the city mayor pardoned him. A year later, he was charged with violating a city ordinance against jaywalking which carried the same penalty. Need Berto post bail for such offense?

A. Yes, his previous conviction requires posting of bail for the present charge.

B. Yes, since he may be deemed to have violated the terms of his pardon.

C. No, because he is presumed innocent until proven otherwise.

D. No, one charged with the violation of a city ordinance is not required to post bail, notwithstanding a previous pardon.

29. Which of the following claims survive the death of the defendant and need not be presented as a claim against the estate?

A. Contingent money claims arising from contract.

B. Unenforced money judgment against the decedent, with death occurring before levy on execution of the property.

C. Claims for damages arising from quasi-delict.

D. Claims for funeral expenses.

30. In a case, the prosecutor asked the medical expert the question, "Assuming that the assailant was behind the deceased before he attacked him, would you say that treachery attended the killing?" Is this hypothetical question permissible?

A. No, since it asks for his legal opinion.

B. Yes, but conditionally, subject to subsequent proof that the assailant was indeed behind the deceased at that time.

C. Yes, since hypothetical questions may be asked of an expert witness.

D. No, since the medical expert has no personal knowledge of the fact.

31. The city prosecutor charged Ben with serious physical injuries for stabbing Terence. He was tried and convicted as charged. A few days later, Terence died due to severe infection of his stab wounds. Can the prosecution file another information against Ben for homicide?

A. Yes, since Terence's death shows irregularity in the filing of the earlier charge against him.

B. No, double jeopardy is present since Ben had already been convicted of the first offense.

C. No, there is double jeopardy since serious physical injuries is necessarily included in the charge of homicide.

D. Yes, since supervening event altered the kind of crime the accused committed.

32. Arvin was caught in flagrante delicto selling drugs for P200,000.00. The police officers confiscated the drugs and the money and brought them to the police station where they prepared the inventory duly signed by police officer Oscar Moreno. They were, however, unable to take pictures of the items. Will this deficiency destroy the chain of custody rule in the drug case?

A. No, a breach of the chain of custody rule in drug cases, if satisfactorily explained, will not negate conviction.

B. No, a breach of the chain of custody rule may be offset by presentation in court of the drugs.

C. Yes, chain of custody in drug cases must be strictly observed at all times to preserve the integrity of the confiscated items.

D. Yes, compliance with the chain of custody rule in drug cases is the only way to prove the accused's guilt beyond reasonable doubt.

33. A sued B in the RTC of Quezon City, joining two causes of action: for partition of real property and breach of contract with damages. Both parties reside in Quezon City but the real property is in Manila. May the case be dismissed for improper venue?

A. Yes, since causes of action pertaining to different venues may not be joined in one action.

B. No, since causes of action pertaining to different venues may be joined in the RTC if one of the causes of action falls within its jurisdiction.

C. Yes, because special civil action may not be joined with an ordinary civil action.

D. No, since plaintiff may unqualifiedly join in one complaint as many causes of action as he has against opposing party.

34. What is the doctrine of judicial stability or non interference?

A. Once jurisdiction has attached to a court, it can not be deprived of it by subsequent happenings or events.

B. Courts will not hear and decide cases involving issues that come within the jurisdiction of administrative tribunals.

C. No court has the authority to interfere by injunction with the judgment of another court of coordinate jurisdiction.

D. A higher court will not entertain direct resort to it unless the redress sought cannot be obtained from the appropriate court.

35. Which of the following admissions made by a party in the course of judicial proceedings is a judicial admission?

A. Admissions made in a pleading signed by the party and his counsel intended to be filed.

B. An admission made in a pleading in another case between the same parties.

C. Admission made by counsel in open court.

D. Admissions made in a complaint superseded by an amended complaint.

36. What defenses may be raised in a suit to enforce a foreign judgment?

A. That the judgment is contrary to Philippine procedural rules.

B. None, the judgment being entitled to full faith and credit as a matter of general comity among nations.

C. That the foreign court erred in the appreciation of the evidence.

D. That extrinsic fraud afflicted the judgment.

37. Cindy charged her husband, George, with bigamy for a prior subsisting marriage with Teresa. Cindy presented Ric and Pat, neighbors of George and Teresa in Cebu City, to prove, first, that George and Teresa cohabited there and, second, that they established a reputation as husband and wife. Can Cindy prove the bigamy by such evidence?

A. Yes, the circumstantial evidence is enough to support a conviction for bigamy.

B. No, at least one direct evidence and two circumstantial evidence are required to support a conviction for bigamy.

C. No, the circumstantial evidence is not enough to support a conviction for bigamy.

D. No, the circumstantial evidence cannot overcome the lack of direct evidence in any criminal case.

38. To prove payment of a debt, Bong testified that he heard Ambo say, as the latter was handing over money to Tessie, that it was in payment of debt. Is Bong's testimony admissible in evidence?

A. Yes, since what Ambo said and did is an independently relevant statement.

B. No, since what Ambo said and did was not in response to a startling occurrence.

C. No, since Bong's testimony of what Ambo said and did is hearsay.

D. Yes, since Ambo's statement and action, subject of Bong's testimony, constitutes a verbal act.

39. Considering the qualifications required of a would-be witness, who among the following is INCOMPETENT to testify?

A. A person under the influence of drugs when the event he is asked to testify on took place.

B. A person convicted of perjury who will testify as an attesting witness to a will.

C. A deaf and dumb.

D. A mental retardate.

40. Arthur, a resident foreigner sold his car to Bren. After being paid but before delivering the car, Arthur replaced its original sound system with an inferior one. Bren discovered the change, rejected the car, and demanded the return of his money. Arthur did not comply. Meantime, his company reassigned Arthur to Singapore. Bren filed a civil action against Arthur for contractual fraud and damages. Upon his application, the court issued a writ of preliminary attachment on the grounds that (a) Arthur is a foreigner; (b) he departed from the Philippines; and (c) he was guilty of fraud in contracting with Bren. Is the writ of preliminary attachment proper?

A. No, Arthur is a foreigner living abroad; he is outside the court's jurisdiction.

B. Yes, Arthur committed fraud in changing the sound system and its components before delivering the car bought from him.

C. Yes the timing of his departure is presumptive evidence of intent to defraud.

D. No, since it was not shown that Arthur left the country with intent to defraud Bren.

41. What is the movant's remedy if the trial court incorrectly denies his motion to dismiss and related motion for reconsideration?

A. Answer the complaint.

B. File an administrative action for gross ignorance of the law against the trial judge.

C. File a special civil action of certiorari on ground of grave abuse of discretion.

D. Appeal the orders of denial.

42. During trial, plaintiff offered evidence that appeared irrelevant at that time but he said he was eventually going to relate to the issue in the case by some future evidence. The defendant objected. Should the trial court reject the evidence in question on ground of irrelevance?

A. No, it should reserve its ruling until the relevance is shown.

B. Yes, since the plaintiff could anyway subsequently present the evidence anew.

C. Yes, since irrelevant evidence is not admissible.

D. No, it should admit it conditionally until its relevance is shown.

43. Ben testified that Jaime, charged with robbery, has committed bag-snatching three times on the same street in the last six months. Can the court admit this testimony as evidence against Jaime?

A. No, since there is no showing that Ben witnessed the past three robberies.

B. Yes, as evidence of his past propensity for committing robbery.

C. Yes, as evidence of a pattern of criminal behavior proving his guilt of the present offense.

D. No, since evidence of guilt of a past crime is not evidence of guilt of a present crime.

44. What is the right correlation between a criminal action and a petition for Writ of Amparo both arising from the same set of facts?

A. When the criminal action is filed after the Amparo petition, the latter shall be dismissed.

B. The proceeding in an Amparo petition is criminal in nature.

C. No separate criminal action may be instituted after an Amparo petition is filed.

D. When the criminal action is filed after the Amparo petition, the latter shall be consolidated with the first.

45. Alex filed a petition for writ of amparo against Melba relative to his daughter Toni's involuntary disappearance. Alex said that Melba was Toni's employer, who, days before Toni disappeared, threatened to get rid of her at all costs. On the other hand, Melba countered that she had nothing to do with Toni's disappearance and that she took steps to ascertain Toni's whereabouts. What is the quantum of evidence required to establish the parties' respective claims?

A. For Alex, probable cause; for Melba, substantial evidence.

B. For Alex, preponderance of evidence; for Melba, substantial evidence.

C. For Alex, proof beyond reasonable doubt; for Melba, ordinary diligence.

D. For both, substantial evidence.

46. In which of the following situations is the declaration of a deceased person aginst his interest NOT ADMISSIBLE against him or his successors and against third persons?

A. Declaration of a joint debtor while the debt subsisted.

B. Declaration of a joint owner in the course of ownership.

C. Declaration of a former co-partner after the partnership has been dissolved.

D. Declaration of an agent within the scope of his authority.

47. Defendant Dante said in his answer: "1. Plaintiff Perla claims that defendant Dante owes her P4,000 on the mobile phone that she sold him; 2. But Perla owes Dante P6,000 for the dent on his car that she borrowed." How should the court treat the second statement?

A. A cross claim

B. A compulsory counterclaim

C. A third party complaint

D. A permissive counterclaim

48. How will the court sheriff enforce the demolition of improvements?

A. He will give a 5-day notice to the judgment obligor and, if the latter does not comply, the sheriff will have the improvements forcibly demolished.

B. He will report to the court the judgment obligor's refusal to comply and have the latter cited in contempt of court.

C. He will demolish the improvements on special order of the court, obtained at the judgment obligee's motion.

D. He will inform the court of the judgment obligor's noncompliance and proceed to demolish the improvements.

49. When may the bail of the accused be cancelled at the instance of the bondsman?
A. When the accused jumps bail.
B. When the bondsman surrenders the accused to the court.
C. When the accused fails to pay his annual premium on the bail bond.
D. When the accused changes his address without notice to the bondsman.

50. Which of the following MISSTATES a requisite for the issuance of a search warrant?
A. The warrant specifically describes the place to be searched and the things to be seized.
B. Presence of probable cause.
C. The warrant issues in connection with one specific offense.
D. Judge determines probable cause upon the affidavits of the complainant and his witnesses.

51. Ranger Motors filed a replevin suit against Bart to recover possession of a car that he mortgaged to it. Bart disputed the claim. Meantime, the court allowed, with no opposition from the parties, Midway Repair Shop to intervene with its claim against Bart for unpaid repair bills. On subsequent motion of Ranger Motors and Bart, the court dismissed the complaint as well as Midway Repair Shop's intervention. Did the court act correctly?
A. No, since the dismissal of the intervention bars the right of Bart to file a separate action.
B. Yes, intervention is merely collateral to the principal action and not an independent proceeding.
C. Yes, the right of the intervenor is merely in aid of the right of the original party, which in this case had ceased to exist.
D. No, since having been allowed to intervene, the intervenor became a party to the action, entitled to have the issue it raised tried and decided.

52. The accused was convicted for estafa thru falsification of public document filed by one of two offended parties. Can the other offended party charge him again with the same crime?
A. Yes, since the wrong done the second offended party is a separate crime.
B. No, since the offense refers to the same series of act, prompted by one criminal intent.
C. Yes, since the second offended party is entitled to the vindication of the wrong done him as well.
D. No, since the second offended party is in estoppel, not having joined the first criminal action.

53. Henry testified that a month after the robbery Asiong, one of the accused, told him that Carlos was one of those who committed the crime with him. Is Henry's testimony regarding what Asiong told him admissible in evidence against Carlos?
A. No, since it is hearsay.
B. No, since Asiong did not make the statement during the conspiracy.
C. Yes, since it constitutes admission against a co-conspirator.
D. Yes, since it part of the res gestae.

54. Dorothy filed a petition for writ of habeas corpus against her husband, Roy, to get from him custody of their 5 year old son, Jeff. The court granted the petition and required Roy to turn over Jeff to his mother. Roy sought reconsideration but the court denied it. He filed a notice of appeal five days from receipt of the order denying his motion for reconsideration. Did he file a timely notice of appeal?

A. No, since he filed it more than 2 days after receipt of the decision granting the petition.

B. No, since he filed it more than 2 days after receipt of the order denying his motion for reconsideration.

C. Yes, since he filed it within 15 days from receipt of the denial of his motion for reconsideration.

D. Yes, since he filed it within 7 days from receipt of the denial of his motion for reconsideration.

55. Angel Kubeta filed a petition to change his first name "Angel." After the required publication but before any opposition could be received, he filed a notice of dismissal. The court confirmed the dismissal without prejudice. Five days later, he filed another petition, this time to change his surname "Kubeta." Again, Angel filed a notice of dismissal after the publication. This time, however, the court issued an order, confirming the dismissal of the case with prejudice. Is the dismissal with prejudice correct?

A. Yes, since such dismissal with prejudice is mandatory.

B. No, since the rule on dismissal of action upon the plaintiff's notice does not apply to special proceedings.

C. No, since change of name does not involve public interest and the rules should be liberally construed.

D. Yes, since the rule on dismissal of action upon the plaintiff's notice applies and the two cases involve a change in name.

56. A complaint without the required "verification"

A. shall be treated as unsigned.

B. lacks a jurisdictional requirement.

C. is a sham pleading.

D. is considered not filed and should be expunged.

57. The decisions of the Commission on Elections or the Commission on Audit may be challenged by

A. petition for review on certiorari filed with the Supreme Court under Rule 45.

B. petition for review on certiorari filed with the Court of Appeals under Rule 42.

C. appeal to the Supreme Court under Rule 54.

D. special civil action of certiorari under Rule 65 filed with the Supreme Court.

58. Which of the following states a correct guideline in hearing applications for bail in capital offenses?

A. The hearing for bail in capital offenses is summary; the court does not sit to try the merits of the case.

B. The prosecution's conformity to the accused's motion for bail is proof that its evidence of his guilt is not strong.

C. The accused, as applicant for bail, carries the burden of showing that the prosecution's evidence of his guilt is not strong.

D. The prosecution must have full opportunity to prove the guilt of the accused.

59. Apart from the case for the settlement of her parents' estate, Betty filed an action against her sister, Sigma, for reconveyance of title to a piece of land. Betty claimed that Sigma forged the signatures of their late parents to make it appear that they sold the land to her when they did not, thus prejudicing Betty's legitime. Sigma moved to dismiss the action on the ground that the dispute should be resolved in the estate proceedings. Is Sigma correct?

A. Yes, questions of collation should be resolved in the estate proceedings, not in a separate civil case.

B. No, since questions of ownership of property cannot be resolved in the estate proceedings.

C. Yes, in the sense that Betty needs to wait until the estate case has been terminated.

D. No, the filing of the separate action is proper; but the estate proceeding must be suspended meantime.

60. What is the consequence of the unjustified absence of the defendant at the pre-trial?

A. The trial court shall declare him as in default.

B. The trial court shall immediately render judgment against him.

C. The trial court shall allow the plaintiff to present evidence ex-parte.

D. The trial court shall expunge his answer from the record.

61. What is the remedy of the accused if the trial court erroneously denies his motion for preliminary investigation of the charge against him?

A. Wait for judgment and, on appeal from it, assign such denial as error.

B. None since such order is final and executory.

C. Ask for reconsideration; if denied, file petition for certiorari and prohibition.

D. Appeal the order denying the motion for preliminary investigation.

62. Which of the following renders a complaint for unlawful detainer deficient?

A. The defendant claims that he owns the subject property.

B. The plaintiff has tolerated defendant's possession for 2 years before demanding that he vacate it.

C. The plaintiff's demand is for the lessee to pay back rentals or vacate.

D. The lessor institutes the action against a lessee who has not paid the stipulated rents.

63. In a judicial foreclosure proceeding, under which of the following instances is the court NOT ALLOWED to render deficiency judgment for the plaintiff?

A. If the mortgagee is a banking institution.

B. if upon the mortgagor's death during the proceeding, the mortgagee submits his claim in the estate proceeding.

C. If the mortgagor is a third party who is not solidarily liable with the debtor.

D. If the mortgagor is a non-resident person and cannot be found in the Philippines.

64. In which of the following cases is the plaintiff the real party in interest?

A. A creditor of one of the co-owners of a parcel of land, suing for partition

B. An agent acting in his own name suing for the benefit of a disclosed principal

C. Assignee of the lessor in an action for unlawful detainer

D. An administrator suing for damages arising from the death of the decedent

65. The defendant in an action for sum of money filed a motion to dismiss the complaint on the ground of improper venue. After hearing, the court denied the motion. In his answer, the defendant claimed prescription of action as affirmative defense, citing the date alleged in the complaint when the cause of action accrued. May the court, after hearing, dismiss the action on ground of prescription?

A. Yes, because prescription is an exception to the rule on Omnibus Motion.

B. No, because affirmative defenses are barred by the earlier motion to dismiss.

C. Yes, because the defense of prescription of action can be raised at anytime before the finality of judgment.

D. No, because of the rule on Omnibus Motion.

66. What is the effect of the failure of the accused to file a motion to quash an information that charges two offenses?

A. He may be convicted only of the more serious offense.

B. He may in general be convicted of both offenses.

C. The trial shall be void.

D. He may be convicted only of the lesser offense.

67. Which of the following is a correct application of the rules involved in consolidation of cases?

A. Consolidation of cases pending in different divisions of an appellate court is not allowed.

B. The court in which several cases are pending involving common questions of law and facts may hear initially the principal case and suspend the hearing in the other cases.

C. Consolidation of cases pending in different branches or different courts is not permissible.

D. The consolidation of cases is done only for trial purposes and not for appeal.

68. Summons was served on "MCM Theater," a business entity with no juridical personality, through its office manager at its place of business. Did the court acquire jurisdiction over MCM Theater's owners?

A. Yes, an unregistered entity like MCM Theater may be served with summons through its office manager.

B. No, because MCM has no juridical personality and cannot be sued.

C. No, since the real parties in interest, the owners of MCM Theater, have not been served with summons.

D. Yes since MCM, as business entity, is a de facto partnership with juridical personality.

69. Fraud as a ground for new trial must be extrinsic as distinguished from intrinsic. Which of the following constitutes extrinsic fraud?

A. Collusive suppression by plaintiff's counsel of a material evidence vital to his cause of action.

B. Use of perjured testimony at the trial.

C. The defendant's fraudulent representation that caused damage to the plaintiff.

D. Use of falsified documents during the trial.

70. Upon review, the Secretary of Justice ordered the public prosecutor to file a motion to withdraw the information for estafa against Sagun for lack of probable cause. The public prosecutor complied. Is the trial court bound to grant the withdrawal?

