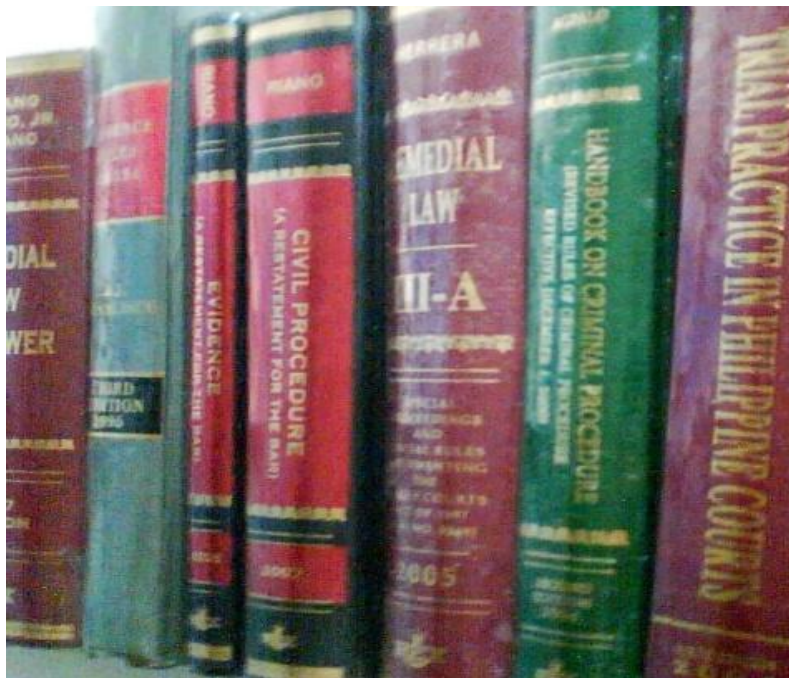


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Remedial Law Reviewer



ELMER P. BRABANTE

**PART I.**  
**CIVIL PROCEDURE**  
**Rules 1 - 71**

**I. GENERAL PRINCIPLES**

**Concept of Remedial Law**

Remedial Law is that branch of law which prescribes the method of enforcing rights or obtaining redress for their invasion.

**Substantive Law as Distinguished from Remedial Law**

Substantive law creates, defines and regulates rights and duties regarding life, liberty or property which when violated gives rise to a cause of action (*Bustos v. Lucero, 81 Phil. 640*).

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.

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.

**Rule-Making Power of the Supreme Court**

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 compelling reasons so warrant or when the purpose of justice requires it. What constitutes and good and sufficient cause that would merit suspension of the rules is discretionary upon courts. (*CIR v. Migrant Pagbilao Corp., GR 159593, Oct. 12, 2006*). 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 v. Zaratan, GR 167471, Feb. 5, 2007*)

- (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 v. CA*, 479 SCRA 594)
- (3) Where substantial and important issues await resolution. (*Pagbilao*, supra)
- (4) When transcendental matters of life, liberty or state security are involved. (*Mindanao Savings Loan Asso. V. Vicenta Vda. De Flores*, 469 SCRA 416).
- (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, June 30, 2006).

### **Nature of Philippine Courts**

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

### **What is a Court**

- (1) It 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.
- (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) Regular courts engaged in the administration of justice are organized into four (4) levels:
  - (a) First Level (MTCs, MeTCs, MCTCs) - which try and decide (1) criminal actions involving violations of city or municipal ordinances committed within their respective territorial jurisdiction and offenses punishable with imprisonment not exceeding six (6) years irrespective of the amount of fine and regardless of other imposable accessory or other penalties, and (2) civil actions including ejectment, recovery of personal property with a value of not more than P300,000 outside MM or does not exceed P400,000 in MM;
  - (b) Second Level ( RTCs, Family Courts) - courts of general jurisdiction; among the civil actions assigned to them by law are those in which the subject of litigation is incapable of pecuniary estimation, or involving title to or possession of real property where the assessed value of the property exceeds P20,000 outside MM or exceeds P50,000 in MM, except actions for ejectment (forcible entry and unlawful detainer), or where the demand exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and cost, or the value of the personal property or controversy exceeds P300,000 outside MM or exceeds P400,000 in MM. RTCs also exercise appellate jurisdiction, to review cases appealed from courts of the first level;

- (c) Third Level (Court of Appeals, Sandiganbayan) - CA is an appellate court, reviewing cases appealed to it from the RTC, on questions of fact or mixed questions of fact and law. Appeals to it decided by the RTC in the exercise of original jurisdiction are a matter of right; appeals with respect to cases decided by the RTC in the exercise of its appellate jurisdiction are a matter of discretion. Occasionally, CA may act as a trial court, as in actions praying for the annulment of final and executor judgments of RTCs on the ground of extrinsic fraud subsequently discovered, against which no other remedies lies.
- Sandiganbayan has jurisdiction over all criminal and civil cases involving graft and corrupt practices act, and such other offenses committed by public officers and employees including those in GOCCs in relation to their office. It also has exclusive appellate jurisdiction over final judgments, resolutions, or orders of RTCs whether in the exercise of their own original or appellate jurisdiction over criminal and civil cases committed by public officers or employees including those in GOCCs in relation to their office.
- (d) Fourth Level (Supreme Court)

### **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 over the decisions or orders of a lower court
- (2) MeTCs, MCTCs and MTCs are courts of original jurisdiction without appellate jurisdiction. 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) CA 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 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 the 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. SB was not directly created by the Constitution but by law pursuant to a constitutional mandate.