A. Yes, since the prosecution of an action is a prerogative of the public prosecutor.

B. No, since the complainant has already acquired a vested right in the information.

C. No, since the court has the power after the case is filed to itself determine probable cause.

D. Yes, since the decision of the Secretary of Justice in criminal matters is binding on courts.

71. Unexplained or unjustified non-joinder in the Complaint of a necessary party despite court order results in

A. the dismissal of the Complaint.

B. suspension of proceedings.

C. contempt of court.

D. waiver of plaintiff's right against the unpleaded necessary party.

72. Which of the following CANNOT be disputably presumed under the rules of evidence?

A. That the thing once proved to exist continues as long as is usual with things of that nature.

B. That the law has been obeyed.

C. That a writing is truly dated.

D. That a young person, absent for 5 years, it being unknown whether he still lives, is considered dead for purposes of succession.

73. Which of the following is NOT REQUIRED in a petition for mandamus?

A. The act to be performed is not discretionary.

B. There is no other adequate remedy in the ordinary course of law.

C. RIGHT ANSWER The respondent neglects to perform a clear duty under a contract.

D. The petitioner has a clear legal right to the act demanded.

74. When is the defendant entitled to the return of the property taken under a writ of replevin?

A. When the plaintiff's bond is found insufficient or defective and is not replaced.

B. When the defendant posts a redelivery bond equal to the value of the property seized.

C. When the plaintiff takes the property and disposes of it without the sheriff's approval.

D. When a third party claims the property taken yet the applicant does not file a bond in favor of the sheriff.

75. Character evidence is admissible

A. in criminal cases, the accused may prove his good moral character if pertinent to the moral trait involved in the offense charged.

B. in criminal cases, the prosecution may prove the bad moral character of the accused to prove his criminal predisposition.

C. in criminal cases, the bad moral character of the offended party may not be proved.

D. when it is evidence of the good character of a witness even prior to impeachment.

76. X's action for sum of money against Y amounting to P80,000.00 accrued before the effectivity of the rule providing for shortened procedure in adjudicating claims that do not exceed P100,000.00. X filed his action after the rule took effect. Will the new rule apply to his case?

A. No since what applies is the rule in force at the time the cause of action accrued.

B. No, since new procedural rules cover only cases where the issues have already been joined.

C. Yes, since procedural rules have retroactive effect.

D. Yes, since procedural rules generally apply prospectively to pending cases.

77. A motion for reconsideration of a decision is pro forma when

A. it does not specify the defects in the judgment.

B. it is a second motion for reconsideration with an alternative prayer for new trial.

C. it reiterates the issues already passed upon but invites a second look at the evidence and the arguments.

D. its arguments in support of the alleged errors are grossly erroneous.

78. Which of the following correctly states the rule on foreclosure of mortgages?

A. The rule on foreclosure of real estate mortgage is suppletorily applicable to extrajudicial foreclosures.

B. In judicial foreclosure, an order of confirmation is necessary to vest all rights in the purchaser.

C. There is equity of redemption in extra-judicial foreclosure.

D. A right of redemption by the judgment obligor exists in judicial foreclosure.

79. The information charges PNP Chief Luis Santos, (Salary Grade 28), with "taking advantage of his public position as PNP Head by feloniously shooting JOSE ONA, inflicting on the latter mortal wounds which caused his death." Based solely on this allegation, which court has jurisdiction over the case?

A. Sandiganbayan only

B. Sandiganbayan or Regional Trial Court

C. Sandiganbayan or Court Martial

D. Regional Trial Court only

80. Distinguish between conclusiveness of judgment and bar by prior judgment.

A. Conclusiveness of judgment bars another action based on the same cause; bar by prior judgment precludes another action based on the same issue.

B. Conclusiveness of judgment bars only the defendant from questioning it; bar by prior judgment bars both plaintiff and defendant.

C. Conclusiveness of judgment bars all matters directly adjudged; bar by prior judgment precludes all matters that might have been adjudged.

D. Conclusiveness of judgment precludes the filing of an action to annul such judgment; bar by prior judgment allows the filing of such an action.

81. Which of the following matters is NOT A PROPER SUBJECT of judicial notice?
    A. Persons have killed even without motive.
    B. Municipal ordinances in the municipalities where the MCTC sits.
    C. Teleconferencing is now a way of conducting business transactions.
    D. British law on succession personally known to the presiding judge.

82. The RTC of Malolos, Branch 1, issued a writ of execution against Rene for P20 million. The sheriff levied on a school building that appeared to be owned by Rene. Marie, however, filed a third party claim with the sheriff, despite which, the latter scheduled the execution sale. Marie then filed a separate action before the RTC of Malolos, Branch 2, which issued a writ of preliminary injunction enjoining the sheriff from taking possession and proceeding with the sale of the levied property. Did Branch 2 correctly act in issuing the injunction?
    A. Yes, since the rules allow the filing of the independent suit to check the sheriff's wrongful act in levying on a third party's property.
    B. Yes, since Branch 2, like Branch 1, is part of the RTC of Malolos.
    C. No, because the proper remedy is to seek relief from the same court which rendered the judgment.
    D. No, since it constitutes interference with the judgment of a co-equal court with concurrent jurisdiction.

83. What is the effect and ramification of an order allowing new trial?
    A. The court's decision shall be held in suspension until the defendant could show at the reopening of trial that it has to be abandoned.
    B. The court shall maintain the part of its judgment that is unaffected and void the rest.
    C. The evidence taken upon the former trial, if material and competent, shall remain in use.
    D. The court shall vacate the judgment as well as the entire proceedings had in the case.

84. Which of the following is sufficient to disallow a will on the ground of mistake?
    A. An error in the description of the land devised in the will.
    B. The inclusion for distribution among the heirs of properties not belonging to the testator.
    C. The testator intended a donation intervivos but unwittingly executed a will.
    D. An error in the name of the person nominated as executor.

85. As a rule, the estate shall not be distributed prior to the payment of all charges to the estate. What will justify advance distribution as an exception?
    A. The estate has sufficient residual assets and the distributees file sufficient bond.
    B. The specific property sought to be distributed might suffer in value.
    C. An agreement among the heirs regarding such distribution.
    D. The conformity of the majority of the creditors to such distribution.

86. A party aggrieved by an interlocutory order of the Civil Service Commission (CSC) filed a petition for certiorari and prohibition with the Court of Appeals. May the Court of Appeals take cognizance of the petition?
    A. Yes, provided it raises both questions of facts and law.

B. No, since the CSC Chairman and Commissioners have the rank of Justices of the Court of Appeals.

C. No, since the CSC is a Constitutional Commission.

D. Yes, since the Court of Appeals has jurisdiction over the petition concurrent with the Supreme Court.

87. Which of the following is appealable?

A. An order of default against the defendant.

B. The denial of a motion to dismiss based on improper venue.

C. The dismissal of an action with prejudice.

D. The disallowance of an appeal.

88. Which of the following is NOT REQUIRED of a declaration against interest as an exception to the hearsay rule?

A. The declarant had no motive to falsify and believed such declaration to be true.

B. The declarant is dead or unable to testify.

C. The declaration relates to a fact against the interest of the declarant.

D. At the time he made said declaration he was unaware that the same was contrary to his aforesaid interest.

89. To prove the identity of the assailant in a crime of homicide, a police officer testified that, Andy, who did not testify in court, pointed a finger at the accused in a police lineup. Is the police officer's testimony regarding Andy's identification of the accused admissible evidence?

A. Yes, since it is based on his personal knowledge of Andy's identification of the accused.

B. Yes, since it constitutes an independently relevant statement.

C. No, since the police had the accused identified without warning him of his rights.

D. No, since the testimony is hearsay.

90. In which of the following cases is the testimony in a case involving a deceased barred by the Survivorship Disqualification Rule or Dead Man Statute?

A. Testimony against the heirs of the deceased defendant who are substituted for the latter.

B. The testimony of a mere witness who is neither a party to the case nor is in privity with the latter.

C. The testimony of an oppositor in a land registration case filed by the decedent's heirs.

D. The testimony is offered to prove a claim less than what is established under a written document signed by the decedent.

91. The prosecution moved for the discharge of Romy as state witness in a robbery case it filed against Zoilo, Amado, and him. Romy testified, consistent with the sworn statement that he gave the prosecution. After hearing Romy, the court denied the motion for his discharge. How will denial affect Romy?

A. His testimony shall remain on record.

B. Romy will be prosecuted along with Zoilo and Amado.

C. His liability, if any, will be mitigated.

D. The court can convict him based on his testimony.

92. In proceedings for the settlement of the estate of deceased persons, the court in which the action is pending may properly

A. pass upon question of ownership of a real property in the name of the deceased but claimed by a stranger.

B. pass upon with the consent of all the heirs the issue of ownership of estate asset, contested by an heir if no third person is affected.

C. rule on a claim by one of the heirs that an estate asset was held in trust for him by the deceased.

D. rescind a contract of lease entered into by the deceased before death on the ground of contractual breach by the lessee.

93. Which of the following stipulations in a contract will supersede the venue for actions that the rules of civil procedure fix?

A. In case of litigation arising from this contract of sale, the preferred venue shall be in the proper courts of Makati.

B. Should the real owner succeed in recovering his stolen car from buyer X, the latter shall have recourse under this contract to seller Y exclusively before the proper Cebu City court.

C. Venue in case of dispute between the parties to this contract shall solely be in the proper courts of Quezon City.

D. Any dispute arising from this contract of sale may be filed in Makati or Quezon City.

94. Allan was riding a passenger jeepney driven by Ben that collided with a car driven by Cesar, causing Allan injury. Not knowing who was at fault, what is the best that Allan can do?

A. File a tort action against Cesar.

B. Await a judicial finding regarding who was at fault.

C. Sue Ben for breach of contract of carriage.

D. Sue both Ben and Cesar as alternative defendants.

95. A surety company, which provided the bail bond for the release of the accused, filed a motion to withdraw as surety on the ground of the accused's non-payment of the renewal premium. Can the trial court grant the withdrawal?

A. No, since the surety's undertaking is not annual but lasts up to judgment.

B. Yes, since surety companies would fold up otherwise.

C. No, since the surety company technically takes the place of the accused with respect to court attendance.

D. Yes, since the accused has breached its agreement with the surety company.

96. To prove that Susan stabbed her husband Elmer, Rico testified that he heard Leon running down the street, shouting excitedly, "Sinasaksak daw ni Susan ang asawa niya! (I heard that Susan is stabbing her husband!)" Is Leon's statement as narrated by Rico admissible?

A. No, since the startling event had passed.

B. Yes, as part of the res gestae.

C. No, since the excited statement is itself hearsay.

D. Yes, as an independently relevant statement.

97. Which of the following NOT TRUE regarding the doctrine of judicial hierarchy?

A. It derives from a specific and mandatory provision of substantive law.

B. The Supreme Court may disregard the doctrine in cases of national interest and matters of serious implications.

C. A higher court will not entertain direct recourse to it if redress can be obtained in the appropriate courts.

D. The reason for it is the need for higher courts to devote more time to matters within their exclusive jurisdiction.

98. Plaintiff Manny said in his complaint: "3. On March 1, 2001 defendant Letty borrowed P1 million from plaintiff Manny and made a promise to pay the loan within six months." In her answer, Letty alleged: "Defendant Letty specifically denies the allegations in paragraph 3 of the complaint that she borrowed P1 million from plaintiff Manny on March 1, 2001 and made a promise to pay the loan within six months." Is Letty's denial sufficient?

A. Yes, since it constitutes specific denial of the loan.

B. Yes, since it constitutes positive denial of the existence of the loan.

C. No, since it fails to set forth the matters defendant relied upon in support of her denial.

D. No, since she fails to set out in par. 2 of her answer her special and affirmative defenses.

99. When may an information be filed in court without the preliminary investigation required in the particular case being first conducted?

A. Following an inquest, in cases of those lawfully arrested without a warrant.

B. When the accused, while under custodial investigation, informs the arresting officers that he is waiving his right to preliminary investigation.

C. When the accused fails to challenge the validity of the warrantless arrest at his arraignment.

D. When the arresting officers take the suspect before the judge who issues a detention order against him.

100. In a civil action involving three separate causes of action, the court rendered summary judgment on the first two causes of action and tried the third. After the period to appeal from the summary judgment expired, the court issued a writ of execution to enforce the same. Is the writ of execution proper?

A. No, being partial, the summary judgment is interlocutory and any appeal from it still has to reckon with the final judgment.

B. Yes since, assuming the judgment was not appealable, the defendant should have questioned it by special civil action of certiorari.

C. No, since the rules do not allow a partial summary judgment.

D. No, since special reason is required for execut

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I

On March 12, 2008, Mabini was charged with Murder for fatally stabbing Emilio. To prove the qualifying circumstance of evident premeditation, the prosecution introduced on December 11, 2009 a text message, which Mabini's estranged wife Gregoria had sent to Emilio on the eve of his death, reading: "Honey, *pa2tayin u ni Mabini. Mtgal n nyang plano i2. Mg ingat u bka ma tsugi k."*

A. A subpoena *ad testificandum* was served on Gregoria for her to be presented for the purpose of identifying her cellphone and the text message. Mabini objected to her presentation on the ground of marital privilege. Resolve. (3%)

B. Suppose Mabini's objection in question A was sustained. The prosecution thereupon announced that it would be presenting Emilio's wife Graciana to identify Emilio's cellphone bearing Gregoria's text message. Mabini objected again. Rule on the objection. (2%)

C. If Mabini's objection in question B was overruled, can he object to the presentation of the text message on the ground that it is hearsay? (2%)

D. Suppose that shortly before he expired, Emilio was able to send a text message to his wife Graciana reading *"Nagsaksak ako. D na me makahinga. Si Mabini ang may gawa ni2."* Is this text message admissible as a dying declaration? Explain. (3%)

II

On August 13, 2008, A, as shipper and consignee, loaded on the *M/V Atlantis* in Legazpi City 100,000 pieces of century eggs. The shipment arrived in Manila totally damaged on August 14, 2008. A filed before the Medtropolitan Trial Court (MeTC) of Manila a complaint against B Super Lines, Inc. (B Lines), owner of the *M/V Atlantis*, for recovery of damages amounting to P167,899. He attached to the complaint the Bill of Lading.

A. B Lines filed a Motion to Dismiss upon the ground that the Regional Trial Court has exclusive original jurisdiction over "all actions in admiralty and maritime" claims. In his Reply, A contended that while the action is indeed "admiralty and maritime" in nature, it is the amount of the claim, not the nature of the action, that governs jurisdiction. Pass on the Motion to Dismiss. (3%)

B. The MeTC denied the Motion in question A. B Lines thus filed an Answer raising the defense that under the Bill of Lading it issued to A, its liability was limited to P10,000. At the pre-trial conference, B Lines defined as one of the issues whether the stipulation limiting its liability to P10,000 binds A. A countered that this was no longer in issue as B Lines had failed to deny under oath the Bill of Lading. Which of the parties is correct? Explain. (3%)

C. On July 21, 2009, B Lines served on A a "Notice to Take Deposition," setting the deposition on July29, 2009 at 8:30 a.m. at the office of its counsel in Makati. A failed to appear at the deposition-taking, despite notice. As counsel for B Lines, how would you proceed? (3%)

III

Anabel filed a complaint against B for unlawful detainer before the Municipal Trial Court (MTC) of Candaba, Pampanga. After the issues had been joined, the MTC dismissed the complaint for lack of jurisdiction after noting that the action was one for *accion publiciana*.

Anabel appealed the dismissal to the RTC which affirmed it and accordingly dismissed her appeal. She elevates the case to the Court of Appeals, which remands the case to the RTC. Is the appellate court correct? Explain. (3%)

IV

X was driving the dump truck of Y along Cattleya Street in Sta. Maria, Bulacan. Due to his negligence, X hit and injured V who was crossing the street. Lawyer L, who witnessed the incident, offered his legal services to V.

V, who suffered physical injuries including a fractured wrist bone, underwent surgery to screw a metal plate to his wrist bone.

On complaint of V, a criminal case for Reckless Imprudence Resulting in Serious Physical Injuries was filed against X before the Municipal Trial Court (MTC) of Sta. Maria. Atty. L, the private prosecutor, did not reserve the filing of a separate civil action.

V subsequently filed a complaint for Damages against X and Y before the Regional Trial Court of Pangasinan in Urdaneta where he resides. In his "Certification Against Forum Shopping," V madeno mention of the pendency of the criminal case in Sta. Maria.

A. Is A guilty of forum shopping? (2%)

B. Instead of filing an Answer, X and Y moved to dismiss the complaint for damages on the ground of *litis pendentia*. Is the motion meritorious? Explain. (2%)

C. Suppose only X was named as defendant in the complaint for damages, mayhe move for the dismissal of the complaint for failure of V to implead Y as an indispensable party? (2%)

D. X moved for the suspension of the proceedings in the criminal case to await the decision in the civil case. For his part, Y moved for the suspension of the civil case to await the decision in the criminal case. Which of them is correct? Explain. (2%)

E. Atty. L offered in the criminal case his affidavit respecting what he witnessed during the incident. X's lawyer wanted to cross examine Atty. L who, however, objected on the ground of lawyer privilege. Rule on the objection. (2%)

V

Charisse, alleging that she was a resident of Lapu-Lapu City, filed a complaint for damages against Atlanta Bank before the RTC of Lapu-Lapu City, following the dishonor of a check she drew in favor of Shirley against her current account which she maintained in the bank's local branch.

The bank filed a Motion to Dismiss the complaint on the ground that it failed to state a cause of action, but it was denied. It thus filed an Answer.

A. In the course of the trial, Charisse admitted that she was a US citizen residing in Los Angeles, California and that she was temporarily billeted at the Pescado Hotel in Lapu-Lapu City, drawing the bank to file another motion to dismiss, this time on the ground of improper venue, nce Charisse is not a resident of Lapu-Lapu City.

Charisse opposed the motion citing the "omnibus motion rule." Rule on the motion. (3%)

B. Suppose Charisse did not raise the "omnibus motion rule," can the judge proceed to resolve the motion to dismiss? Explain. (3%)

C. Suppose the judge correctly denied the second motion to dismiss and rendered judgment in favor of Charisse, ordering the bank to pay her P100,000 in damages plus legal interest. The judgment became final and executor in 2008. To date, Charisse has not moved to execute the

judgment. The bank is concerned that its liability will increase with the delay because of the interest on the judgment award.

As counsel of the bank, what move shou you take?

VI

Antique dealer Mercedes borrowed P1,000,000 from antique collector Benjamin. Mercedes issued a postdated check in the same amount to Benjamin to cover the debt.

On the due date of the check, Benjamin deposited it but it was dishonored. As despite demands, Mercedes failed to make good the check, Benjamin filed in January 2009 a complaint for collection of sum of money before the RTC of Davao.

Mercedes filed in February 2009 her answer with Counterclaim, alleging that before the filing of the case, she and Benjamin had entered into a *dacion en pago* agreement in which her vintage P1,000,000 *Rolex* watch which was taken by Benjamin for sale on commission was applied to settle her indebtedness; and that she incurred expenses in defending what she termed a "frivolous lawsuit." She accordingly prayed for P50,000 damages.

A. Benjamin soon after moved for the dismissal of the case. The trial court accordingly dismissed the complaint. And it also dismissed the Counterclaim.

Mercedes mover for reconsideration of the dismissal of the Counterclaim. Pass upon Mercedes' motion. (3%)

B. Suppose there was no Counterclaim and Benjamin's complaint was not dismissed, and judgment was rendered against Mercedes for P1,000,000. The judgment became final and executor and a writ of execution was correspondingly issued.

Since Mercedes did not have cash to settle the judgment debt, she offered her Toyota Camry model 2008 valued at P1.2 million. The Sheriff, however, on request of Benjamin, seized Mercedes' 17th century iveory image of the *La Sagada Familia* estimated to be worth over P1,000,000.

Was the Sheriff's action in order? (3%)

VII

As Cicero was walking down a dark alley one midnight, he saw an "owner -type jeepney" approaching him. Sensing that the occupants of the vehicle were up to no good, he darted into a corner and ran. The occupants of the vehicle – elements from the Western Police District – gave chase and apprehended him.

The police apprehended Cicero, frisked him and found a sachet of 0.09 gram of *shabu* tucked in his waist and a Swiss knife in his secret pocket, and detained him thereafter. Is the arrest and body search legal? (3%)

PART II

VIII

Dominique was accused of committing a violation of the Human security Act. He was detained *incommunicado,* deprived of sleep, and subjected to water torture. He later allegedly confessed his guilt via an affidavit.

After trial, he was acquitted on the ground that his confession was obtained through torture, hence inadmissible as evidence.

In a subsequent criminal case for torture against those who deprived him of sleep and subjected him to water torture, Dominique was asked to testify and to, among other things, identifyhis above-said affidavit of confession. As he was about to identify the affidavit, the defense counsel objected on the ground that the affidavit is a fruit of a poisonous tree. Can the objection be sustained? Explain. (3%)

IX

In a prosecution for rape, the defense relied on Deoxyribonucleic Acid (DNA) evidence showing that the semen found in the private part of the victim was not identical with that of the accused's. As private prosecutor, how will you dispute the veracity and accuracy of the results of the DNA evidence? (3%)

X

Marinella is a junior officer of the Armed Forces of the Philippines who claims to have personally witnessed the malversation of funds given by US authorities in connection with the *Balikatan* exercises.

Marinella alleges that as a result of her exposė, there are operatives within the military who are out to kill her. She files a petition for the issuance of a writ of amparo against, among others, the Chief of Staff but without alleging that the latter ordered that she be killed.

Atty. Daro, counsel for the Chief of staff, moves for the dismissal of the Petition for failure to allege that his client issued any order to kill or harm Marinella. Rule on Atty. Daro's motion. Explain. (3%)

XI

X was arrested for the alleged murder of a 6-year old lad. He was read his *Miranda* rights immediately upon being apprehended.

In the course of his detention, X was subjected to three hours of n."on-stop interrogation. He remained quiet until, on the 3rd hour, he answered "yes" to the question of whether "he prayed for forgiveness for shooting down the boy." The trial court, interpreting X's answer as an admission of guilt, convicted him.

On appeal, X's counsel faulted the trial court in its interpretation of his client's answer, arguing that X invoked his *Miranda* rights when he remained quiet for the first two hours of questioning. Rule on the assignment of error. (3%)

XII

In a prosecution for murder, the prosecutor asks accused Darwin if he had been previously arrested for violation of the antiGraft and corrupt Practices Act. As defense counsel, you object. The trial court asks you on what ground/s. Respond. (3%)

XIII

Policemen brought Lorenzo to the Philippine General Hospital (PGH) and requested one of its surgeons to immediately perform surgery on him to retrieve a packet of 10 grams of *shabu* which they alleged was swallowed by Lorenzo.

Suppose the PGH agreed to, and did perform the surgery, is the package of *shabu* admissible in evidence? Explain. (3%)

XIV

Czarina died single. She left all her properties bywill to her friend Duqueza. In the will, Czarina stated that she did not recognize Marco as an adopted son because of his disrespectful conduct towards her.

Duqueza soon instituted an action for probate of Czarina's will. Marco, on the other hand, instituted intestate proceedings. Both actions were consolidated before the RTC of Pasig. On motion of Marco, Duqueza's petition was ordered dismissed on the ground that the will is void for depriving him of his legitime. Argue for Duqueza. (5%)

XV

Pedrillo, a Fil-am permanent resident of Los Angeles, California at the time of his death, bequeathed to Winston a sum of money to purchase an annuity.

Upon Pedrillo's demise, his will was uly probated in Los Angeles and the specified sum in the will was in fact used to purchase an annuity with XYZ of Hong Kong so that Winston would receive the equivalent of US$1,000 per month for the next 15 years.

Wanting to receive the principal amount of the annuity, Winston files for the probate of Pedrillo's will in the Makati RTC. As prayed for, the court names Winston as administrator of the estate.

Winston now files in the Makati RTC a motion to compel XYZ to account for all sus in its possession forming part of Pedrillo's estate. Rule on the motion. (5%)

XVI

Sal Mineo died intestate, leaving a P1 billion estae. He was survived by his wife Dayanara and their five children. Dayanara filed a petition for the issuance of letters of administration. Charlene, one of the children, filed an opposition to the petition, alleging that there was neither an allegation nor genuine effort to settle the estate amicably before the filing of the petition. Rule on the opposition. (5%)

XVII

What is "*res judicata* in prison grey"? (2%)

XVIII

While window-shopping at the mall on August 4, 2008, Dante lost his organizer including his credit card and billing statement. Two days later, upon reporting the matter to the credit card company, he learned that a one-was airplane ticket was purchased online using his credit card for a fight to Milan in mid-August 2008. Upon extensive inquiry with the airline company, Dante discovered that the plane ticket was under the name of one Dina Meril. Dante approaches you for legal advice.

A. What is the proper procedure to prevent Dina from leaving the Philippines? (2%)

B. Suppose an Information is filed against Dina on August 12, 2008 and she is immediately arrested. What pieces of evidence will Dante have to secure in order to provbe the fraudulent online transaction? (2%)

XIX

1. Enumerate the requisites of a "trial *in absentia"* (2%) and a "promulgation of judgment *in absentia*" (2%).

2. Name two instances where the trial couert can hold the accused civilly liable even if he is acquitted. (2%)

XX

Azenith, the cashier of Temptation Investments, Inc. (Temptation, Inc.) with principal offices in Cebu City, is equally hated and loved byher co-employees because she extends cash advances or "*vales*" to her colleagues whom she likes. One morning, Azenith discovers an anonymous letter inserted under the door of her office threatening to kill her.

Azenith promptly reports the matter to her superior Joshua, who thereupon conducts an internal investigation to verify the said threat.

Claiming that the threat is real, Temptation, Inc. opts to transfer Azenith to its Palawan Office, a move she resists in view of the company's refusal to disclose the results of its investigation.

Decrying the move as a virtual deprivation of her employment, Azenith files a petition for the issuance of a writ of habeas corpus before the Regional Trial Court (RTC) to enjoin Tempotation, Inc. from transferring her on the ground that the company's refusal to provide her with a copyof the investigation results compromises her rights to life, liberty, and privacy.

Resolve the petition. Explain. (5%)

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PART I

I

TRUE or FALSE. Answer TRUE if the statement is true, or FALSE if the statement is false. Explain your answer in not more than two (2) sentences. (5%)

a. The *Vallejo standard* refers to jurisprudential norms considered by the court in assessing the probative value of DNA evidence.

b. The One-Day Examination of Witness Rule abbreviates court proceedings by having a witness fully examined in only one day during trial.

c. A suit for injunction is an action *in rem*.

d. Under the doctrine of adoptive admission, a third party's statement becomes the admission of the party embracing or espousing it.

e. Summons may be served by mail.

II

Angelina sued Armando before the Regional Trial Court (RTC) of Manila to recover the ownership and possession of two parcels of land; one situated in Pampanga, and the other in Bulacan.

a. May the action prosper? Explain. (2%)

b. Will your answer be the same if the action was for foreclosure of the mortgage over the two parcels of land? Why or why not? (2%)

III

Amorsolo, a Filipino citizen permanently residing in New York City, filed with the RTC of Lipa City a Complaint for Rescission of Contract of Sale of Land against Brigido, a resident of Barangay San Miguel, Sto. Tomas, Batangas. The subject property, located in Barangay Talisay, Lipa City, has an assessed value of P19,700.00. Appended to the complaint is Amorsolo's verification and certification of non-forum shopping executed in New York City, duly notarized by Mr. Joseph Brown, Esq., a notary public in the State of New York.

Brigido filed a motion to dismiss the complaint on the following grounds:

a. The court cannot acquire jurisdiction over the person of Amorsolo because he is not a resident of the Philippines; (2%)

b. The RTC does not have jurisdiction over the subject matter of the action involving real property with an assessed value of P19,700.00; exclusive and original jurisdiction is with the Municipal Trial Court where the defendant resides; (3%) and

c. The verification and certification of non-forum shopping are fatally defective because there is no accompanying certification issued by the Philippine Consulate in New York, authenticating that Mr. Brown is duly authorized to notarize the document. (3%)

Rule on the foregoing grounds with reasons.

IV

Pedrito and Tomas, Mayor and Treasurer, respectively, of the Municipality of San Miguel, Leyte, are charged before the Sandiganbayan for violation of Section 3 (e), Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act). The information alleges, among others, that the two conspired in the purchase of several units of computer through personal canvass instead of a public bidding, causing undue injury to the municipality.

Before arraignment, the accused moved for reinvestigation of the charge, which the court granted. After reinvestigation, the Office of the Special Prosecutor filed an amended information duly signed and approved by the Special Prosecutor, alleging the same delictual facts, but with an additional allegation that the accused gave unwarranted benefits to SB Enterprises owned by Samuel. Samuel was also indicted under the amended information.

Before Samuel was arraigned, he moved to quash the amended information on the ground that the officer who filed the same had no authority to do so. Resolve the motion to quash with reasons. (3%)

V

Frank and Gina were married on June 12, 1987 in Manila. Barely a year after the wedding, Frank exhibited a violent temperament, forcing Gina, for reasons of personal safety, to live with her parents. A year thereafter, Gina found employment as a domestic helper in Singapore, where she worked for ten consecutive years. All the time she was abroad, Gina had absolutely no communications with Frank, nor did she hear any news about him. While in Singapore, Gina met and fell in love with Willie.

On July 4, 2007, Gina filed a petition with the RTC of Manila to declare Frank presumptively dead, so that she could marry Willie. The RTC granted Gina's petition. The Office of the Solicitor General (OSG) filed a Notice of Appeal with the RTC, stating that it was appealing the decision to the Court of Appeals on questions of fact and law.

a. Is a petition for Declaration of Presumptive Death a special proceeding? Why or why not? (2%)

b. As the RTC judge who granted Gina's petition, will you give due course to the OSG's Notice of Appeal? Explain. (3%)

VI

Arrested in a buy-bust operation, Edmond was brought to the police station where he was informed of his constitutional rights. During the investigation, Edmond refused to give any statement. However, the arresting officer asked Edmond to acknowledge in writing that six (6) sachets of "shabu" were confiscated from him. Edmond consented and also signed a receipt for the amount of P3,000.00, allegedly representing the "purchase price of the shabu." At the trial, the arresting officer testified and identified the documents executed and signed by Edmond. Edmond's lawyer did not object to the testimony. After the presentation of the testimonial evidence, the prosecutor made a formal offer of evidence which included the documents signed by Edmond.

Edmond's lawyer objected to the admissibility of the documents for being the "fruit of the poisoned tree." Resolve the objection with reasons. (3%)

VII

Cresencio sued Dioscoro for collection of a sum of money. During the trial, but after the presentation of plaintiff's evidence, Dioscoro died. Atty. Cruz, Dioscoro's counsel, then filed a motion to dismiss the action on the ground of his client's death. The court denied the motion to dismiss and, instead, directed counsel to furnish the court with the names and addresses of Dioscoro's heirs and ordered that the designated administrator of Dioscoro's estate be substituted as representative party.

After trial, the court rendered judgment in favor of Cresencio. When the decision had become final and executory, Cresencio moved for the issuance of a writ of execution against Dioscoro's estate to enforce his judgment claim. The court issued the writ of execution. Was the court's issuance of the writ of execution proper? Explain. (2%)

VIII

On July 15, 2009, Atty. Manananggol was served copies of numerous unfavorable judgments and orders. On July 29, 2009, he filed motions for reconsideration which were denied. He received the notices of denial of the motions for reconsideration on October 2, 2009, a Friday. He immediately informed his clients who, in turn, uniformly instructed him to appeal. How, when and where should he pursue the appropriate remedy for each of the following: (10%)

a. Judgment of a Municipal Trial Court (MTC) pursuant to its delegated jurisdiction dismissing his client's application for land registration?

b. Judgment of the Regional Trial Court (RTC) denying his client's petition for a Writ of Habeas Data?

c. Order of a Family Court denying his client's petition for Habeas Corpus in relation to custody of a minor child?

d. Order of the RTC denying his client's Petition for Certiorari questioning the Metropolitan Trial Court's (MeTC's) denial of a motion to suspend criminal proceedings?

e. Judgment of the First Division of the Court of Tax Appeals (CTA) affirming the RTC decision convicting his client for violation of the National Internal Revenue Code?

IX

Modesto sued Ernesto for a sum of money, claiming that the latter owed him P1-million, evidenced by a promissory note, quoted and attached to the complaint. In his answer with counterclaim, Ernesto alleged that Modesto coerced him into signing the promissory note, but that it is Modesto who really owes him P1.5-million. Modesto filed an answer to Ernesto's counterclaim admitting that he owed Ernesto, but only in the amount of P0.5-million. At the pre-trial, Modesto marked and identified Ernesto's promissory note. He also marked and identified receipts covering payments he made to Ernesto, to the extent of P0.5-million, which Ernesto did not dispute.

After pre-trial, Modesto filed a motion for judgment on the pleadings, while Ernesto filed a motion for summary judgment on his counterclaim. Resolve the two motions with reasons. (5%)

X

Upon termination of the pre-trial, the judge dictated the pre-trial order in the presence of the parties and their counsel, reciting what had transpired and defining three (3) issues to be tried.

a. If, immediately upon receipt of his copy of the pre-trial order, plaintiff's counsel should move for its amendment to include a fourth (4th) triable issue which he allegedly inadvertently failedto mention when the judge dictated the order. Should the motion to amend be granted? Reasons. (2%)

b. Suppose trial had already commenced and after the plaintiff's second witness had testified, the defendant's counsel moves for the amendment of the pre-trial order to include a fifth (5th) triable issue vital to his client's defense. Should the motion be granted over the objection of plaintiff's counsel? Reasons. (3%)

PART II

XI

TRUE or FALSE. Answer TRUE if the statement is true, or FALSE if the statement is false. Explain your answer in not more than two (2) sentences. (5%)

a. The accused in a criminal case has the right to avail of the various modes of discovery.

b. The viatory right of a witness served with a *subpoena ad testificandum* refers to his right not to comply with the subpoena.

c. In the exercise of its original jurisdiction, the Sandiganbayan may grant petitions for the issuance of a writ of *habeas corpus*.

d. An electronic document is the equivalent of an original document under the Best Evidence Rule if it is a printout or output readable by sight or other means, shown to reflect the data accurately.

e. The filing of a motion for the reconsideration of the trial court's decision results in the abandonment of a perfected appeal.

XII

Mike was renting an apartment unit in the building owned by Jonathan. When Mike failed to pay six months' rent, Jonathan filed an ejectment suit. The Municipal Trial Court (MTC) rendered judgment in favor of Jonathan, who then filed a motion for the issuance of a writ of execution. The MTC issued the writ.

a. How can Mike stay the execution of the MTC judgment? Explain. (2%)

b. Mike appealed to the Regional Trial Court (RTC), which affirmed the MTC decision. Mike then filed a petition for review with the Court of Appeals (CA). The CA dismissed the petition on the ground that the sheriff had already executed the MTC decision and had ejected Mike from the premises, thus rendering the appeal moot and academic. Is the CA correct? Reasons. (3%)

XIII

a. Continental Chemical Corporation (CCC) filed a complaint for a sum of money against Barstow Trading Corporation (BTC) for the latter's failure to pay for its purchases of

industrial chemicals. In its answer, BTC contended that it refused to pay because CCC misrepresented that the products it sold belonged to a new line, when in fact they were identical with CCC's existing products. To substantiate its defense, BTC filed a motion to compel CCC to give a detailed list of the products' ingredients and chemical components, relying on the right to avail of the modes of discovery allowed under Rule 27. CCC objected, invoking confidentiality of the information sought by BTC. Resolve BTC's motion with reasons. (3%)

b. Blinded by extreme jealousy, Alberto shot his wife, Betty, in the presence of his sister, Carla. Carla brought Betty to the hospital. Outside the operating room, Carla told Domingo, a male nurse, that it was Alberto who shot Betty. Betty died while undergoing emergency surgery. At the trial of the parricide charges filed against Alberto, the prosecutor sought to present Domingo as witness, to testify on what Carla told him. The defense counsel objected on the ground that Domingo's testimony is inadmissible for being hearsay. Rule on the objection with reasons. (3%)

XIV

The Republic of the Philippines, through the Department of Public Works and Highways (DPWH) filed with the RTC a complaint for the expropriation of the parcel of land owned by Jovito. The land is to be used as an extension of the national highway. Attached to the complaint is a bank certificate showing that there is, on deposit with the Land Bank of the Philippines, an amount equivalent to the assessed value of the property. Then DPWH filed a motion for the issuance of a writ of possession. Jovito filed a motion to dismiss the complaint on the ground that there are other properties which would better serve the purpose.

a. Will Jovito's motion to dismiss prosper? Explain. (3%)

b. As judge, will you grant the writ of possession prayed for by DPWH? Explain. (3%)

XV

a. Florencio sued Guillermo for partition of a property they owned in common. Guillermo filed a motion to dismiss the complaint because Florencio failed to implead Hernando and Inocencio, the other co-owners of the property. As judge, will you grant the motion to dismiss? Explain. (3%)

b. Mariano, through his attorney-in-fact, Marcos, filed with the RTC of Baguio City a complaint for annulment of sale against Henry. Marcos and Henry both reside in Asin Road, Baguio City, while Mariano resides in Davao City. Henry filed a motion to dismiss the complaint on the ground of prematurity for failure to comply with the mandatory barangay conciliation. Resolve the motion with reasons. (3%)

XVI

a. After the prosecution had rested and made its formal offer of evidence, with the court admitting all of the prosecution evidence, the accused filed a demurrer to evidence with leave of court. The prosecution was allowed to comment thereon. Thereafter, the court granted the demurrer, finding that the accused could not have committed the offense charged. If the prosecution files a motion for reconsideration on the ground that the court order granting the demurrer was not in accord with the law and jurisprudence, will the motion prosper? Explain your answer. (3%)

b. A criminal information is filed in court charging Anselmo with homicide. Anselmo files a motion to quash the information on the ground that no preliminary investigation was conducted. Will the motion be granted? Why or why not? (3%)

XVII

Having obtained favorable judgment in his suit for a sum of money against Patricio, Orencio sought the issuance of a writ of execution. When the writ was issued, the sheriff levied upon a parcel of land that Patricio owns, and a date was set for the execution sale.

a. How may Patricio prevent the sale of the property on execution? (2%)

b. If Orencio is the purchaser of the property at the execution sale, how much does he have to pay? Explain. (2%)

c. If the property is sold to a third party at the execution sale, what can Patricio do to recover the property? Explain. (2%)

XVIII

Pinoy died without a will. His wife, Rosie, and three children executed a deed of extrajudicial settlement of his estate. The deed was properly published and registered with the Office of the Register of Deeds. Three years thereafter, Suzy appeared, claiming to be the illegitimate child of Pinoy. She sought to annul the settlement alleging that she was deprived of her rightful share in the estate.