### **Principle of Judicial Hierarchy**

- (1) This is an ordained sequence of recourse to courts vested with concurrent jurisdiction, beginning from the lowest, on to the next highest, 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) 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.
- (3) 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.
- (4) 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.

### **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.

## **II. JURISDICTION**

Jurisdiction - the power and authority of the court to hear, try and decide a case.

### **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. 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) Acquired when the action is commenced by the filing of the complaint. This presupposes payment of the docket fees

### **How jurisdiction over defendant is acquired**

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.

- (1) 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.
- (2) Instances when appearance of 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.

### **Jurisdiction over the subject matter**

- (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 is 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: (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.

### **Jurisdiction versus exercise of jurisdiction**

- (1) Jurisdiction if the power or authority of the court. The exercise of this power or authority is the exercise of jurisdiction.

### **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 or 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.

### **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 (*Omicron vs. CA, GR 148004, January 22, 2007*).

### **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.
- (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*).

### **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.

### **Effect of estoppel on objection to jurisdiction**

- (1) The active participation of a party in a case is tantamount to 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. v. Estita, 449 SCRA 240; Mangaiag v. 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. v. Sycip, 469 SCRA 424; Concepcion v. Regalado, GR 167988, Feb. 6, 2007*).
- (2) The doctrine of estoppels 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 SC 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 v. 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 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 of 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 the Supreme Court**

- (1) Exclusive original jurisdiction in petitions for certiorari, prohibition and mandamus against the CA, COMELEC, COA, CTA, Sandiganbayan, NLRC
- (2) Concurrent original jurisdiction
  - (a) With Court of Appeals in petitions for certiorari, prohibition and mandamus against the RTC, CSC, Central Board of Assessment Appeals, Quasi-judicial agencies, and writ of kalikasan, all subject to the doctrine of hierarchy of courts.
  - (b) With the CA and RTC 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.
- (3) Appellate jurisdiction by way of petition for review on certiorari (appeal by certiorari under Rule 45) against CA, 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*.

- (4) 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.

#### **Jurisdiction of the Court of Appeals**

- (1) Exclusive original jurisdiction in actions for the annulment of the judgments of the RTC.
- (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 and RTC 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 SC, RTC and Sandiganbayan for petitions for writs of amparo and habeas data
- (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.

#### **Jurisdiction of the Court of Tax Appeals (under 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 countervailing 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 of 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 P1M 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.

#### **Jurisdiction of the Sandiganbayan**

- (1) Original jurisdiction in all cases involving
  - (a) Violations of RA 3019 (Anti-Graft and Corrupt Practices Act)
  - (b) Violations of RA 1379 (Anti-Ill-Gotten Wealth Act)
  - (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

#### **Jurisdiction of the Regional Trial Courts**

- (1) Exclusive original jurisdiction
  - (a) matters incapable of pecuniary estimation, such as rescission of contract
  - (b) title to, possession of, or interest in, real property with assessed value exceeding P20,000 (outside Metro Manila), or exceeds P50,000 in Metro Manila
  - (c) probate proceedings where the gross value of the estate exceeds P300,000 outside MM or exceeds P400,000 in MM
  - (d) admiralty or maritime cases where the demand or claim exceeds P300,000 outside MM or exceeds P400,000 in MM
  - (e) other actions involving property valued at more than P300,000 outside MM or more than P400,000 in MM
  - (f) criminal cases not within the exclusive jurisdiction of the Sandiganbayan
- (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 or 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 or association has no sufficient assets to cover its liabilities, but is under the management of a Rehabilitation Receiver or Management Committee.
- (4) Concurrent 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 Sandiganbayan in petitions for writs of habeas data and amparo
- (5) Appellate jurisdiction over cases decided by lower courts in their respective territorial jurisdictions
- (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.