Rosie and the three children contended that (1) the publication of the deed constituted constructive notice to the whole world, and should therefore bind Suzy; and (2) Suzy's action had already prescribed.

Are Rosie and the three children correct? Explain. (4%)

XIX

a. Distinguish the two (2) modes of appeal from the judgment of the Regional Trial Court to the Court of Appeals. (3%)

b. What is the writ of amparo? How is it distinguished from the writ of habeas corpus? (2%)

c. What is the writ of habeas data? (1%)

-NOTHING FOLLOWS-

I

Lanie filed an action for partition and accounting in the Regional Trial Court (RTC) of Manila against her sister Mary Rose, who is a resident of Singapore and is not found in the Philippines. Upon motion, the court ordered the publication of the summons for three weeks in a local tabloid, *Bulgar*. Linda, an OFW vacationing in the Philippines, saw the summons in *Bulgar* and brought a copy of the tabloid when she returned to Singapore, Linda showed the tabloid and the page containing the summons to Mary Rose, who said, "Yes I know, my kumara Anita scanned and e-mailed that page of *Bulgar* to me!"

Did the court acquire jurisdiction over Mary Rose?

II

Fe filed a suit for collection of P387,000 against Ramon in the RTC of Davao City. Aside from alleging payment as a defense, Ramon in his answer set up counterclaims for P100,000 as damages and P30,000 as attorney's fees as a result of the baseless filing of the complaint, as well as for P250,000 as the balance of the purchase price of the 30 units of air conditioners he sold to Fe.

a) Does the RTC have jurisdiction over Ramon's counterclaims, and if so, does he have to pay docket fees therefor? (3%)

b) Suppose Ramon's counterclaim for the unpaid balance is P310,000, what will happen to his counterclaims if the court dismisses the complaint after holding a preliminary hearing on Ramon's affirmative defenses? (3%)

c) Under the same premise as paragraph (b) above, suppose that instead of alleging payment as a defense in his answer, Ramon filed a motion to dismiss on that gound, at the same time setting up his counterclaims, and the court grants his motion. What will happen to his counterclaims?

III

a) Angela, a resident of Quezon City, sued Antonio, a resident of Makati City before the RTC of Quezon City for the reconveyance of two parcels of land situated in Tarlac and Nueva Ecija, respectively. May her action prosper? (3%)

b) Assuming that the action was for foreclosure on the mortgage of the same parcels of land, what is the proper venue for the action? (3%)

IV

Filomeno brought an action in the Metropolitan Trial Court (MeTC) of Pasay City against Marcelino pleading two causes of action. The first was a demand for the recovy of physical possession of a parcel of land situated in Pasay City with an assessed value of P40,000; the second was a claim for damages of P500,000 for Marcelino's unlawful retention of the property.

Marcelino filed a motion to dismiss on the ground that the total amount involved, which is P540,000, is beyond the jurisdiction of the MeTC. Is Marcelino correct? (4%)

V

Within the period for lfiling a respective pleading, the defendant filed a motion for bill of particulars that he set for hearing on a certain date. However, the defendant was surprised to find on the date set for hearing that the trial court had already denied the motion on the day of its filing, stating that the allegations of the complaint were sufficiently made.

a) Did the judge gravely abuse his discretion in acting on the motion without waiting for the hearing set for the motion?

b) If the judge grants the motion and orders the plaintiff to file and serve the bill of particulars, can the trial judge dismiss the case if the plaintiff does not comply with the order? (3%)

VI

After his properties were attached, defendant Porfirio filed a sufficient counterbond. The trial court discharged the attachment. Nonetheless, Porfirio suffered substantial prejudice due to the unwarranted attachment. In the end, the trtial court rendered a judgment in Porfirio's favor by ordering the plaintiff to pay damages because the plaintiff was not entitled to the attachment. Profirio moved to charge the plaintiff's attachment bond. The plaintiff and his sureties opposed the motion, claiming that the filing of the counterbond had relieved the plaintiff's attachment bond form all liability for the damages. Rule on Porfirio's motion. (4%)

VII

a) The writ of execution was returned unsatisfied. The judgment obligee subsequently received information that a bank holds a substantial deposit belonging to the judgment obligor. If you were the counsel of the judgment oblige, what wteps would you take to reach the deposit to satisfy the judgment? (3%)

b) If the ank denies holding the deposit in the sanem of the judgment obligor but you client's informant is certain that the deposit belongs to the judgment obligor under an assumed name, what is your remedy to reach the deposit? (3%)

VIII

Bembol was charged with rape. Bembol's father, Ramil, approached Aftemon, the victim's father, during the preliminary investigation and offered P1 Million to Artemon to settle the case. Artemon refused the offer.

a) During trial, the prosecution presented Artemon to testify on Ramil's offer and thereby establish an implied admission of guilt. Is Ramil's offer to settle admissible in avidence? (3%)

b) During the pre-trial, Bembol personally offered to settle the case for P1 Million to the private prosecutor, who immediately put the offer on record in the presence of the trial judge. Is Bembol's offer a judicial admission of his guilt?

IX

The search warrant authorized the seizure of "undetermined quantityof shabu." During the service of the search warrant, the raiding team also recovered a kilo of dried marijuana leaves wrapped in newsprint. The accused moved to suppress the marijuana leaves as evidence for the violation of Section 11 of the Comprehensive Dangerous Drugs Act of 2002 since theywere not covered bythe search warrant. The State justified the seizure of the marijuana leaves under the "plain view" doctrine. There was no indication of whether the marijuana leaves were discovered and seized before or after the seizure of the shabu. If you are the judge, how would you rule on the motion to suppress? (4%)

X

Jose, Alberto and Romeo were charged with murder. Upon filing of the information, the RTC judge issued the warrants for their arrest. Learning of the issuance of the warrants, the three accused jointly filed a motionfor reinvestigation and for the recall of the warrants of arrest. On the date set for hearing of their motion, none of the accused showed up in court for fear of being arrested. The RTC judge denied their motion because the RTC did not acquire jurisdiction over the persons of the movants. Did the RTC rule correctly? (4%)

XI

a) On October 1, 2007, pending resolution of the motion to dismiss, Arturo filed an amended complaint alleging that Robert's debt still refused to pay. Shou the amended complaint be allowed considering that no answer has been filed? (3%)

b) Would yur answer be different had Arturo filed instead a supplemental complaint stating that the debt became due after the filing of the original complaint? (2%)

XII

After receiving the adverse decision rendered against his client, the defendant, Atty. Sikat duly filed a notice of appeal. For his part, the plaintiff timely filed a motion for partial noew trial to seek an increase in the monetary damages awarded. The RTC instead rendered an amended decision further reducing the monetary awards. Is it necessary for Atty. Sikat to file a second notice of appeal after receiving the amended decision? (3%)

XIII

An heir/oppositor in a probate proceeding filed a motion to remove the administrator on the grounds of neglect of duties as administrator and absence from the country. On his part the heir/oppositor served written interrogatories to administrator preparatory to presenting the latter as a witness. The administrator objected, insisting that the modes of discoveryapply only to ordinary civil actions, not special proceedings. Rule on the matter. (4%)

XIV

On August 15, 2008, Edgardo committed estafa against Petronilo in the amount of P3 Million. Petronilo brought his complaint to the National Bureau of Investigation, which found that Edgardo had visited his lawyetwice, the first time on August 14, 2008, and the second on August 16, 2008; and that both visits concerned the swindling of Petronilo. During trial of Edgardo, the RTC issued a *subpoena ad testificandum* to Edgardo's lawyer for him to testify on the conversations during their first and second meetings. Maythe subpoena be quashed on the ground of privileged communication? Explain fully. (4%)

XV

Half-brothers Roscoe and Salvio inherited from their father a vast tract of unregistered land. Roscoe succeeded in gaining possession of the parcel of land in its entirety and transferring the tax declaration thereon in his name. Roscoe sold the northern half to Bono, Salvio's cousin. Upon learning of the sale, Salvio asked Roscoe to convey the southern half to him. Roscoe refused as he even sold one-third of the southern half along the West to Carlo. Thereupon, Salvio filed an action for the reconveyce of the southern half against Roscoe only. Carlo was not impleaded. After filing his answer, Roscoe sold the middle third of the southern half to Nina. Salvio did not amend the complaint to implead Nina.

After trial, the court rendered judgment ordering Roscoe to reconvey the entire southern half to Salvio. The judgment became final and executor. A writ of execution having been issued, the Sheriff required Roscoe, Carlo and Nina to vacate the southern half and yield possession thereof to Salvio as the prevailing party. Carlo and Nina refused, contending that theyare not bound by the judgment as they are not parties to the case. Is the contention tenable? Explain fully. (4%)

XVI

The mutilated cadaver of a woman was discovered near a creek. Due to witnesses attesting that he was the last person seen with the woman when she was still alive, Carlito was arrested within five hours after the discovery of the cadaver and brought to the police station. The crime laboratory determined that the woman had been raped. While in police custody, Carlo broke down in the presence of an assisting counsel and orallyconfessed to the investigator that he had raped and killed the woman, detailing the acts he had performed up to his dumping of the body near the creek. He was genuinely remorseful. During the trial, the State presented the investigator to testify on the oral confession of Carlito. Is the oral confession admissible as evidence of guilt? (4%)

XVII

Ben sold a parcel of land to Del with right to repurchase within one (1) year. Ben remained in possession of the possession of the property. When Ben failed to repurchase the same, title was consolidated in favor of Del. Despite demand, Ben refused to vacate the land, constraining Del to file a complaint for unlawful detainer. In his defense, Ben averred that the case should be dismissed because Del had never been in possession of the property. Is Ben correct? (4%)

XVIII

Domenico and Gen lived without benefit of marriage for twenty yrs, during which time they purchased properties together. After Domenico died without a will, Gen filed a petition for letters of administration. Domenico's siblings opposed the same on the ground that Gen has no legal personality. Decide. (4%)

XIX

After Alma had started serving her sentence for violation of Batas Pambansa Blg. 22 (BP 22), she filed a petition of writ oa habeas corpus, citing *Vaca vs. CA* where the sentence of imprisonment of a party found guilty of violation of BP 22 was reduced to a fine equal to double the amount of the check involved. She prayd that her sentence be similarlymodified and that she be immediately released form detention. In the alternative, she prayed that pending determination on whether the *Vaca* ruling applies to her, she be allowed to post bail pursuant to Rule 102, Sec. 14, which provides that if a person is lawfully imprisoned or restrained on a charge of having committed an offense not punishable by death, he maybe admitted to bail in the discretion of the court. Accordingly, the trial court allowed Alma to post bail and then ordered her release. In yur opinion, is the order of the trial court correct?

a) Under Rule 102? (2%)

b) Under the Rules of Criminal Procedure? (2%)

XX

A tugboat owned bySpeedy Port Service, Inc. (SPS) sank in Manila Bay while helping tow another vessel, drowning five (5) of the crew in the resulting shipwreck. At the maritime board inquiry the gour (4) survivors testified. SPS engaged Atty. Ely to defend it against potential claims ad to sue the company owning the other vessel for damages to the tug. Ely obtained signed statements from the survivors. He also interviewed other persons, in some instance making memoranda. The heirs of the five (5) victims filed an action for damages against SPS.

Plaintiff's counsel sent written interrogatories to ely, asking whether statements of witnesses were obtained; if written, copies were to be furnished; if oral, the exact provisions were to be set forth in detail. Ely refused to comply, arguing that the documents and information asked are privileged communication. Is the contention tenable? Explain. (4%)

XXI

a) Compare the certiorari jurisdiction of the Supreme Court under the Constitution with that under Rule 65 of Civil Procedure. (4%)

b) Give at least three instances where the Court of Appeals may act as a trial court. (3%)

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I

a) What are the rules on the recognition and enforcement of foreign judgments in our courts? (6%)

b) Can a foreign arbitral award be enforced in the Philippines under those rules? Explain briefly. (2%)

c) How about a global injunction issued by a foreign court to prevent dissipation of funds against a defendant therein whose assets in the Philippines? Explain briefly. (2%)

II

True or False. If the answer is false, explain your answer briefly.

a) The surviving parties rule bars Maria from testifying for the claimant as to what the deceased Jose had said to her, in a claim filed by Pedro against the estate of Jose. (3%)

b) A defendant who has been declared in default can avail of a petition for relief from the judgment subsequently rendered in the case. (3%)

c) A motion is a pleading. (2%)

d) A counterclaim is a pleading. (2%)

III

a) What is the hearsay rule? (5%)

b) In relation to the hearsay rule, what do the following rules of evidence have in common? (5%)

IV

Husband H files a petition for declaration of nullity of marriage before the RTC of Pasig City. Wife W files a petition for *habeas corpus* before the RTC of Pasay City, praying for custody over their minor child. H files a motion to dismiss the wife's petition on the ground of the pendency of the other case. Rule. (10%)

V

a) Distinguish the effects of the filing of a demurrer to the evidence in a criminal case and its filing in a civil case. (5%)

b) What is reverse trial and when may it be resorted to? Explain briefly. (5%)

VI

a) On his way home, a member of the Caloocan City police force witnesses a bus robbery in Pasay City and effects the arrest of the suspect. Can he bring the suspect to Caloocan City for booking since that is where his station if? Explain briefly. (5%)

b) In the course of serving a search warrant, the plice finds an unlicensed firearm. Can the police take the firearm even if it is not covered by the search warrant? If the warrant is subsequently quashed, is the police required to return the firearm? Explain briefly. (5%)

VII

a) B files a petition for cancellation of the birth certificate of her daughter R on the ground of falsified material entries therein made by B's husband as the informant. The RTC sets the case for hearing and directs the publication of the order once a week for three consecutive weeks in a newspaper of general circulation. Summons was served on the Civil Registrar but there was no appearance during the hearing. The RTC granted the petition. R filed a petition for annulment of judgment before the Court of Appeals saying that she was not notified of the petition and hence, the decision was issued in violation of due process. B opposed saying that the publication of the court order was sufficient compliance with due process. Rule. (5%)

b) G files a complaint for recovery of possession and damages against F. in the course of the trial, G marked his evidence but his counsel failed to file a formal offer of evidence. F then presented in evidence tax declarations in the name of his father to establish that his father is a co-owner of the property. The court ruled in favor of F, saying that G failed to prove sole ownership of the property in the face of F's evidence. Was the court correct? Explain briefly. (5%)

VIII

a) X files an unlawful detainer case against Y before the appropriate Metropolitan Trial Court. In his answer, Y avers as a special and affirmative defense that he is a tenant of X's deceased father in whose name the property remains registered. What should the court do? Explain briefly. (5%)

b) The heirs of H agree among themselves that they will honor the divison of H's estate as indicated in her Last Will and Testament. To avoid the expense of going to court in a Petition for Probate of the Will, can they instead execute an Extrajudicial Settlement Agreement among themselves? Explain briefly. (5%)

IX

L was charged with illegal possession of *shabu* before the RTC. Although bail was allowable under his indictment, he could not afford to post bail, and so he remained in detention at the City Jail. For various reasons ranging from the promotion of the Presiding Judge, to the absence of the trial prosecutor, and to the lack of notice to the City Jail Warden, the arraignment of L was postponed nineteen times over a period of two years. Twice during that period, L's counsel filed motions to dismiss, invoking the right of the accused to a speedy trial. Both motions were denied by the RTC. Can L file a petition for *mandamus*? Reason briefly. (10%)

X

a) RC filed a complaint for annulment of the foreclosure sale against Bank V. In its answer, Bank V set up a counterclaim for actual damages and litigation expenses. RC filed a motion to dismiss the counterclaim on the ground on the ground that Bank V's Answer with Counterclaim was not accompanied bya certification against forum shopping. Rule. (5%)

b) A files a case against B. while awaiting decision on the case, A goes to the United States to work. Upon her return to the Philippines, seven years later, A discovers that a decision was rendered by the court in her favor a few months after she had left. Can A file a motion for execution of the judgment? Reason briefly. (5%)

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2006 BAR EXAMS QUESTIONS

I

1. What is the concept of remedial law? (2%)
2. Distinguish between substantive law and remedial law. (2%)
3. How are remedial laws implemented in our sysem of government? (2%)
4. Distinguish jurisdiction from venue. (2%)
5. What do you mean by a) real actions, and b) personal action? (2%)

II

What court has jurisdiction over an action for specific performance filed by a subdivision homeowner against a subdivision developer? Choose the correct answer. Explain. (2.5%)

1. The Housing and Land Use Regulatory Board
2. The Securities and Excchange Commission
3. The Regional Trial Court
4. The Commercial Court or the Regional Trial Court designated by the Supreme Court to hear and decide "commercial cases"

III

1. What is forum shopping? (2.5%)

2. Honey filed with the Regional Trial Court, Taal, Batangas a complaint for specific performance against Bernie. For lack of certification against forum shopping, the judge dismissed the complaint. Honey's lawyer filed a motion for reconsideration, attaching thereto an amended complaint with the certification against forum shopping. If you were the judge, how [would] you resolve the motion? (5%)

IV

Jojie filed with the Regional Trial Court of Laguna a complaint for damages against Joe. During the pre-trial, Jojie (sic) and her (sic) counsel failed to appear despite notice to both of them. Upon oral motion of Jojie, Joe was declared as in default and Jojie was allowed to present her evidence *ex parte*. Thereafter, the court rendered its Decision in favor of Jojie.

Joe hired Jose as his counsel. What are the remedies available to him? (5%)

V

May Congress enact a law providing that a 5,000 square meter lot, a part of the UST compound in Sampaloc, Manila, be appropriated for the construction of a park in honor of former City Mayor Arsenio Lacson? As compensation to UST, the City of Manila shall deliver its 5-hectare lot in Sta. Rosa, Laguna originally intended as a residential subdivision for the Manila City Hall employees. Explain. (5%)

VI

a. As a mode of appeal from the Regional Trial Court or the Court of Appeals to the Supreme Court? (2.5%)

b. As a special civil action from the Regional Trial Court or the Court of Appeals to the Supreme Court. (2.5%)

c. As a mode of review of the decision of the National Labor Relations commission and the Constitutional Commissions. (2.5%)

VII

Mark filed with the Bureau of Internal Revenue a complaint for refund of taxes paid, but it was not acted upon. So, he filed a similar complaint witht the Court of Tax Appeals raffled to one of its Divisions. Mark's complaint was dismissed. Thus, he filed with the Court of Appeals a petition for certiorari under Rule 65.

Does the Court of Appeals have jurisdiction over Mark's petition? (2.5%)

VIII

Does the Court of Appeals have jurisdiction to review the Decisions in criminal and administrative cases of the Ombudsman? (2.5%)

IX

1. What are the requisites for the issuance of (a) writ of preliminary injunction; and (b) a final writ of injunction? (2.5%)

2. Distinguish between injunction as an ancillary remedy and injunction as a main action. (2.5%)

X

1. Define a temporary restraining order (TRO). (2%)
2. May a Regional Trial Court issue injunction without bond? (2%)
3. What is the duration of a TRO issued by the Executive Judge of a Regional Trial Court? (2%)
4. Differentiate a TRO from a *status quo* order. (2%)
5. May a justice of a Division of the Court of Appeals issue a TRO? (2%)

XI

1. What is an interlocutory order? (2%)
2. What is the difference between a judgment and an opinion of the court? (2.5%)

XII

Tina Guerrero filed with the Regional Trial Court of Biñan, Laguna, a complaint for sum of money amounting to P1 Million against Carlos Corro. The complaint alleges, among others, that Carlos borrowed from Tina the said amount as evidenced by a promissory note signed by Carlos and his wife, jointly and severally. Carlos was served with summons which was received by Linda, his secretary. However, Carlos failed to file an answer to the complaint within the 15-day reglementary period. Hence, Tina filed with the court a motion to declare Carlos in default and to allow her to present evidence *ex parte*. Five days thereafter, Carlos filed his verified answer to the complaint, denying under oath the genuineness and due execution that he has fully paid his loan with interest at 12% *per annum*.

1. Was he summons validly served on Carlos? (2.5%)
2. If you were the judge, will you grant Tina's motion to declare Carlos in default? (2.5%)

XIII

Sergio Punzalan, Filipino, 50 years old, married, and residing at Ayala Alabang Village, Muntinlupa City, of sound and disposing mind, executed a last will and testament in English, a language spoken and written by him proficiently. He disposed of his estate consisting of a parcel of land in Makati City and cash deposit at the City Bank in the sum of P300 Million. He bequeathed P50 Million each to his 3 sons and P150 Million to his wife. He devised a piece of land worth P100 Million to Susan, his favorite daughter-in-law. He named his best friend, Cancio Vidal, as executor of the will without bond.

1. Is Cancio Vidal, after learning of Sergio's death, obliged to file with the proper court a petition of probate of the latter's last will and testament? (2%)

2. Supposing the original copy of the last will and testament was lost, can Cancio compel Susan to produce a copy in her possession to be submitted to the probate court? (2%)

3. Can the probate court appoint the widow as executor of the will? (2%)

4. Can the widow and her children settle extrajudicially among themselves the estate of the deceased? (2%)

5. Can the widow and her children initiate a separate petition for partition of the estate pending the probate of the last will and testament by the court? (2%)

XIV

When is bail a matter of right and when is it a matter of discretion? (5%)

XV

Leticia was estranged from her husband Paul for more than a year due to his suspicion that she was having an affair with Manuel their neighbor. She was temporarily living with her sister in Pasig City.

For unknown reasons, the house of Leticia's sister burned, killing the latter. Leticia survived. She saw her husband in the vicinity during the incident. Later he was charged with arson in an Information filed with the Regional Trial Court, Pasig City.

During the trial, the prosecutor called Leticia to the witness stand and offered her testimony to prove that her husband committed arson.

Can Leticia testify over the objection of her husband on the ground of marital privilege? (5%)

XVI

1. What are the requirements in order that an admission of guilt of an accused during a custodial investigation be admitted in evidence? (2.5%)

2. As counsel of an accused charged with homicide, you are convinced that he can be utilized as a state witness. What procedure will you take? (2.5%)

XVII

In 1996, congress passed Republic Act No. 8189, otherwise known as the Voter's Registration Act of 1996, providing for computerization of elections. Pursuant thereto, the COMELEC approved the Voter's Registration and Identification system (VRIS) Project. It issued invitations to pre-qualify and bid for the project. After the public bidding, Fotokina was declared the winning bidder with a bid of P6 billion and was issued a Notice of Awards. But COMELEC Chairman Gener Go objected to the award on the ground that under the Appropriations Act, the budget for the COMELEC's modernization is only P1 billion. He announced to the public that the VRIS project has been set aside. Two Commissioners sided with Chairman Go, but the majority voted to uphold the contract.

Meanwhile, Fotokina fileld with the RTC a petition for *mandamus* to compel COMELEC to implement the contract. The Office of the Solicitor General (OSG), representing Chairman Go, opposed the petition on the ground that *mandamus* does not lie to enforce contractual obligations. During the proceedings, the majority Commissioners filed a manifestation that Chairman Go was not authorized by the COMELEC *En Banc* to oppose the petition.

1. May the OSG represent Chairman Go before the RTC notwithstanding that his position is contrary to that of the majority? (5%)

2. Is a petition for *mandamus* an appropriate remedy to enforce contractual obligations? (5%)

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2005 BAR EXAMS QUESTIONS

I

a) Under Article 1144 of the New Civil code, an action upon a judgment must be brought within 10 years from the time the right of action accrues.

Is this provision applicable to an action filed in the Philippines to enforce a foreign judgment? (10%)

b) May the aggrieved party file a petition for *certiorari* in the Supreme Court under Rule 65 of the 1997 Rules of Civil Procedure, instead of filing a petition for review on *certiorari* under Rule 45 thereof for the nullification of a decision of the Court of Appeals in the exercise of its original or appellate jurisdiction? Explain.

c) May a private document be offered and admitted in evidence both as documentary evidence and as object evidence? Explain.

d) Distinguish a derivative suit from a class suit.

e) When may the trial court order that the testimony of a child be taken by live-link television? Explain.

II

(1) While Marietta was in her place of work in Makati City, her estranged husband Carlo barged into her hou in Paraňaque City, abducted their six-year old son, Percival, and brought the child to his hometown in Baguio City. Despite Marietta's pleas, Carlo refused to return their child. Marietta, through counsel, filed a petition for *habeas corpus* against Carlo in the Court of Appeals in Manila to compel him to produce their son before the court and for her to regain custody. She alleged in the petition that despite her efforts, she could no longer locate her son.

In his comment, Carlo alleged that the petition was erroneously filed in the Court of Appeals as the same should have been filed in the Family Court of Baguio City which, under Republic Act No. 8369, has exclusive jurisdiction over the petition. Marietta replied that under Rule 102 of the Rules of Court, as amended, the petition may be filed in the Court of Appeals and if granted, the writ of *habeas corpus* shall be enforceable anyhere in the Philippines.

Whose contention is correct? Explain. (5%)

(2) Under Republic Act No. 8353, one may be charged with and found guilty of qualified rape if he knew on or before the commission of the crime that he is afflicted with Human Immuno-Deficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS) or any other sexually transmissible disease and the virus or disease is transmitted to the victim.

Under Section 17(a) of republic Act No. 8504 the court may compel the accused to submit himself to a blood test where blood samples would be extracted from his veins to determine whether he has HIV. (8%)

a) Are the rights of the accused to be presumed innocent of the crime charged, to privacy, and against self-incrimination violated by such compulsory testing? Explain.

b) If the result of such test shows that he is HIV positive, and the prosecution offers such result in evidence to prove the qualifying circumstance under the Information for qualified rape, should the court reject such result on the ground that it is the fruit of a poisonous tree? Explain.

III

Perry is a resident of Manila, while Ricky and Marvin are residents of Batangas City. They are co-owners of a parcel of residential land located in Pasay City with an assessed value of P100,000.00. Perry borrowed P100,000.00 from Ricky which he promised to payon or before December 1, 2004. However, Perry failed to pay his loan. Perry also rejected Ricky and Marvin's proposal to partition the property.

Ricky filed a complaint against Perry and Marvin in the Regional Trial Court of Pasay City for the partition of the property. He also incorporated in his complaint his action against Perry for the collection of the latter's P100,000.00 loan, plus interests and attorney's fees.

State with reasons whether it was proper for Rciky to join his causes of action in his complaint for partition against Perry and Marvin in the Regional Trial Court of Pasay City. (5%)

IV

Raphael, a warehouseman, filed a complaint against YCorporation, X Corporation and Y Corporation to compel them to interplead. He alleged therein that the three corporations claimed title and right of possession over the goods deposited in his warehouse and that he was uncertain which of them was entitled to the goods. After due proceedings, judgmwent was rendered by the court declaring that X Corporation was entitled to the goods. The decision became final and executor.

Raphael filed a complaint against X Corporation for the payment of P100,000.00 for storage charges and other advances for the goods. X Corporation filed a motion to dismiss the complaint on the ground of *res judicata*. X Corporation alleged that Raphael should have incorporated in his complaint for interpleader his claim for storage fees and advances and that for his failure he was barred from interposing his claim. Raphael replied that he could not have claimed storage fees and other advances in his complaint for interpleader because he was not yet certain as to who was liable therefor.

Resolve the motion with reasons. (4%)

V

(1) After Lulu's death, her heirs brought her last will to a lawyer to obtain their respective shares in the estate. The lawyer prepared a deed of partition distrib uting Lulu's estate in accordance with the terms of her will.

Is the act of the lawyer correct? Why? (2%)

(2) Nestor died intestate in 2003, leaving no debts. How may his estate be settled byhis heirs who are of legal age and have legal capacity? Explain. (2%)

(3) State the rule on venue in judicial settlement of estate of deceased persons. (2%)

VI

While cruising on a highway, a taxicab driven by Mans hit an electric post. As a result thereof, its passenger, Jovy, suffered serious injurious. Mans was subsequentlycharged before the Municipal Trial Court with reckless imprudence resulting in serious physical injuries.

Thereafter, Jovy filed a civil action against Lourdes, the owner of the taxicab, for breach of contract, and Mans for quasi-delict. Lourdes and Mans filed a motion to dismiss the civil action on the ground of *litis pendentia*, that is, the pendency of the civil action impliedly instituted in the criminal action for reckless imprudence resulting in serious physical injuries.

Resolve the motion with reasons. (4%)

VII

Katy filed an action against Tyrone for collection of the sum of P1 Million in the Regional Trial Court, with an *ex parte* application for a writ of preliminary attachment. Jupon posting of an attachment bond, the court granted the application and issued a writ of preliminary attachment.

Apprehensive that Tyrone might withdraws his savings deposit with the bank, sheriff immediately served a notice of garnishment on the bank to implement the writ of preliminary attachment. The following day, the sheriff proceeded to Tyrone's house and served him the summons, with copies of the complaint containing the application for writ of preliminary attachment, Katy's affidavit, order of attachment, writ of preliminary attachment and attachment bond.

Within fifteen (15) days from service of summons, Tyrone filed a motion to dismiss and to dissolve the writ of preliminary attachment on the following grounds: (i) the court did not acquire jurisdiction over his person because the writ was served ahead of the summons; (ii) said writ was improvidently issued because the obligation in question was already fully paid.

Resolve the motion with reasons. (4%)

VIII

In a complaint for recovery of real property, the plaintiff averred, among others, that he is the owner of the said property b y virtue of a deed of sale executed by the defendant in his favor. Copy of the deed of sale was appended to the complaint as Annex "A" thereof.

In his unverified answer, the defendant denied the allegation concerning the sale of the property in question, as well as the appended deed of sale, for lack of knowledge or information sufficient to form a belief as to the truth thereof.

Is it proper for the court to render judgment without trial? Explain. (4%)

IX

On May 12, 2005, the plaintiff filed a complaint in the Regional Trial Court of Quezon City for the collection of P250,000.00. The defendant filed a motion to dismiss the complaint on the ground that the court had no jurisdiction over the action since the claimed amount of P250,000.00 is within the exclusive jurisdiction of the Metropolitan Trial Court of Quezon City.

Before the court could resolve the motion, the plaintiff, without leave of court, amended his complaint to allege a new cause of action consisting in his inclusion of an additional amount of P200,000.00, thereby increasing his total claim to P450,000.00. the plaintiff thereafter filed his opposition to the motion to dismiss, claiming that the Regional Trial Court had jurisdiction over his action.

Rule on the motion of the defendant with reasons. (4%)

X

A obtained a money judgment against B. After the finality of the decision, the court issued a writ of execution for the enforcement thereof. Conformably with the said writ, the sheriff levied upon certain properties under B's name. c filed a third-party claim over said properties that B had already transferred the same to him.

A moved to deny the third-party claim and to hold B and C jointly and severally liable to him for the money judgment alleging that B had transferred said properties to C to defraud him (A).

After due hearing, the court denied the third-partyc-claim and rendered an amended decision declaring B and C jointly and severally liable to A for the money judgment.

Is the ruling of the court correct? Explain. (4%)

XI

Helen is the daughter of Eliza, a Filipina, and Tony, a Chinese, who is married to another woman living in China. Her birth certificate indicates that Helen is the legitimate child of Tony and Eliza and that she is a Chinese citizen.

Helen wants her birth certificate corrected by changing her filiation from "legitimate" to "illegitimate" and her citizenship from "Chinese" to "Filipino" because her parents were not married.

What petition should Helen file and what procedural requirements must be observed? Explain. (5%)

XII

Mariano was convicted by the Regional Trial Court for raping Victoria and meted the penalty or *reclusion perpetua*. While serving sentence at the National Penitentiary, Mariano and Victoria were married. Mariano filed a motion in said court for his release from the penitentiary on his claim that under Republic Act No. 8353, his marriage to Victoria extinguished the criminal action against him for rape, as well as the penalty imposed on him. However, the court denied the motion on the ground that it had lost jurisdiction over the case after its decision had become final and executor. (7%)

a) Is the ruling of the court correct? Explain.

b) What remedy/remedies should the counsel of Mariano take to secure his proper and most expeditious release from the National Penitentiary? Explain.

XIII

Rodolfo is charged with possession of unlicensed firearnms in an Information filed in the Regional Trial Court. It was alleged gtherein that Rodolfo was in possession of two unlicensed firearms: a .45 caliber and a .32 caliber.

Under Republic Act No. 8294, possession of an unlicensed .45 calliber gun is punishable by *prision mayor* in its minimum period and a fine of P30,000.00, while possession of unlicensed .32 caliber gun is punishable by *prision correccional* in its maximum period and a fine of not less than P15,000.00.

As counsel of the accused, you intend to file a motion to quash the Information. What ground or grounds shoud you invoke? Explain. (4%)

XIV

Police operatives of the Western Police District, Philippine National Police, applied for a search warrant in the Regional Trial Court for the seach of the house of Juan Santos and the seizure of un undetermined amount of *shabu*. The team arrived at the house of Santos bt failed to find him there. Instead, the team found Roberto Co.

The team conducted a search in the house of Santos in the presence of Roberto Co and barangay officials and found ten (10) grams of *shabu.* Roberto Co was charged in court with illegal possession of ten grams of *shabu*.

Before his arraignment, Roberto Co filed a motion to quash the search warrant on the following grounds: (a) he was not the accused named in the search warrant; and (b) the warrant does not describe the article to be seized with sufficient particularity.

Resolve the motion with reasons. (4%)

XV

For the multiple stab wounds sustained by the victim, Noel was charged with frustrated homicide in the Regional Trial Court. Upon arraignment, he entered a plea of gulty to said crime. Neither the court nor the prosecution was aware that the victim had died two days earlier on account of his stab wounds.

Because of his guilty plea, Noel was convicted of frustrated homicide and meted the corresponding penalty. When the prosecution learned of the victim's death, it filed within fifteen (15) days therefrom a motion to amend the Information ton upgrade the charge from frustrated homicide to consummated homicide. Noel opposed the motion claiming that the admission of the amended Information would place him in double jeopardy.

Resolve the motion with reasons. (4%)

XVI

Dencio barged into the house of Marcela, tied her to a chair and robbed her of assorted pieces of jewelry and money. Dencio then brought Candida, Marcela's maid, to a bedroom where he raped her. Marcela could hear Candida crying and pleading: "*Huwag! Maawa ka sa akin!"* After raping Candida, Dencio fled from the house with the loot. Candida then untied Marcela and rushed to the police station about a kilometer away and told Police Officer Roberto Maawa that Dencio had barged into the house of Marcela, tied the latter ot a chair and robbed her of her jewelry and money. Candida also related to the police officer that despite her pleas, Dancio had raped her. The policeman noticed that Candida was hysterical and on the verge of collapse. Dencio was charged with robbery with rape. During the trial, Candida can no longer be located. (8%)

a) If the prosecution presents Police Officer Roberto Maawa to testify on what Candida had told him, would such testimony of the policeman he hearsay? Explain.

b) If the police officer will testify that he noticed Candida to be hysterical and on the verged of collapse, would such testimony be considered as opinion, hence, inadmissible? Explain.

XVII

Explain briefly whether the regional Trial Court may, *motu propio*, take judicial notice of the following: (5%)

a) The street name of metamphetamine hydrochloride is *shabu*;

b) Ordinances approved by municipalities under its territorial jurisdiction'

c) Foreign laws'

d) Rules and Regulations issued b y quasi-judicial bodies implementing statutes;

e) Rape may be committed even in public places.