### **Jurisdiction of Family Courts**

Under RA 8369, shall have exclusive original jurisdiction over the following cases:

- (1) Petitions for guardianship, custody of children and habeas corpus involving children
- (2) Petitions for adoption of children and the revocation thereof
- (3) 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
- (4) Petitions for support and/or acknowledgment
- (5) Summary judicial proceedings brought under the provisions of EO 209 (Family Code)
- (6) 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
- (7) Petitions for the constitution of the family home

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

### **Jurisdiction of Metropolitan Trial Courts/Municipal Trial Courts**

- (1) Criminal cases
- (a) Exclusive original jurisdiction
1. Summary proceedings 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 value of the personal property, estate, or amount the demand does not exceed P200,000 outside MM or does not exceed P400,000 in MM, exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs.
  2. Summary proceedings 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 MM or does not exceed P50,000 in MM
- (3) Special jurisdiction over petition for writ of habeas corpus and application for bail if the RTC Judge in area is not available
- (4) Delegated jurisdiction to hear and decide cadastral and land registration cases where there is no controversy provided the value of the land to be ascertained by the claimant does not exceed P100,000

### **Jurisdiction over small claims**

- (1) MTCs, MeTCs and MCTCs shall have jurisdiction over actions for payment of money where the value of the claim does not exceed P100,000 exclusive of interest and costs (*Sec. 2, AM 08-8-7-SC, Oct. 27, 2009*).
- (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).

### **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) SRP 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

- (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.

### Totality Rule

- (1) 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).

## III. ACTIONS

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*). 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. 3a*) 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.

## 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.

## 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*, 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 or 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) SC sums up the basic rules in *Biaco vs. Philippine Countryside Rural Bank, GR 161417, February 8, 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. And 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. 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.

#### IV. CAUSE OF ACTION (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).
- (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.

### 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 v. Varela, 92 Phil. 373*).

### 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.

### 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 v. 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 matter 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 v. China Banking Corp., GR 172175, Oct. 9, 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 v. Diaz, 331 SCRA 302*). The sufficiency of the statement of the COA 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. v. Roxas, 335 SCRA 540*).

### **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, July 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, Oct. 30, 1969*). The remedy of the defendant is to file a motion to dismiss. Hence, if the first action is pending when the second action is filed, the latter may be dismissed based on *litis pendencia*, 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.

### **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.

## **V. PARTIES IN CIVIL ACTION (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 this rule:

- (a) Contracts containing stipulations *pour autrui* 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, CC, provides that “creditors are protected in cases of contracts intended to defraud them.” Further, Art. 1318, CC, 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: (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 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 IP (*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 pertains to the parties allowed by the court as substitute parties to an action whereby the original parties become incapacitated or incompetent (*Sec. 18, Rule 3*). The substitution of a party depends on the nature of the action. If the action is personal, and a party dies pendent 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*).
- (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*).

### 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 or 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*).

### 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. Herbieta, 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. Ramoleta, 66 SCRA 425*).

### Class suit

- (1) A class suit is an action where one or more 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 or 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 Ban & 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*).

#### 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*).

#### 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*).

### VI. 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

- (1) Jurisdiction is the authority to hear and determine a case; venue is the place where the case is to be heard or tried;
- (2) Jurisdiction is a matter of substantive law; venue of procedural law;
- (3) Jurisdiction establishes a relation between the court and the subject matter; venue, a relation between plaintiff and defendant, or petitioner and respondent;
- (4) Jurisdiction is fixed by law and cannot be conferred by the parties; venue may be conferred by the act or agreement of the parties; and
- (5) Lack of jurisdiction over the subject matter is a ground for a *motu proprio* dismissal; venue is not a ground for a *motu proprio* dismissal except in cases subject to summary procedure.

#### 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*).

#### **Venue or personal actions**

- (1) All other actions 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, all at the option of the plaintiff (*Sec. 2, Rule 4*).

#### **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 by 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 or not 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, August 28, 2006*).

## **VII. PLEADINGS (Rules 6 - 13)**

- (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.

#### **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.

## 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, July 15, 2003*).

## Affirmative Defenses

- (1) Negative 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*)

## 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.

## 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 claim 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*).

### **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.

### **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*).

### **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 or 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.

### **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*).

### **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:

### **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) and IBP receipt, the purpose of which is to see to it that he pays his tax and membership due regularly



## 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 need 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 and 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 dismissable.
- (5) It is, 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 (*Sarmeinto vs. Zaratan, GR 167471, Feb. 5, 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 (*Pampang 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 nor 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, Aug. 3, 2006*). 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, May 4, 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.
- (4) 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*).

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

#### **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, April 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)**

##### **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 shows that the plaintiff's cause of action or 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 direct 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.

### Specific denials

- (1) There are three modes of specific denial which are contemplated by the Rules, namely:
  - (a) 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) By specifying so much of the averment in the complaint as is true and material and denying only the remainder;
  - (c) 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 126863, Jan. 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 166704, Dec. 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, Aug. 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*).

## Effect of failure to plead (Rule 9)

### Failure to plead defenses and objections

- (1) Defenses or objections not pleaded in either in a motion to dismiss or in the answer, they 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*).

### 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.

### 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*).

### 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. 33[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, March 31, 2006*).

## Actions where default are not allowed

- (1) Annulment of marriage;
- (2) Declaration of nullity of marriage; and
- (3) Legal separation

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)

### Payment of docket fees

- (1) 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, May 7, 1987*).
- (2) 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 (*PGCOR 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, Jan. 15, 2004*).
- (3) 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."
- (4) 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, Feb. 6, 2007*). Hence, nonpayment is a valid ground for the dismissal of an appeal (*MA Santander Construction vs. Villanueva, GR 136477, Nov. 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, Jan. 21, 2004*).