XVII

Regional Director AG of the Department of Public Works and Highways was charged with violation of Section 3(e) of Republic Act No. 3019 in the Office of the Ombudsman. An administrative charge for gross misconduct arising from the transaction subject matter of said criminal case was filed against him in the same office. The Ombudsman assigned a team composed of investigators from the Office of the Special Prosecutor and from the Office of the Deputy Ombudsman for the Military to conduct a joint investigation to the criminal case and the administrative case. The team of investigators recommended to the Ombudsman that AG be preventively suspended for period not exceeding six (6) months on its finding that the evidence of guilt is strong. The Ombudsman issued the said order as recommended by the investigators.

AG moved to reconsider the order on the following grounds: (a) the Office of the Special Prosecutor had exclusive authority to conduct a preliminary investigation of the criminal case; (b) the order for his preventive suspension was premature because he had yet to file his answer to the administrative complaint and submit countervailing evidence; and (c) he was a career executive service officer and under Presidential Decree No. 807 (Civil Service Law), his preventive suspension shall be for a maximum period of three months.

Resolve with reasons the motion of respondent AG. (5%)

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2004 BAR EXAMS QUESTIONS

I

A. In a complaint for a sum of money filed before the MM Regional Trial Court, plaintiff did not mention or even just hint at any demand for payment made on defendant before commencing suit. During the trial, plaintiff duly offered Exh. "A" in evidence for the stated purpose of proving the making of extrajudicial demand on defendant to pay P500,000, the subject of te suit. Exh. "A" was a letter of demand for defendant tp pay said sum of money within 10 days from receipt, addressed to and served on defendant some two months before suit was begun. Without objection from defendant, the court admitted Exh. "A" in evidence.

Was the court's admission of Exh. "A" in evidence erroneous or not? (5%)

B. Mayor TM was charged of malversation through falsification of official documents. Assisted by Atty. OP as counsel *de parte* during pre-trial, he signed together with Ombudsman Prosecutor TG a "Joint Stipulation of Facts and Documents," which was presented to the Sandiganbayan. Before the court could issue a pre-trial order but after some delay caused by Atty. OP, he was substituted by Atty. QR as defense counsel. Atty. QR forthwith filed a motion to withdraw the "Joint Stipulation," alleging that it is prejudicial to the accused because it contains, *inter alia*, the statement that the "Defense admitted all the documentary evidence of the Prosecution," thus leaving the accused little or no room to defend himself, and violating his right against self-incrimination.

Should the court grant or deny QR's motion? Reason. (5%)

II

A. RP and State XX have a subsisting Extradition Treaty. Pursuant thereto RP's Secretary of Justice (SOJ) filed a Petition for Extradition before the MM Regional Trial Court alleging that Juan Kwan is the subject of an arrest warrant duly issued by the proper criminal court of State XX in connection with a criminal case for tax evasion and fraud before his return to RP as *balikbayan*. Petitioner prays that Juan be extradited and delivered to the proper authorities of State XX for trial, and that to prevent Juan's flight in the *interim*, a warrant for his immediate arrest be issued. Before the RTC could act on the petition for extradition, Juan filed before it an urgent motion, in sum praying (1) that SOJ's application for an arrest warrant be set for hearing and (2) that Juan be allowed to post bail in the event the court would issue an arrest warrant.

Should the court grant or deny Juan's prayers? Reason. (5%)

B. Charged with the offense of slight physician injuries under an information duly filed with the MeTC in Manila which in the meantime had duly issed an order declaring that the case shall be governed by the Revised Rule on Summary Procedure, the accused filed with the said court a motion to quash on the sole ground that the officer who filed the information had no authority to do so. The MeTC denid the motion on the ground that it is a prohibited motion under the said Rule.

The accused thereupon filed with the RTC in Manila a petition for *certiorari* in sum assailing and seeking the nullification of the MeTC's denial of his motion to quash. The RTC in due time issued an order denying due course to the *certiorari* petition on the ground that it is not allowed by the said Rule. The accused forthwith filed witht the said RTC a motion for reconsideration of

its said order. The RTC in time denied said motion for reconsideration on the ground that the same is also a prohibited motion under the said Rule.

Were the RTC's orders denying due course to the petition as well as denying the moriton for reconsideration correct? Reason. (5%)

III

A. Summons was issued by the MM Regional Trial Court and actually received on time by defendant from his wife at their residence. The sheriff earlier that day ahd delivered the summons to her said residence because defendant was not home at the time. The sheriff's return or proof of service filed with the court in sum states that the summons, with attached copy of the complaint, was served on defendant at his residence thru his wife, a person of suitable age and discretion then residing therein. Defendant moved to dismiss on the ground that the court had no jurisdiction over his person as there was no valid service of summons on him because the sheriff's return or proof of service does not show that the sheriff first made a genuine attempt to serve the summons on defendant personally before serving it thru his wife.

Is the motion to dismiss meritorious? What is the purpose of summons and by whom may it be served? Explain. (5%)

B. The information for illegal possession of firearm filed against the accused specifically alleged that he had no license or permit to possess the caliber .45 pistol mentioned therein. In its evidence-in-chief, the prosecution established the fact that the subject firearm was lawfully seized by the police from the possession of the accused, that is, while the pistol was tucked at his waist in plain view, without the accused being able to present any license or permit to possess the firearm. The prosecution on such evidence rested its case and within a period of five days therefrom, the accused filed a demurrer to evidence, in sum contending that the prosecution evidence has not established the guilt of the accused beyond reasonable doubt and so prayed that he be acquitted of the offense charged.

The trial court denied the demurrer to evidence and deemed the accused as having waived his right to present evidence and submitted the case for judgment on the basis of the prosecution evidence. In due time, the court rendered judgment finding the accused guilty of the offense charged beyond reasonable doubt and accordingly imposing on him the penalty prescribed therefor.

Is the judgment of the trial court valid and proper? Reason. (5%)

IV

A. During trial, plaintiff was able to present, without objection on the part of defendant in an ejectment case, evidence showing that plaintiff served on defendant a written demand to vacate the subject property before the commencement of the suit, a matter not alleged or otherwise set forth in the pleading on file.

May the corresponding pleading still be amended to conform to the evidence? Explain. (5%)

B. Plaintiff filed a complaint for a sum of money aginst defendant with the MeTC-Makati, the total amount of the demand, exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs, being P1,000,000. In due time, defendant filed a motion to dismiss the complaint on the ground of the MeTC's lack of jurisdiction over the subject matter. After due

hearing, the MeTC (1) ruled that the court indeed lacked jurisdiction over the subject matter of the complaint; and (2) ordered that the case therefore should be forwarded to the proper Regional Trial Court immediately.

Was the court's ruling concerning jurisdiction correct? Was the court's order to forward the case proper? Explain briefly. (5%)

V

A. After plaintiff in an ordinary civil action before the ZZ Regional Trial Court has completed presentation of his evidence, defendant without prior leave of court moved for dismissal of plaintiff's complaint for insufficiency of plaintiff's evidence. After due hearing of the motion and the opposition thereto, the court issued an order, reading as follows" "The Court hereby grants defendant's motion to dismiss and accordingly orders the dismissal of plaintiff's complaint, with the costs taxed against him. It is so ordered."

Is the order of dismissal valid? May plaintiff properly take an appeal? Reason. (5%)

B. AX was charged before the YY Regional Trial Court with theft of jewelry valued at P20,000, punishable with imprisonment of up to 10 years of *prision mayor* under the Revised Penal Code. After trial, he was convicted of the offense charged, notwithstanding that the material facts duly established during the trial showed that the offense committed was *estafa*, punishable by imprisonment of up to eight years of *prision mayor* under the said Code. No appeal having been taken therefrom, said judgment of conviction became final.

Is the judgment of conviction valid? Is the said judgment reviewable thru a special civil action for *certiorari*? Reason. (5%)

VI

A. Distinguish clearly but briefly between:

1. Burden of proof and burden of evidence.
2. Competency of the witness and credibility of the witness.
3. Legislative facts and adjudicative facts.
4. Hearsay evidence and opinion evidence.
5. Questions of law and questions of fact. (5%)

B. In his complaint for foreclosure of mortgage to which was duly attached a copy of the mortgage deed, plaintiff PP alleged *inter alia* as follows: (1) that defendant DD duly executed the mortgage deed, copy of which is Annex "A" of the complaint and made an integral part thereof; and (2) that to prosecute his complaint, plaintiff contracted a lawyer, CC, for a fee of P50,000. In his answer, defendant alleged, *inter alia*, that he had no knowledge of the mortgage deed, and he also denied any liability for plaintiff's contracting with a lawyer for a fee.

Does defendant's answer as to plaintiff's allegation no. 1 as well as no. 2 sufficiently raise an issue of fact? Reason briefly. (5%)

VII

A. After defendant has served and filed his answer to plaintiff's complaint for damages before the proper Regional Trial Court, plaintiff served and filed a motion (with supporting affidavits) for a summary judgment in his favor upon all of his claims. Defendant served and filed his opposition (with supporting affidavits) to the motion. After due hearing, the court issued an order (1) stating that the court has found no genuine issue as to any material fact and thus concluded that plaintiff is entitled to judgment in his favor as a matter of law except as to the amount of damages recoverable, and (2) accordinglyordering that plaintiff shall have judgment summarily against defendant for such amount as may be found due plaintiff for damages, to be ascertained by trial on October 7, 2004, at 8:30 o'clock in the morning.

May defendant properly take an appeal from said order? Or, may defendant properly challenge said order thru a special civil action for certiorari? Reason. (5%)

B. SPO1 CNC filed with the Metropolitan Trial Court in Quezon City (MeTC-QC) a sworn written statement duly subscribed by him, charging RGR (an actual resident of Cebu City) with the offense of slight physical injuries allegedly afflicted on SPS (an actual resident of Quezon City). The Judge of the branch to which the case was raffled thereupon issued an order declaring that the case shall be governed by the Rule on Summary Procedure in criminal cases. Soon thereafter, the Judge ordered the dismissal of the case for the reason that it was not commenced by information, as required by said Rule.

Sometime later, based on the same facts giving rise to the slight physical injuries case, the City Prosecutor filed with the same MeTC-QC an information for attempted homicide against the same RGR. In due time, before arraignment, RGR moved to quash the information on the ground of double jeopardy and after due hearing, the Judge granted his motion.

Was the dismissal of the complaint for slight physical injuries proper? Was the grant of the motion to quash the attempted homicide information correct? Reason. (5%)

VIII

A. AX, a Makati-bound paying passenger of PBU, a public utility bus, died instantly on board the bus on account of the fatal head wounds he sustained as a result of the strong impact of the collision between the bus and a dump truck that happened while the bus was still travelling on EDSA to Makati. The foregoing facts, among others, were duly established on evidence-in-chief by the plaintiff TY, sole heir of AX, in TY's action against the subject common carrier for breach of contract of carrieage. After TY had rested his case, the common carrier filed a demurrer to evidence, contending that plaintiff's evidence is insufficient because it did not show (1) that defendant was negligent and (2) that such negligence was the proximate cause of the collision.

Should the court grant or deny defendant's demurrer to evidence? Reason briefly. (5%)

B. AX swindled RY in the amount of P10,000 sometime in mid-2003. On the strength of the sworn statement given by RY personally to SPO1 Juan Ramos sometime in mid-2004, and without securing a warrant, the police officer arrested AX. Forthwith the police officer filed with the City Prosecutor of Manila a complaint for estafa supported by RY's sworn statement and other documentary evidence. After due inquest, the prosecutor filed the requisite information with the MM Regional Trial Court. No preliminary investigation was conducted either before or after the filing of the information and the accused at no time asked for such an investigation. However, before arraignment, the accused moved to quash the information on the ground that the prosecutor suffered from a want of authority to file the information because of his failure to conduct preliminary investigation before filing the information, as required by the Rules of Court.

Is the warrantless arrest of AX valid? Is he entitled to a preliminary investigation before the filing of the information? Explain. (5%)

IX

A. PX filed a suit for damages against DY. In his answer, DY incorporated a counterclaim for damages against PX and AC, counsel for plaintiff in said suit, alleging in said counterclaim, *inter alia*, that AC, as such counsel, maliciously induced PX to bring the suit against DY despite AC's knowledge of its utter lack of factual and legal basis. In due time, AC filed a motion to dismiss the counterclaim as against him on the ground that he is not a proper party to the case, he being merely plaintiff's counsel.

Is the counterclaim of DY compulsory or not? Should AC's motion to dismiss the counterclaim be granted or not? Reason. (5%)

B. XYZ, an alien, was criminally charged of promoting and facilitating child prostitution and other sexual abuses under Rep. Act No. 7610. The principal witness against him was his Filipina wife, ABC. Earlier, she had complained that XYZ's hotel was being used as a center for sex tourism and child trafficking. The defense counsel for XYZ objected to the testimony of ABC at the trial of the child prostitution case and the introduction of the affidavits she executed against her husband as a violation of espousal confidentiality and marital privilege rule. It turned out that DEF, the minor daughter of ABC by her first husband who was a Filipino, was molested by XYZ earlier. Thus, ABC had filed for legal separation from XYZ since last year.

May the court admit the testimony and affidavits of the wife, ABC, against her husband, XYZ, in the criminal case involving child prostitution? Reason. (5%)

X

A. At the scene of a heinous crime, police recovered a man's shorts with blood stains and strands of hair. Shortly afterwards, a warrant was issued and police arrested the suspect, AA. During his detention, a medical technician extracted blood sample from his finger and cut a strand from his hair, despite AA's objections.

During AA's trial for rape with murder, the prosecution sought to introduce DNA (deoxyribonucleic acid) evidence against AA, based on forensic laboratory matching of the materials found at the crime scene and AA's hair and blood samples. AA's counsel objected, claiming that DNA evidence is inadmissible because the materials taken from AA were in violation of his constitutional right against self-incrimination as well as his right of privacy and personal integrity.

Should the DNA evidence be admitted or not? Reason. (5%)

B. Sgt. GR of WPD arrested two NPA suspects, Max and Brix, both aged 22, in the act of robbing a grocery in Ermita. As he handcuffed them he noted a pistol tucked in Max's waist and a dagger hidden under Brix's shirt, which he promptly confiscated.

At the police investigation room, Max and Brix orally waived their right to counsel and to remain silent. Then under oath, they freely answered questions asked by the police desk officer. Thereafter they signed their sworn statements before the police captain, a lawyer. Max admitted his part in the robbery, his possession of a pistol and his ownership of the packet of shabu found in his pocket. Brix admitted his role in the robbery and his possession of a dagger. But they denied being NPA hit men. In due course, another proper charges were filed by the City Prosecutor against both arrestees before the MM Regional Trial Court.

May the written statements signed and sworn to by Max and Brix be admitted by the trial court as evidence for the prosecution? Reason. (5%)

2003 BAR EXAMS QUESTIONS

I

In rendering a decision, should a court take into consideration the possible effect of its verdict upon the political stability and economic welfare of the nation? (4%)

II

A filed with the Metropolitan Trial Court of Manila an action for specific performance against B, a resident of Quezon City, to compel the latter to execute a deed of conveyance covering a parcel of land situated in Quezon Cioty having an assessed value of P19,000.00. B received the summons and a copy of the Complaint on 02 January 2003. On 10 January, B filed a Motion to Dismiss the Complaint on the ground of lack of jurisdiction contending that the subject matter of the suit was incapable of percunary estimation. The court denied the motion. In due time, B filed with the Regional Trial Court a Petition for *Certiorari* praying that the said Order be set aside because the Metropolitan Trial Court had no jurisdiction over the case.

On 13 February 2003, A filed with the Metropolitan Trial Court a motion to declare B in default. The motion was opposed by B on the ground that his Petition for *Certiorari* was still pending.

(a) Was the denial of the Motion to Dismiss the Complaint correct?

(b) Resolve the Motion to Declare the Defendant in Default. (6%)

III

After an answer has been filed, can the plaintiff amend his complaint, with leave of court, by changing entirely the nature of the action? (4%)

IV

Defendant X received an adverse Decision of the Regional Trial Court in an ordinary civil case on 02 January 2003. He filed a Notice of Appeal on 10 January 2003. On the other hand, plaintiff A received the same Decision on 06 January 2003 and, on 19 January 2003, filed a Motion for Reconsideration of the Decision. On 13 January 2003, defendant X filed a Motion withdrawing his notice of appeal in order to file a Motion for New Trial which he attached. On 20 January 2003, the court denied A's Motion for Reconsideration and X's Motion to Withdraw Notice of Appeal. Plaintiff A received the Order denying his Motion for Reconsideration on 03 February 2003 and filed his Notice of Appeal on 05 February 2003. The court denied due course to A's Notice of Appeal on the ground that the period to appeal had already lapsed.

(a) Is the court's denial of X's Motion to Withdraw Notice of Appeal proper?

(b) Is the court's denial of due course to A's appeal correct? (6%)

V

Compare the effects of a denial of demurrer to evidence in a civil case with those of a denial of demurrer to evidence in a criminal case. (4%)

VI

A borrowed from the Development Bank of the Philippine (DBP) the amount of ₱1.5 million (principal plus interest) to the bank. No appeal was taken by A on the Decision within the reglementary period. A failed to pay the judgment debt within the period specified in the decision. Consequently, the court ordered the foreclosure sale of the mortgaged land. In that foreclosure sale, the land was sold to the DBP for ₱1.2 million. The sale was subsequently confirmed by the court, and the confirmation of the sale was registered with the Registry of Deeds on 05 January 2002.

On January 2003, the bank filed an *ex parte* motion with the court for the issuance of a writ of possession to oust B from the land. It also filed a deficiency claim for ₱800,000.00 against A and B. The deficiency claim was opposed by A and B.

(a) Resolve the motion for the issuance of a writ of possession.

(b) Resolve the deficiency claim of the bank. (6%)

VII

(a) When can a bill of particulars be availed of?

(b) What is the effect of non-compliance with the order of a bill of particulars? (4%)

VIII

Widow A and her two children, both girls, aged 8 and 12 years old, reside in Angeles City, Pampanga. A leaves her two daughters in their house at nioght because she works in a brothlel as a prostitute. Realizing the danger to the morals of these two girls, B, the father of the deceased husband of A, files a petition for *habeas corpus* against A for the custody of the girls in the Family Court of Angeles City. In said petition, B alleges that he is entitled to the custody of the two girls because their mother is living a disgraceful life. The court issues the writi of *habeas corpus*. When A learns of the petition and the writ, she brings her two children to Cebu City. At the expense of B, the sheriff of the said Family Court goes to Cebu City and serves the writ on A. A files her comment on the petition raising the following defenses:

(a) The enforcement of the writ of *habeas corpus* in Cebu City is illegal; and

(b) B has no personality to institute the petition.