### 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*)

### **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*).

### **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 explanation 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*).

### **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.

### **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.

### **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*).

### **Amendment (Rule 10)**

#### **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*).

#### **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 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, Sept. 14, 1999*).

#### **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*).

## VIII. 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.
- (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, Oct. 23, 1997*).

### 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, Feb. 29, 1960*);
  - (d) Filing a motion for dissolution of attachment;
  - (e) Failure to question the invalid service of summons (*Navale vs. CA, GR 109957, Feb. 20, 1996*);
  - (f) Filing a motion for extension of time to file an answer.

### Personal service

- (1) It shall be served by handing a copy to the defendant in person, or if he refuses it, by tendering it to him (*Sec. 6, Rule 14*).

### **Substituted service**

- (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, June 29, 2005*).
- (4) Substituted service is not allowed in service of summons on domestic corporations (*Delta Motor Sales Corp. vs. Mangosing, 70 SCRA 598*).

### **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, Sept. 23, 2005*).

### **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*). 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. Bрева, 166 SCRA 516*).

## Rules on Summons on Defendant

- (1) Resident
  - (a) Present in the Philippines
    1. Personal service (*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. Personal service (*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]*).

## 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 news paper 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.

## 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 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*).

### 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*).

## IX. MOTIONS (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 17).

### Definition of Motion

- (1) A motion is an application for relief other than by a pleading (*Sec. 1, Rule 15*).

### 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*).

### 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 pendency*), (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.

### 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. Zaratan, GR 167471, Feb. 5, 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, Dec. 5, 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 Corporation vs. Flojo, 251 SCRA 87*).

### 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. 2, 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 115748, Aug. 7, 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 even 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*).
- (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 (c) or make such other order as it deems just (*Sec. 4*).

### 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, or 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, Dec. 11, 1989; Sec. 5*).

### Motion to Dismiss (Rule 16)

- (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.

### 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 (*lis pendens*);
  - (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.

- (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 143188, Feb. 14, 2007*).

#### **Resolution of motion**

- (1) After the hearing, the court may dismiss the action or claim, deny the motion, or 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 defendant 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 refile 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) 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 161309, Feb. 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 refileing 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 148174, June 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 prior judgment or by the statute of limitations, or payment, waiver, abandonment or extinguishment of the claim or unenforceability of the cause of action under the statute of frauds, the dismissal shall bar the refileing 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 as 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, Dec. 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 168557, Feb. 19, 2007*).
- (2) *Res judicata* comprehends two distinct concepts: (a) bar by a former judgment, and (b) conclusiveness of judgment (*Heirs of Wenceslao Tabia vs. CA, GR 129377 & 129399, Feb. 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, Sept. 5, 2006*).
- (3) 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.

#### **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.

## **X. DISMISSAL OF ACTIONS (Rule 17)**

#### **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 refilled 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 counterclaim 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.

### **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. Sec. 2, Rule 17 provides the following grounds for dismissal:
  - (a) Failure of the plaintiff, without justifiable reasons, to appear on the date 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 proprio* or upon a motion filed by the defendant (*Sec. 2, Rule 17*). The court may dismiss an action *motu proprio*:
  - (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*).

### **XI. PRE-TRIAL (Rule18)**

#### **Concept of pre-trial**

- (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.

#### **Nature and purpose**

- (1) The conduct of a pre-trial is mandatory. 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, March 6, 2002*).
- (2) 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*).

#### **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-trial (*Agulto vs. Tucson, 476 SCRA 395*).

#### **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*.

#### **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**

- (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 accuse (*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*).

Civil Pre-trial	Criminal Pre-trial
Mandatory	Mandatory
Presence of defendant and counsel mandatory	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 after trial

### Alternative Dispute Resolution (ADR)

- (1) 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, Aug. 18, 2006*).
- (2) 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, June 22, 2006*).

## XII. 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. Sandiganbayan, 253 SCRA 30; Rule 19*).
- (2) Intervention is merely a 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.

### 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:

- (1) A legal interest in the matter in litigation, the success of either of the parties in the action, or against both parties;
- (2) 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
- (3) 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 140058, Aug. 1, 2002*).

#### 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, July 11, 2002*).

#### Remedy for the denial of motion to intervention

- (1) The remedy of the aggrieved party is appeal. *Mandamus* will not lie except in case of grave abuse of discretion.

### XIII. 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 as the trial (*Black's Law Dictionary, 5<sup>th</sup> 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 in whose behalf the subpoena is issued fails to advance the reasonable cost of the production thereof (*Sec. 4*).
- (2) Subpoena *ad testificandum* may be quashed on the ground that the witness is not bound thereby. In either case, the subpoena may be quashed on the ground that the witness fees and kilometrage allowed by the Rules were not tendered when the subpoena was served (*Sec. 4*).

## XIV. 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 basis 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*).

## Depositions Pending Action (Rule 23)

### Depositions before action or pending appeal

### 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

- (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

### 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 (*Sec. 2, par. 1*).
- (2) 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*).

### **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 of 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*)

#### **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;
  - (d) If a physician fails or refuses to make such report, the court may exclude his testimony if offered at the trial;
  - (e) 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*).

## XV. 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*).

### 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 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*).

#### **Reversal of order**

- (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*).

#### **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*).

#### **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 or 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*).

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.

- (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*).

## **XVI. 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*).

### **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 movants 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 (*Radiowalth Finance Corp. vs. Del Rosario, 335 SCRA 288*).

#### **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**

- (1) In a civil case, leave of court is not required before filing a demurrer. In a criminal case, leave of court 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—since the motion is interlocutory. 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*).

## **XVII. JUDGMENTS AND FINAL ORDERS (Rules 34 - 36)**

#### **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, Nov. 14, 1989; Carcon Devt. Corp. vs. CA, GR 88218, Dec. 17, 1989*).

#### **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*).

#### **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*).

#### **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, Sept. 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.

#### **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*).

### **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 days 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.

### **Rendition of judgments and final orders**

- (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*).

### **Entry of judgment and final order**

- (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 executor (*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 executor. 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 executor (*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*).

## **XVIII. 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;
  - (b) Action to annul a judgment;
  - (c) Certiorari; and
  - (d) Collateral attack of a judgment.

### **Motion for New Trial or Reconsideration (Rule 37)**

#### **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; and
- (3) Award of excessive damages, or insufficiency of the evidence to justify the decision, or that the decision is against the law (*Sec. 1, Rule 37*).

#### **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 *Distilleria 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 movants has a “fresh period” of fifteen days from receipt or 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*).

#### 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*).

#### 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 38. 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 15-day period rule

- (1) If the motion is denied, the movants has 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, Sept. 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.

## Appeals in General

- (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, Dec. 13, 2005*). 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, Aug. 22, 2005*). 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) 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], BO 129; Rule 21[d], Interim Rules*);
  - (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. Aubga, 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 solidarity defendant who did not appeal is not affected by appeal of solidarity 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*).

### 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.

### Matters not appealable

- (1) No appeal may be taken from:
  - (a) An order denying a motion for new trial or a motion for reconsideration;
  - (b) An order denying a petition for relief or any similar motion seeking relief from judgment;
  - (c) An interlocutory order;
  - (d) An order disallowing or dismissing an appeal;
  - (e) 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;
  - (f) An order of execution;
  - (g) 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
  - (h) An order dismissing and 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, Feb. 6, 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.

### **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.

### **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 or 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*).

### **Period of appeal**

- (1) 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*).
- (2) 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*).

- (3) 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*).
- (4) 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*).
- (5) 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 trial 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*).

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	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 reckoned from the receipt of the order denying the motion for new trial or motion for reconsideration ( <i>Zayco vs. Himlo, GR 170243, April 16, 2008</i> )
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
Appeal by 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

## 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.

## Appeal from judgments or final orders of the MTC

- (1) An appeal from a judgment or final order of a 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) Rule 41 applies to appeals from the judgment or final order of the RTC in the exercise of its original jurisdiction. This appeal is called an “ordinary appeal”. Rule 42 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.

#### **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*.

#### **Appeal from judgments or final orders of the CTA**

- (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 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.

#### **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 45 by filing the petition within 30 days from notice (*Sec. 3, Rule 64*).

#### **Review of final orders of the CSC**

- (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 COA**

- (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*).

### Review of final orders of the Ombudsman

- (1) In administrative disciplinary cases, the ruling 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. If cannot, therefore, review the orders, directives or decisions of the OO in criminal or non-administrative cases (*Golangco vs. Fung, GR 147640-762, Oct. 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, Nov. 18, 2005*). The remedy is not a petition for review on *certiorari* under Rule 45.

### Review of final orders of the 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 45 within 60 days from notice of the decision. In observance of the doctrine of hierarchy of courts, the petition for *certiorari* should be filed in the CA (*St. Martin Funeral Homes vs. NLRC, GR 130866, Sept. 16, 1998*).

### 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 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.

### 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, Aug. 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*).

#### **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 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)**

##### **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*).

##### **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 refilled 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 use 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*).

## **XIX. EXECUTION, SATISFACTION AND EFFECT OF JUDGMENTS (Rule 39)**

### **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, 4554 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) 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, Feb. 14, 2007*).
- (2) 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, Jan. 30, 2006*).
- (3) Judgments and orders become final and executor 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*).
- (4) 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, Jan. 29, 2006*). Unlike judgments that are final and executor, 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, Oct. 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*).

## 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 executor 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.

## 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.

#### **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]*).

#### **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*).

#### **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.

#### **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.

### 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.

### 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:
  - (a) The property is levied;
  - (b) The claimant is a person other than the judgment obligor or his agent;

- (c) Makes an affidavit of his title thereto or right to the possession thereof stating the grounds of such right or title; and
- (d) Serves the same upon the officer making the levy and the judgment obligee.