Resolve the petition in the light of the above defenses of A. (6%)

IX

A, a resident of Malolos, Bulacan, died leaving an estate located in Manila, worth ₱200,000.00. In what court, taking into consideration the nature of jurisdiction and the venue, should the probate proxeeding on the estate of A be instituted? (4%)

X

In a buy-bust operation, the police operatives arrested the accused and seized from him a sachet of *shabu* and an unlicensed firearm. The accused was charged in two informations, one for violation of the Dangerous Drugs Act, as amended, and another for illegal possession of firearms.

The accused filed an action for recovery of the firearm in another courst against the police officers with an application for the issuance of a writ of replevin. He alleged in his Complaint that he was a military informer who had been issued a written authority to carry said firearm. The police offiers moved to dismiss the complaint on the ground that the subject firearm was *in custodial egis*. The court denied the motion and instead issued the writ of replevin.

(a) Was the seizure of the firearm valid?

(b) Was the denial of the motion to dismiss proper? (6%)

XI

Can a suit for injunction be aptly filed with the Supreme Court to stop the President of the Philippines from entering into a peace agreement with the National Democratic Front? (4%)

XII

In an action for violation of Batas Pambansa Blg. 22, the court granted the accused's demurrer to evidence which he filed without leave of court. Although he was acquitted of the crime charged, he, however, was required by the court to pay the private complainant the face value of the check. The accused filed a Motion for Reconsideration regarding the order to pay the face value of the check on the following grounds:

(a) the demurrer ton evidence applied only to the criminal aspect of the case; and

(b) at the very least, he was entitled to adduce controverting evidence on the civil liability. (6%)

XIII

In complex crimes, how is the jurisdiction of a court determined? (4%)

XIV

Before the arraignment for the crime of murder, the private complainant executed an Affidavit of Desistance stating that she was not sure if the accused was the man who killed her husband. The public prosecutor filed a Motion to Quash the Information on the ground that with private complainant's deistance, he did not have evidence sufficient to convict the accused. On 02 January 2001, the court without further proceedings granted the motion and provisionally dismissed the case. The accused gave his express consent to the provisional deismissal of the case. The offended party was notified of the dismissal but she refused to give her consent.

Subsequently, the private complainant urged the public prosecutor to refile the murder charge because the accused failed to pay the consideration which he had promised for the execution of the Affidavit of Desistance. The public prosecutor obliged and refiled the murder charge against the accused on 01 February 2003. The accused filed a Motion to Quash the

Information on the ground that the provisional dismissal of the case had already become permanent.

(a) Was the provisional dismissal of the case proper?

(b) Resolve the Motion to Quash. (6%)

XV

When a criminal case is dismissed on *nolle prosequi*, can it later be refiled? (4%)

XVI

After the requisite proceedings, the Provincial Prosecutor filed an information for homicide against X. The latter, however, timely filed a Petition for Review for the Resolution of the Provincial Prosecutor with the Secretary of Justice who, in due time, issued a Resolution reversing the resolution of the Provincial Prosecutor and directing him to withdraw the information.

Before the Provincial Prosecutor could comply with the directive to the Secretary of Justice, the court issued a warrant of arrest against X.

The Provincial Prosecutor filed a Motion to Quash the Warrant of Arrest and to Withdraw the Information, attaching to it the Resolution of the Secretary of Justice. The court denied the motion.

(a) Was there a legal basis for the court to deny the motion?

(b) If you were the counsel for the accused, what remedies, if any, would you pursue? (6%)

XVII

Distinguish preponderance of evidence from substantial evidence. (4%)

XVIII

X was charged with robbery. On the strength of a warrant of arrest issued by the court, X was arrested by police operatives. They seized from his person a handgun. A charge for illegal possession of firearm was also filed against him. In a press conference called by the police, X admitted that he had robbed the victim of jewelry valued at ₱500,000.00.

The robbery and illegal possession of firearm cases were tried jointly. The prosecution presented in evidence a newspaper clipping of the report to the reporter who was present during the press conference stating that X admitted the robbery. It likewise presented a certification of the PNP Firearms and Explosives Office attesting that the accused had no license to carry any firearm. The certifying officer, however, was not presented as a witness. Both pieces of evidence were objected to by the defense.

(a) Is the newspaper clipping admissible in evidence against X?

(b) Is the certification of the PNP Firearm and Explosives Office without the certifying officer testifying on it admissible in evidence against X? (6%)

XIX

(a) State the rule on the admissibility of and electronic evidence.

(b) When is an electronic evidence regarded as being the equivalent of an original document under the Best Evidence Rule? (4%)

XX

X and Y were charged with murder. Upon application of the prosecution, Y was discharged from the Information to be utilized as a state witness. The prosecutor presented Y as witness but forgot to state the purpose of his testimony much less offer it in evidence. Y testified that he and X conspired to kill the victim but it was X who actually shot the victim. The testimony of Y was the only material evidence establishing the guilt of X. Y was thoroughly cross-examined by the defense counsel. After the prosecution rested its case, the defense filed a motion for demurrer to evidence based on the following grounds:

(a) The testimony of Y should be excluded because its purpose was not initially stated and it was not formally offered in evidence as required by Section 34, Rule 132 of the Revised Rules of Evidence; and

(b) Y's testimony is not admissible against X pursuant to the rule on *res inter alios acta*.

Rule on the motion for demurrer to evidence on the above grounds. (6%)

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2002 BAR EXAMS QUESTIONS

I.

The plaintiff, a Manila resident, sued the defendant, a resident of Malolos, Bulacan, in the RTC manila for a sum of money. When the sheriff tried to serve the summons with a copy of the complaint on the defendant at his Blacan residence, the sheriff was told that the defendant had gone to Manila for business and would not be back until the evening of that day. So, the sheriff served the smmons, together with a copy of the complaint, on the defendant's 18-year-old daughter, who was a college student. For the defendant's failure to answer the complaint within the regelmentary period, the trial court, on motion of the plaintiff, declared the defendant in default. A month later, the trial court rendered judgment holding the defendant liable for the entire amount prayed for in the complaint.

A. After the judgment had become final, a writ of execution was issued by the court. As the writ was returned unsatisfied, the plaintiff filed a motion for an order requiring the defendant to appear before it and to be examined regarding his property and income. How should the court resolve the motion? (2%)

B. Seven years after the entry of judgment, the plaintiff filed an action for its revival. Can the defendant successfully oppose the revival of the judgment by contending that it is null and void because the RTC-Manila did not acquire jurisdiction over his person? Why? (3%)

II.

A. The plaintiff sued the defendant in the RTC for damages allegedly caused by the latter's encroachment on the plaintiff's lot. In his answer, the defendant denied the plaintiff's claim and alleged that it was the plaintiff who in fact had encroached on his (defendant's) land. Accordingly, the defendant counterclaimed against the plaintiff for damages resulting from the alleged encroachment on his lot. The plaintiff filed an *ex parte* motion for extension of time to answer the defendant's counterclaim, but the court denied the motion on the ground that it should have been set for hearing. On the defendant's motion, therefore, the court declared the plaintiff in default on the counterclaim. Was the plaintiff validly declared in default? Why? (5%)

B. The plaintiff sued the defendant in the RTC to collect on a promissory note, the terms of which were stated in the complaint and a photocopy attached to the complaint as an annex. Before answering, the defendant filed a motion for an order directing the plaintiff to produce the original of the note so that the defendant could inspect it and verify his signature and the handwritten entries of the dates and amounts.

(1) Should the judge grant the defendant's motion for production and inspection of the original of the promissory note? Why? (2%)

(2) Assuring that an order for production and instpection was issued but the plaintiff faield to comply with it, how should the defendant plead to the alleged execution of the note? (3%)

III.

A. The plaintiff obtained a writ of preliminary attachment upon a bond of ₱1 million. The writ was levied on the defendant's property, but it was discharged upon the posting by the defendant of a counterbond in the same amount of ₱1 million. After trial, the court rendered judgment finding that the plaintiff had no cause of action against the defendant and that he had sued out the writ of

attachment maliciously. Accordingly, the court dismissed the complaint and ordered the plaintiff and its surety to pay jointly to the defendant ₱1.5 million as actual damages, ₱0.5 million as moral damages and ₱0.5 million as exemplary damages.

Evaluate the soundness of the judgment from the point of view of procedure. (5%)

B. The trial court rendered judgment ordering the defendant to pay the plaintiff moral and exemplary damages. The judgment was served on the plaintiff on October 1, 2001 and on the defendant on October 5, 2001. On October 8, 2001, the defendant filed a notice of appeal from the judgment, but the following day, October 9, 2001, the plaintiff moved for the execution of the judgment pending appeal. The trial court granted the motion upon the posting by the plaintiff of a bond to indemnify the defendant for damages it may suffer as a result of the execution. The court gave as a special reason for its order the imminent insolvency of the defendant. Is the order of execution pending appeal correct? Why? (5%)

IV.

The defendant was declared in default in the RTC for his failure to file an answer to a complaint for a sum of money. On the basis of the plaintiff's *ex parte* presentation of evidence, judgment by default was rendered against the defendant. The default judgment was served on the defendant on October 1, 2001. On October 10, 2001, he filed a verified motion to lift the order of default and to set aside the judgment. In his motion, the defendant alleged that, immediately upon receipt of the summons, he saw the plainriff and confronted him with his receipt evidencing his payment and that the plaintiff assured him that he would instruct his lawyer to withdraw the complaint. The trial court denied the defendant's motion because it was not accompanied by an affidavit of merit. The defendant filed a special civil action for certiorari under Rule 65 challenging the denial order.

A. Is certiorari under Rule 65 the proper remedy? Why? (2%)

B. Did the trial court abuse its discretion or act without or in excess of its jurisdiction in denying the defendant's motion to lift the order of default and to set aside the default judgment? Why? (3%)

V.

A. P sued A and B in one complaint in the RTC-Manile, the cause of action against A being on an overdue promissory note for P300,000.00 and that against B being on an alleged balance of P300,000.00 on the purchase price of goods sold on credit. Does the RTC-Manila have jurisdiction over the case? Explain. (3%)

B. P sued A in the RTC-Manila to recover the following sums: (1) P200,000.00 on an overdue promissory note, (2) P80,000.00 on the purchase price of a computer, (3) P150,000.00 for damages to his car and (4) P100,000.00 for attorney's fees and litigation expenses. Can A move to dismiss the case on the ground that the court has no jurisdiction over the subject matter? Explain. (2%)

VI.

A. A default judgment was rendered by the RTC ordering D to pay P a sum of money. The judgment became final, but D filed a petition for relief and obtained a writ of preliminary injunction staying the enforecement of the judgment. After hearing, the RTC dismissed D's petition, whereupon P immediately moved for the execution of the judgment in his favor. Should P's motion be granted? Why? (3%)

B. Rolando filed a petition for declaration of the nullity of his marriage to Carmela because of the alleged psychological incapacity of the latter. After trial, the court rendered judgment dismissing the petition on the ground that Rolando failed to prove the psychological incapacity of his wife. The judgment having become final, Rolando filed another petition, this time on the ground that his marriage to Carmela had been celebrated without a license. Is the second action barred by the judgment in the first? Why? (2%)

VII.

A. May an order denying the probate of a will still be overturned after the period to appeal therefrom has lapsed? Why? (3%)

B. What should tge court do if, in the course of intestate proceedings, a will is found and it is submitted for probate? Explain. (2%)

VIII.

A. X filed a claim in the intestate proceedings of D. D's administrator denied liability and filed a counterclaim against X. X's claim was disallowed.

(1) Does the probate court still have jurisdiction to allow the claim of D's administrator by way of offset? Why? (2%)

(2) Suppose D's administrator did not allege any claim against X by way of offset, can D's administrator prosecute the claim in an independent proceeding? Why? (2%)

B. A, B, and C, the only heirs in D's intesteate proceedings, submitted a project of partition of the probate court (RTC-Manila). Upon the court's approval of the partition, two lots were assigned to C, who immediately entered into the possession of the lots. Thereafter, C died and proceedings for the settlement of his estate were filed in the RTC-Quezon City. D's administrator then filed a motion in the probate court (RTC-Manila), praying that one of the lots assigned to C in the project of partition be turned over to him to satisfy debts corresponding to C's portion. The motion was opposed by the administrator of C's estate. How should RTC-Manila resolve the motion of D's administrator? Explain. (3%)

C. Suppose the property of D was declared escheated on July 1, 1990 in escheat proceedings brought by the Solicitor General. Now, X, who claims to be an heir of D, files an action to recover the escheated property, is the action viable? Why? (2%)

IX.

A. D and E were charged with homicide in one information. Before they could be arraigned, the prosecution moved to amend the information to exclude E therefrom. Can the court grant the motion to amend? Why? (2%)

B. On the facts above stated, suppose the prosecution, instead of filing a motion to amend, moved to withdraw the information altogether and its motion was granted. Can the prosecution re-file the information although this time for murder? Explain. (3%)

C. If an information was filed in the RTC-Manila charging D with homicide and he was arrested in Quezoon City, in what court or courts may he apply for bail? Explain. (3%)

D. D was charged with theft of an article worth P15,000.00. Upon being arraigned, he pleaded not guilty to the offense charged. Thereafter, before trial commenced, he asked the court to allow him to change his plea of not guilty to a plea of guilty but only to estafa involving P5,000.00. Can the court allow D to change his plea? Why? (2%)

X.

A. D was charged with slight physical injuries in the MTC. He pleaded not guilty and went to trial. After the prosecution had presented its evidence, the trial court set the continuation of the hearing on another date. On the date scheduled for hearing, the prosecutor failed to appear, whereupon the court, on motion of D, dismissed the case. A few minutes later, the prosecutor arrived and opposed the dismissal of the case. The court reconsidered its order and directed D to present his evidence. Before the next date of trial came, however, D moved gthat the last order be set aside on the ground that the reinstatement of the case had placed him twice in jeopardy. Acceding to this motion, the court again dismissed the case. The prosecutor then filed an information in the RTC, charging D with direct assault based on the same facts alleged in the information for slight physical injuries but with the added allegation that D inflicted the injuries out of resentment for what the complainant had done in the performance of his duties as chairman of the board of election inspectors. D moved to quash the second information on the ground that its filing had placed him in double jeopardy. How should D's motion to quash be resolved? (4%)

B. In a prosecution for robbery against D, the prosecutor moved for the postponement of the first scheduled hearing on the ground that he had lost his records of the case. The court granted the motion but, when the new date of trial arrived, the prosecutor, alleging that he could not locate hs witnesses, moved for the provisional dismissal of the case. If D's counsel does not object, may the court grant the motion of the prosecutor? Why? (3%)

C. D was charged with murder, a capital offense. After arraignment, he applied for bail. The trial court ordered the prosecution to present its evidence in full on the ground that only on the basis of such presentation could it determine wheter the evidence of D's guilt was strong for purposes of bail. Is the ruling correct? Why? (3%)

XI.

Acting on a tip by an informant, plice officers stopped a car being driven by D and ordered him to open the trunk. The officers found a bag containing several kilos of cocaine. They seized the car and the cocaine as evidenc and placed D under arrest. Without advising him of his right to remain silent and to have the assistance of an attorney, they questioned him regarding the cocaine. In reply, D said, "I don't know anyting about it. It isn't even my car." D was charged with illegal possession of cocaine, a prohibited drug. Upon motion of D, the court suppressed tge yse if cocaine as evidence and dismissed the charges against him. D commenced proceedings against the police for the recovery of his car. In his direct examination, D testified that he owned the car but had registered it in the name of a friend for convenience. On cross-examination, the attorney representing the police asked, "After your arrest, did you not tell the arresting officers that it wasn't your car?" If you were D's attorney, would you object to the question? Why? (5%)

XII.

Romeo is sued for damages for injuries suffered by the plaintiff in a vehicular accident. Julieta, a witness in court, testifies that Romeo told her (Julieta) that he (Romeo) heard Antonio, a witness to the accident, give an excited account of the accident immediately after its occurrence. Is Julieta's testimony admissible against Roveo over proper and timely objection? Why? (5%)

XIII.

A. Delia sued Victor for personal injuries which she allegedly sustained when she was struck by a car driven by Victor. May the court receive in evidence, over proper and timely objection by Delia, a certified true copy of a judgment of acquittal in a criminal prosecution charging Victor with hit-and-run driving in connection with Delia's injuries? Why? (3%)

B. Is the question on direct examination objectionable: "What happened on July 12, 1999?" Why? (2%)

XIV.

D was prosecuted for homicide for allegedly beating up V to death with an iron pipe.

A. May the prosecution introduce evidence that V had a good reputation for peacefulness and non-violence? Why? (2%)

B. May D introduce evidence of specific violent acts by V? Why? (3%)

XV.

A. What are the modes of appeal to the Supreme Court? (2%)

B. Comment on a proposal to amend Rule 122, Section 2(b), in relation to Section 3(c), of the Revised Rules of Criminal Procedure to provide for appeal to the Court of Appeals from the decisions of the Regional Trial Court in criminal cases, where the penalty imposed is reclusion perpetua or life imprisonment, subject to the right of the accused to appeal to the Supreme Court. (3%)

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I.

Carlos, the accused in the theft case, field a demurrer to evidence without leave of court. The court denied the demurrer to evidence and Carlos moved to present his evidence. The court denied Carlos' motion to present evidence and instead rendered judgment on the basis of the evidence for the prosecution.

Was the court correct in preventing Carlos from presenting his evidence and rendering judgment on the basis of the evidence for the prosecution? Why? (5%)

II.

Josefina filed in the Municipal Circuit Trial Court of Aliocia and Mabini, a petition for the probate of the will of her husband, Martin, who died in the Municipality of Alicia, the residence of the spouses. The probate value of the estate which consisted mainly of a house and lot was placed at P95,000.00 and in the petition for the allowance of the will, attorney's fees in the amount of P10,000.00, litigation expenses in the amount of P5,000.00 and costs were included. Pedro, the next of kin of Martin, filed an opposition to the probate of the will on the ground that the total amount included in the relief of the petition is more than P100,000.00, the maximum jurisdictional amount for municipal circuit trial courts. The court overruled the opposition and proceeded to hear the case.

Was the municipal circuit trial court correct in its ruling? Why? (5%)

III.

Petitioner Fabian was appointed Election Registrar of the Municipality of Sevilla supposedly to replace the respondent Election Registrar Pablo who was transferred to another municipality without his consent and who refused to accept his aforesaid transfer, much less to vacate his position in Bogo town as election registrar, as in fact he continued to occupy his aforesaid position and exercise his functions thereto. Petitioner Fabian then filed a petition for mandamus against Pablo but the trial court dismissed Fabian's petition conteding that *quo warranto* is the proper remedy.

Is the court correct in its ruling? Why? (5%)

IV.