#### 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) **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 Reinvidicatoria** - 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.

#### Rules on Redemption

- (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) The property may be again, and as often as a redemptioner is so disposed, similarly redeemed from any previous redemptioner within 60 days after the last redemption. Written notice of any



redemption must be given to the officer who made the sale and a duplicate filed with the registry of deeds of the place. If any assessments or taxes are paid by the redemptioner or if he has or acquires any lien other than that upon which the redemption was made, notice thereof must in like manner be given to the officer and filed with the registry of deeds. If such notice be not filed, the property may be redeemed without paying such assessments, taxes, or liens.

- (5) 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*).
- (6) 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*).
- (7) 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*).
- (8) 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*).
- (9) 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.

#### **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.

#### **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.

#### **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, June 27, 2006*).

## XX. 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*);
  - (b) Preliminary injunction (*Rule 58*);
  - (c) Receivership (*Rule 59*);
  - (d) Replevin (*Rule 60*); and
  - (e) Support *pendent lite* (*Rule 61*).

### Jurisdiction over provisional remedies

- (1) The courts 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 egis* 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.

#### 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 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. 1*).

#### Requisites

- (1) The issuance of an order/writ of execution 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, that a sufficient cause of action exists, that the case is one of those mentioned in Section 1, that there is no other sufficient security for the claim sought to be enforced by the action, and 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*).

### Rule on prior or contemporaneous service of summons

- (1) 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.
- (2) 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).

### Manner of attaching real and personal property; when property attached is claimed by third person

*Sec. 7. Attachment of real and personal property; recording thereof.* - 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.

- (10) Certain remedies available to a third person not party to the action but whose property is the subject of execution:
- (e) 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.
  - (f) 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*).
  - (g) 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*).
  - (h) Accion Reinvidicatoria - 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 movant makes 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 issue 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 20<sup>th</sup> 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) 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.

## 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 complained 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 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, Feb. 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
- (2a) 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*).



### **When writ may be issued**

- (1) The complaint in the action is verified, and shows facts entitling the plaintiff to the relief demanded; and
- (2) 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
- (2) The commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or
- (3) 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*).

### **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*).

### **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, Sept. 4, 1992; PPA vs. vs. Pier 8 Arrastre and Stevedoring 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
  - (a) 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;
  - (b) 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) Ruffled only after notice to and in the presence of the adverse party or the person to be enjoined.
  - (c) 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;
  - (d) 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;
  - (e) 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.
  - (f) TRO is automatically vacated upon expiration of the period and without granting of preliminary injunction;
  - (g) Effectivity is not extendible without need of any judicial declaration to that effect;
  - (h) No court shall have authority to extend or renew the same on the same ground for which it was issued.
- (3) Preliminary Injunction
  - (a) Hearing and prior notice to the party sought to be enjoined;
  - (b) 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) Ruffled only after notice to and in the presence of the adverse party or the person to be enjoined
  - (c) Applicant posts a bond
- (4) Final Injunction
  - (a) 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.

### **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 of 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. 2*).

### **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 when (a) its continuance is not justified by the facts and circumstances of the case (*Samson vs. Araneta, 64 Phil. 549*); or (b) then 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*).

### **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 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 distrained 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, or 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 3<sup>rd</sup> party claimant may vindicate his claim to the property, and the applicant may claim damages against such 3<sup>rd</sup> 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*).

## XXI. 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 declaratory relief. In 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 of 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* in 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 in 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;
    2. Review of adjudication of the COMELEC and COA;
    3. *Certiorari*, prohibition and *mandamus*;
    4. *Quo warranto*; and
    5. Contempt
  - (b) Special civil actions initiated by filing of a *Complaint*.

1. Interpleader;
2. Expropriation;
3. Foreclosure of real estate mortgage;
4. Partition; and
5. Forcible entry and unlawful detainer.

### **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.

#### 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.
- (9) 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

- (4) (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*).
- (4) 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.
- (5) 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, Oct. 5, 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 statutory 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*).

### **Review of Judgments and Final Orders or Resolution of the COMELEC and COA (Rule 64)**

- (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. Bottomline: 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 MtD;
  - (b) filing an answer after denial or service of a bill of particulars;
  - (c) filing a special civil action for certiorari from a decision of the Comelec or CoA after denial of a MfR or MNT. It does not apply to filing appeal from decisions of other entities after denial of a MfR or MNT. In such cases, either the parties have a fresh 15 days, or the balance.

### **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 <i>certiorari</i> . 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 filed the petition if the motion for reconsideration or new trial is denied, is 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, Jan. 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, May 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, Dec. 5, 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*).

## Definitions and distinctions

<b>Certiorari</b>	<b>Prohibition</b>	<b>Mandamus</b>
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 ( <i>Sec. 1, Rule 65</i> ).	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 ( <i>Sec. 2, Rule 65</i> ).	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 ( <i>Sec. 3, Rule 65</i> ).
Directed against a person exercising to 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 <u>without or in excess of</u> jurisdiction, or with grave abuse of discretion	Person or entity must have acted <u>without or in excess of</u> jurisdiction, or with grave abuse of discretion	Person must have neglected a ministerial duty or excluded another from a right or office

<b>Prohibition</b>	<b>Injunction</b>
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 the court acted without or in excess of jurisdiction	Does not involve a question of jurisdiction
<b>Prohibition</b>	<b>Mandamus</b>
To prevent an act by a respondent	To compel 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
<b>Mandamus</b>	<b>Quo warranto</b>
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 or 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.	The defendant unlawfully neglects the performance of the duty enjoined by 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.	There is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.

## When petition for *certiorari*, prohibition and *mandamus* is proper

Certiorari	Prohibition	Mandamus
<p>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.</p> <p>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</p>	<p>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.</p> <p>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</p>	<p>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.</p> <p>The petition shall also contain a</p>

shopping as provided in the third paragraph of section 3, Rule 46 ( <i>Sec. 1, Rule 65</i> ).	relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46. ( <i>Sec. 2, Rule 65</i> ).	sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46 ( <i>Sec. 3, Rule 65</i> ).
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### 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, Dec. 12, 2007*).

### *Certiorari* distinguished from Appeal by *Certiorari*; Prohibition and *Mandamus* distinguished from Injunction; when and where to file petition

<i>Certiorari</i> as a Mode of Appeal (Rule 45)	<i>Certiorari</i> as a Special Civil Action (Rule 65)
Called petition for review on <i>certiorari</i> , 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, and not a part of the appellate process but an independent action.
Seeks to review final judgments or final orders;	May be directed against an interlocutory order of the court or where not 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 of the denial of petitioner's motion for reconsideration or new trial;	Filed not later than 60 days from notice of judgment, order or resolution sought to be assailed and in case a motion for 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 with only the Supreme Court	May be filed with the Supreme Court, Court of Appeals, Sandiganbayan, or Regional Trial Court
SC may deny the decision <i>motu proprio</i> 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.

- (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*).

**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 ( <i>Sec. 2, Rule 65</i> ).	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 ( <i>Sec. 3, Rule 65</i> ).	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) When the issue is one purely of law;

- (7) When there is urgency to decide upon the question and any further delay would prejudice the interests of the government or of the petitioner;
- (8) Where the subject matter of the action is perishable;
- (9) When order is a patent nullity, as where the court *a quo* has no jurisdiction or there was no due process;
- (10) When questions have been duly raised and passed upon by the lower court;
- (11) When is urgent necessity for the resolution of the question;
- (12) When Motion for Reconsideration would be useless, e.g. the court already indicated it would deny any Motion for Reconsideration;
- (13) In a criminal case, where relief from order of arrest is urgent and the granting of such relief by the trial court is improbable;
- (14) Where the proceedings was *ex parte* or in which the petitioner had no opportunity to object;
- (15) When petitioner is deprived of due process and there is extreme urgency for urgent relief; and
- (16) When issue raised is one purely of law or public interest is involved;

#### 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]*).

#### 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
Regional Trial Court	If the petition relates to an act or an omission of an MTC, corporation, board, officer or person
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
<i>As amended by AM No. 07-7-12-SC, Dec. 12, 2007</i>	

- (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 148029, Sept. 24, 2002; Estrera vs. CA, GR 154235, Aug. 16, 2006*).



### Effects of filing of an unmeritorious petition

- (1) The Court may impose *motu proprio*, based on *res ipsa loquitur*, other disciplinary sanctions or measures on erring lawyers for patently dilatory an 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) 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*).

### Distinguish 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 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*).

#### **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.

#### **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) 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.
- (2) Determination of just compensation through the court-appointed commissioners (*National Power Corporation vs. Joson, 206 SCRA 520*).

### **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 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*).

### **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 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.

### **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*).

#### **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, CC*).
- (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*).

#### **Judgment on foreclosure for payment or sale**

- (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**

- (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*).

### **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*). 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 mortgagore who is not the debtor in the principal obligation, mortgagee may have to file a separate suit against the principal debtor.

### **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.

### 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;	Mortgagee 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.

### Equity of redemption versus right of redemption

Equity of Redemption	Right of Redemption
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 ( <i>Sec. 3, Act 3135</i> ), 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 unencumbered. 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 of 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

## **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 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*).

### **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**

*Sec. 3. 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. 4. 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. 5. 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. 6. 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. 7. 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.

#### **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, in so far 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)

- (b) 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]*).
- (c) *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.

### Definitions and Distinction

Forcible Entry	Unlawful Detainer
The possession of the defendant is unlawful from the beginning; issue is which party has prior <i>de facto</i> possession;	The possession of the defendant is 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	The plaintiff need not have been in prior physical

physical possession of the premises until he was deprived by the defendant; and	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.