Saturnino filed a criminal action against Alex for the latter's bouncing check. On the date of the hearing after the arraignment, Saturnino manifested to the court that he is reserving his right to file a separate civil action. The court allowed Saturnino to file a civil action separately and proceeded to hear the criminal case. Alex filed a motion for reconsideration contending that the civil action is deemed included in the criminal case. The court reconsidered its order and ruled that Saturnino could not file a separate civil action.

Is the court's order granting the motion for reconsideration correct? Why? (5%)

V.

An amicable settlement was signed before a Lupon Tagapamayapa on January 3, 2001. On July 6, 2001, the prevailing party asked the Lupon to execute the amicable settlement because of the non-compliance by the other party of the terms of the agreement. The Lupon concerned refused to execute the settlement / agreement.

a) Is the Lupon correct in refusing to execute the settlement / agreement? (3%)

b) What should be the course of action of the prevailing party in such a case? 92%)

VI.

Lilio filed a complaint in the Municipal Trial Court of Lanuza for the recovery of a sum of money against Juan. The latter filed his answer to the complaint serving a copy thereof on Lilio.

After the filing of the answer of Juan, whose duty is it to have the case set for pre-trial? Why? (5%)

VII.

The prosecution filed an information against Jose for slight physical injuries alleging the acts constituting the offense but without anymore alleging that it was committed after Jose's unlawful entry in the complainant's abode.

Was the information correctly prepared by the prosecution? Why? (5%)

VIII.

Amando was charged with frustrated homicide. Before he entered his plea and upon the advice of his counsel, he manifested his willingness to admit having committed the offense of serious physical injuries. The prosecution then filed an amended information for serious physical injuries against Amando.

What steps or action should the prosecution take so that the amended information against Amando which downgrades the nature of the offense could be validly made? Why? (5%)

IX.

An application for a writ of preliminary injunction with a prayer for a temporary restraining order is included in a complaint and filed in a multi-sala Regional Trial Court consisting of Branches 1, 2, 3, and 4. Being urgent in nature, the Executive Judge who was sitting in Branch 1, upon the filing of the aforesaid application immediately raffled the case in the presence of the judges in Branches 2, 3, and 4. The case was raffled to branch 4 and judge thereof immediately issued a temporary restraining order.

Isn the temporary restraining order valid? Why? (5%)

X.

Modesto was accused of seduction by Virginia, a poor, unemployed young girl, who has a child by Modesto. Virginia was in dire need of pecuniary assistance to keep her child, not to say

of herself, alive. The criminal case is still pending in court and although the civil liability aspect of the crime has not been waived or reserved for a separate civil action, the trial for the case was foreseen to take two long years because of the heavily clogged court calendar before the judgment may be renedered.

If you were the lawyer of Virginia, what action should you take to help Virginia in the meantime especially with the problem of feeding the child? (5%)

XI.

A group of businessmen formed an association in Cebu City calling itself Cars Co. to distribute / sell cars in said city. It did not incorporate itself under the law nor did it have any government permit or license to conduct its business as such. The Solicitor General filed before a Regional Trial Court in Manila a verified petition for quo warranto questioning and seeking to stop the operations of Cars Co. The latter filed a motion to dismiss the petition on the grouond of improper venue claiming that its main office and operations are in Cebu City and not in Manila.

Is the contention of Cars Co. correct? Why? (5%)

XII.

a) May a writ of preliminary attachment be issued *ex parte*? Briefly state the reason(s) for your answer. (3%)

b) May a writ of preliminary injunction be issued *ex parte*? Why? (2%)

XIII.

Joaquin filed a complaint against Jose for the foreclosure of a mortgage of a furniture factory with a large number of machiner and equipment. During the pendency of the foreclosure suit, Joaquin learned from reliable sources that Jose was quietly and gradually disposing of some of his machinery and equipment to a businessman friend who was also engaged in furniture manufacturing such that from confirmed reports Joaquin gathered, the machinery and equipment left with Jose were no longer sufficient to answer for the latter's mortgage indebtedness. In the meantime, judgment was rendered by the court in favor of Joaquin but the same is not yet final.

Knowing what Jose has been doing, if you were Joaquin's lawyer, what action woulde you take to preserve whatever remaining machinery and equipment are left with Jose? Why? (5%)

XIV.

a) How should records of child and family cases in the Family Courts or Regional Trial Court designated by the Supreme Court to handle Family Court cases be treated and dealt with? (3%)

b) Under what conditions may the identity of parties in child and family cases be divulged? (2%)

XV.

The rules on special proceedings ordinarily require that the estate of the deceased should be judicially administered thru an administrator or executor.

What are the two exception to said requirement? (5%)

XVI.

Pedro filed a complaint against Lucion for the recovery of a sum of money based on a promissory note executed by lucio. In his complaint, Pedro alleged that although the promissory note says that it is payable within 120 days, the truth is that the note is payable immediately after 90 days but that if Pedro is willing, he may, upon request of Lucio give the latter up to 120 days to pay the note. During the hearing, Pedro testified that the truth is that the agreenment between him and Lucio is for the latter to pay immediately after ninety day's time. Also, since the original note was with Lucio and the latter would not surrender to pedro the original note which Lucio kept in a place about one day's trip from where he received that notice to produce the note and in spite of such notice to produce the same within six hours from receipt of such notice, Lucio failed to do so. Pedro presented a copy of the note which was executed at the same time as the original and with identical contents.

a) Over the objection of Lucio, will Pedro be allowed to testify as to the true agreement or contents of the promissory note? Why? (2%)

b) Over the objection of Lucio, can Pedro present a copy of the promissory note and have it admitted as valid evidence in his favor? Why? (3%)

XVII.

Maximo filed an action against Pedro, the administrator of the estate of deceased Juan, for the recovery of a car which is part of the latter's estate. During the trial, Maximo presented witness Mariano who testified that he was present when maximo and Juan agreed that the latter would pay a rental of P20,000.00 for the use of Maximo's car for one month after which Juan should immediately return the car to Maximo, Pedro objected to the admission of Mariano's testimony.

If you were the judge, would you sustain Pedro's objection? Why? (5%)

XVIII.

Carlos filed a complaint against Pedro in the Regional Trial Court of Ozamis City for the recovery of the ownership of a car. Pedro filed his answer within the reglementary period. After the pre-trial and actual trial, and after Carlos has completed the presentation of his evidence, Pedro moved for the dismissal of the complaint on the ground that under the facts proven and the law applicable to the case, Carlos is not entitled to the ownership of the car. The Regional Trial Court granted the motion for dismissal. Carlos appealed the order of dismissal and the appellate court reversed the order of the trial court. Thereafter, Pedro filed a motion with the Regional Trial Court asking the latter to allow him to present his evidence. Carlos objected to the presentation of evidence by Pedro.

Should the Regional Trial Court grant Pedro's motion to present his evidence? Why? (5%)

IX.

Governor Pedro Mario of Tarlac was charged with indirect bribery before the Sandiganbayan for accepting a car in exchange of the award of a series of contracts for medical supplies. The Sandiganbayan, after going over the information, found the same to be valid and ordered the suspension of Mario. The latter contested the suspension claiming that under the law (Sec. 13 of R.A. 3019) his suspension is not automatic upon the filing of the information and his suspension under Sec. 13, RA 3019 is in conflict with Sec. 5 of the Decentralization Act of 1967 (RA 5185).

The Sandiganbayan overruled Mario's contention stating that Mario's suspension under the circumstances is mandartory.

Is the court's ruling correct? Why? (5%)

XX.

Mario was declared in default but before judgment was rendered, he decided to file a motion to set aside the order of default.

a) What should Mario state in his motion in order to justify the setting of the order of default? (3%)

b) In what form should such motion be? (2%)

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2000 BAR EXAMS QUESTIONS

I.

a) **X** files a complaint in the Regional Trial Court for the recovery of a sum of money with damages against **Y**. Y files his anwer denying liability under the contract of sale and praying for the dismissal of the complaint on the fround of lack of cause of action becaue the contract of sale was superseded by a contract of lease, executed and signed by X and Y two weeks after the contract of sale was executed. The contract of lese was attached to the answer. X does not file a reply. What is the effect of the non-filing of a reply? Explain. (3%)

b) For failure of KJ to file an answer within the reglementary period, the Court, upon motion of LM, declared KJ in default. In due time, KJ filed an unverified motion to lift the order of default without an affidavit of merit attached to it. KJ however attached to the motion his answer under oath, stating in said answer his reasons for his failure to file an answer on time, as well as his defenses. Will the motion to lift the order of default prosper? Explain? (3%)

c) PJ engaged the services of Atty. ST to represent him in civil case filed by OP against him which was docketed as Civil Case No. 123. A retainership agreement was executed between PJ and Atty. ST whereby PJ promised to pay Atty. ST a retainer sum of P24,000.00 a year and to transfer the ownership of a parcel of land to Atty. ST after presentation of PJ's evidence. PJ did not comply with his undertaking. Atty. ST filed a case against PJ which was docketed as Civil Case No. 456. During the trial of Civil Case No. 456, PJ died.

i) Is the death of PJ a valid ground to dismiss the money calim of Atty. ST in Civil Case No. 456? Explain. (2%)

ii) Will your answer be the same with respect to the real property being claimed by Atty. ST in Civil Case No. 456? Explain. (2%)

II.

As counsel for A, B, C and D, Atty. XY prepared a complaint for recovery of possession of a parcel of land against Z. before filing the complaint, XY discovered that his clients were ot available to sign the certification of non-forum shopping. To avoid further delays in the filing of the complaint, XY signed the certification and immediately filed the complaint in court. is XY justified in signing the certification? Why? (5%)

III.

The Regional Trial Court rendered judgment against ST, copy of which was received by his counsel on February 28, 2000. On March 10, 2000, ST, through counsel, filed a motion for reconsideration of the decision with notice to the Clerk of Court submitting the motion for the reconsideration of the court. On March 15, 2000, realizing that the Motion lacked a notice of hearing, ST's counsel filed a supplemental pleading. Was the Motion for Reconsideration filed within the reglementary period? Explain. (5%)

IV.

AB, as mother an in her capacity as legal guardian of her legitimate minor son, CD, brought action for support against EF, as father of CD and AB's lawfully wedded husband. EF filed his answer denying his paternity with counterclaim for damages. Subsequently, AB filed a manifestation in court that in view of the denial made by EF, it would be futile to pursue the case against EF. AB agreed to move fore the dismissal of the complaint, subject to the condition that EF will withdraw his counterclaim for damages. AB and EF filed a joint motion to dismiss. The court dismissed the case with prejudice. Later on, minor son CD, represented by AB, filed another complaint for support against EF. EF filed a motion to dismiss on the ground of *res judicata*.

(a) Is *res judicata* a valid ground for dismissal of the second complaint? Explain your answer. (3%)

(b) What are the essential requisites of *res judicata*? (2%)

V.

Describe briefly at least five (5) modes of discovery under the Rules of Court. (5%)

VI.

What are the requisites for an intervention by a non-party in an action pending in court? (5%)

VII.

FG was arrested without a warrant by policemen while he was walking in a busy street. After preliminary investigation, he was charged with rape and the corresponding information was filed in the Regional Trial Court. On arraignment, he pleaded not guilty. Trial on the merits ensued. The court rendered judgment convicting him. On appeal, FG claims that the judgment is void because he was illegally arrested. If you were the Solicitor General, counsed for the People of the Philippines, how would you refute said claim? (5%)

VIII.

Your friend YY, an orphan, 16 years old, seeks your legal advice. She tells you that ZZ, her uncle, subjected her to acts of lasciviousness; that when she told her grandparents, they told her to just keep quiet and not to file charges against ZZ, their son. Feeling very much aggrieved, she asks you how her uncle ZZ can be made to answer for his crime.

(a) What would your advice be? Explain. (3%)

(b) Suppose the crime committed against YY by her uncle ZZ is rape, witnessed by your mutual friend XX. But this time, YY prevailed upon by her grandparents not to file charges. XX asks you if she can initiate the complaint against ZZ. Would your answer be the same? Explain. (2%)

IX.

CX is charged with estafa in court for failure to remit to MM sums of money collected by him (CX) for MM in payment for goods purchased from MM, by depositing the amounts in his (CX's) personal bank account. CX files a motion to suspend proceedings pending resolution of a civil case earlier filed in court by CX against MM for accounting and damages involving the amounts subject of the criminal case. As the prosecutor in the criminal case, briefly discuss your grounds in support of your opposition to the motion to suspend proceedings. (5%)

X.

BC is charged with illegal prossession of firearms under an information signed by a Provincial Prosecutor. After arraignment but before pre-trial, BC found out that the Provincial Prosecutor had no authority to sign and file the information as it was the City Prosecutor who has such authority. During the pre-trial, BC moves that the case against him be dismissed on the ground that the Information in defective because the officer signing it lacked the authority to do so. The Provincial prosectutor opposes the motion on the ground of estoppel as BC did not move to quash the Information before the arraignment. If you were the counsel for BC, what is your argument to refute the opposition of the Provincial Prosecutor? (5%)

XI.

Vida and Romeo are legally married. Romeo is charged in court with the crime of serious physical injuries committed against Selmo, son of Vida, step-son of Romeo. Vida itnesses the infliction of the injuries on Selmo by Romeo. The public prosecutor called Vida to the witness stand and offered her testimonhy as an eyewitness. Counsel for Romeo objected on the ground of the marital disqualification rule under the Rules of Court.

(a) Is the objection valid? (3%)

(b) Will your answer be the same if Vida's testimony is offered in a civil case for recovery of personal property filed by Selmo against Romeo? (2%)

XII.

Linda and spouses Arnulfo and Regina Ceres were co-owners of a parcel of land. Linda died intestate and without any issue. Ten (10) persons headed by Jocelyn, claiming to be the collateral realtives of the deceased Linda, filed an action for partition with the Regional Trial Court praying fror the segregation of Linda's 1/2 share, submitting in support of their petition the baptismal certificates of seven of the petitioners, a family bible belonging to Linda in which the names of the petitioners have been entered, a photocopy of the birth certificate of Jocelyn, and a certification of the local civil registrar that its office had been completely razed by fire. The spouses Ceres refused to partition on the following grounds: 1) the baptismal certificates of the parish priest are evidence only of the administration of the sacrament of baptism and theyu do not prove filiation of the alleged collateral relatives of the deceased; 2) entry in the family bible is hearsay; 3) the certification of the registrar on non-availability of the records of birth does not prove filiation; 4) in partition cases where filiation to the deceased is in dipute, prior and separate judicial declaration

of heirship in a separate judicial declaration of heirship in a settlement of estate proceedings is necessary; and 5) there is need for publication as real property is involved. As counsel for Jocelyn and her co-petitioners, argue against the objections of the spouses Ceres so as to convice the court to allow the partition. Discuss each of the five (5) arguments briefly but completely. (10%)

XIII.

Defendant was declared in default by the Regional Trial Court (RTC). Plaintiff was allowed to present evidence in support of his complaint. Photocopies of official receipts and original copies of affidavits were presented in court, identified by plaintiff on the witness stand and marked as exhibits. Said documents were offered by plaintiff and admitted in evidence by the court on the basis of which the RTC rendered judgment in favor of the plaintiff, pursuant to the relief prayed for. Upon receipt of the judgment, defendant appeals to the Court of Appeals claiming that the judgment is not valid because the RTC based it judgment on mere photocopies and affidavits of persons not presented in court.

(a) Is the claim of defendant valid? Explain. (3%)

(b) Will your answer be the same if the photocopies of official receipts and photocopies of affidavits were attached to the position paper submitted by plaintiff in an action for unlawful detainer filed with the Municipal Trial Court on which basis the court rendered judgment in favor of plaintiff? Explain. (2%)

XIV.

BB files a complaint for ejectment in the Metropolitan Trial Court on the ground of non-payment of rentals against JJ. After two days, JJ files in the Regional Trial Court a complaint against BB for specific performance to enforce the option to purchase the parcel of land subject of the ejectment case. What is the effect of JJ's action on BB's complaint? Explain. (5%)

XV.

AB mortgaged his property to CD. AB failed to pay his obligation and CD filed an action for foreclosure of mortgage. After trial, the court issued an Order granting CD's prayer for foreclosure of mortgage and ordering AB to pay CD the full amount of the mortgage debt including interest and other charges not later that 120 days from date of receipt of the Order. AB received the Order on August 10, 1999. No other proceeding took place thereafter. On December 20, 1999, AB tendered the full amount adjudged by the court to CS but the latter refused to accept it on the ground that the amount was tendered beyond the 120-day period granted by the court. AB filed a motion in thae same court praying that CD be directed to receive the amount tendered by him on the ground that the Order does not comply with the provisions of Section 2, Rule 68 of the Rules of Court which gives AB 120 days from entry of judgment, and not from date of receipt of the Order. The court denied his motion on the ground that the Order had already become final and can no longer be amended to conform with Section 2, Rule 68. Aggrieved, AB fiels a petition for certiorari against the Court ad CD. Will the petition for certiorari prosper? Explain. (5%)

XVI.

JK's real property is being attached by the sheriff in a civil action for damages against LM. JK claims that he is not a party to the case; that his property is not involved in said case; and that he is the sole registered owner of said property. Under the Rules of Court, what must JK do to prevent the Sheriff from attaching his property? (5%)

XVII.

X, an illegitimate child of Y, celebrated her 18th birthday on May 2, 1996. A month before her birthday, Y died. The legitimate family of Y refused to recognize X as an illegitimate child of Y. After countless efforts to convince them, X filed on April 25, 2000 an action for recognition against Z, wife of Y. After Z filed her answer on August 14, 2000, X filed a motion for leave to file an amended complaint and a motion to admit the said amended complaint impleading the three (3) legitimate children of Y. The trial court admitted the amended complaint on August 22, 2000. What is the effect of the admission of the amended complaint? Has the action of X prescribed? Explain. (5%)

XVIII.

(a) A brings an action in the Metropolitan Trial Court of Manila against B for the annulment of an extrajudicial foreclosure sale of real property with an assessed value of P50,000.00 located in Laguna. The complaint alleged prematurity of the sale for the reason that the mortgage was not yet due. B timely moved to dismiss the case on the ground that the action should have been brought in the Regional Trial Court of Laguna. Decide with reasons. (3%)

(b) A files an action in the Municipal Trial Court against B, the natural son of A's father, for the partition of a parcel of land located in Taytay, Rizal with an assessed value of P20,000.00. B moves to dismiss the action on the ground that the case should have been brought in the Regional Trial Court because the action is one that is not capable of pecuniary estimation as it involves primarily a determination of hereditary rights and not merely the bare right to real property. Resolve the motion. (2%)

--- NOTHING FOLLOWS ---