**Distinguished from *accion publiciana* and *accion reivindicatoria***

<b>Accion Publiciana</b>	<b>Accion Reivindicatoria</b>
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 <i>accion publiciana</i> ( <i>Valdez vs. CA, GR 132424, May 2, 2006</i> ).	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 <i>jus possessionis</i> , which is the right to the possession of the real property independent of ownership.	The basis for the recovery of possession is ownership itself.

**How to determine jurisdiction in *accion publiciana* and *accion reivindicatoria***

- (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. Cordillera Caraballo Mission, GR 155343, Sept. 2, 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, May 2, 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]*).

**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.

### **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*).

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, Feb. 9, 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. Riazon, 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, Aug. 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, Feb. 6, 2007*).

**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;
Acts constituting direct contempt are: a) Misbehavior in the presence of or so near the court as to obstruct or interrupt the proceedings before it; b) Disrespect toward the court; c) Offensive personalities towards others; d) Refusal to be sworn as a witness or to answer as a witness; e) Refusal to subscribe an affidavit or deposition when lawfully required to do so ( <i>Sec. 1</i> ); f) Acts of a party or a counsel which constitute willful and deliberate forum shopping ( <i>Sec. 1, Rule 7</i> ); g) Unfounded accusations or allegations or words in a pleading tending to embarrass the court or to bring it into disrepute ( <i>Re: Letter dated 21 Feb. 2005 of Atty. Noel Sorreda, 464 SCRA 32</i> );	Acts constituting indirect contempt are: (a) Misbehavior 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 ( <i>Sec. 3</i> );

**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:
  - (b) Misbehavior 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: CATCH AGED SHARC (Rules 72 - 109)
  - (a) Change of Name
  - (b) Adoption
  - (c) Trustees
  - (d) Constitution of Family Home
  - (e) Hospitalization 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 of Deceased Persons
  - (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.

**I. SETTLEMENT OF ESTATE OF DECEASED PERSONS (Rules 73 - 91)**

**Settlement of Estate of Deceased Persons, Venue and Process (Rule 73)**

**Which court has jurisdiction**

- (1) If the decedent is an inhabitant of the Philippines at the time of his death, whether a citizen of 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 P200,000 (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.

**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 as 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, Nov. 2, 2000*).

### **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*).

### **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 with the Register of Deeds; and
  - (e) The fact of the extrajudicial settlement or administration shall be published in a newspaper of general circulation.

### **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*).

### **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*).

### 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 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, May 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) 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 be 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*).

### **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*).

#### **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*).

#### **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 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*).

### **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.

### **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 be 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 payments 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 (*Solvio 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 132*).

## II. 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 <i>cestui que trust</i> , who acquires no beneficial interest in the estate; he merely took the legal estate only 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 vest 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 incompetent or refuses to serve as such.
An association or corporation authorized to conduct the business of a trust company in the Philippines may appointed as trustee of an estate in the same manner as an individual ( <i>Art. 1060, CC</i> ).	An association or corporation authorized to conduct the business of a trust company in the Philippines may appointed as executor or administrator of an estate in the same manner as an individual ( <i>Art. 1060, CC</i> ).
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 ( <i>Rule 84</i> ).
<u>Grounds for removal of trustee:</u> <ol style="list-style-type: none"> <li>(a) Insanity;</li> <li>(b) Incapability of discharging trust or evidently unsuitable therefor (<i>Sec. 8, Rule 98</i>);</li> <li>(c) Neglect in the performance of his duties;</li> <li>(d) Breach of trust displaying a want of fidelity, not mere error in the administration of the trust;</li> </ol>	<u>Grounds for removal:</u> <ol style="list-style-type: none"> <li>(a) Neglect to render an account and settle the estate according to law;</li> <li>(b) Neglect to perform an order or judgment of the court;</li> <li>(c) Neglect to perform a duty expressly provided by these rules;</li> <li>(d) Absconds, or becomes insane, or</li> </ol>

<ul style="list-style-type: none"> <li>(e) Abuse and abandonment of the trust;</li> <li>(f) Refusal to recognize or administer the trust;</li> <li>(g) Failure or neglect or impropriety in investment of the trust estate as to give rise to waste of trust property;</li> <li>(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.</li> </ul>	<p>otherwise incapable or unsuitable to discharge trust;</p> <ul style="list-style-type: none"> <li>(e) Fraud or misrepresentation (<i>Cobarrubias vs. Dizon, 76 Phil. 209</i>).</li> </ul>
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### 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 an 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 Editoin*).
- (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 was 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 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;
  - (b) Petitions for guardianship, custody of children, *habeas corpus* in relation to the latter;
  - (c) Petitions for adoption of children and the revocation thereof;
  - (d) 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;
  - (e) Actions for support and acknowledgment;
  - (f) Summary judicial proceedings brought under the provisions of EO 209, the Family Code;
  - (g) 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;
  - (h) Petitions for the constitution of family home;
  - (i) Cases against minors cognizable under the Dangerous Drugs Act, as amended;
  - (j) Violations of RA 7610, the Anti-Child Abuse Law, as amended by RA 7658;
  - (k) 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 require.
- (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.

**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*.

**Distinguish domestic adoption from inter-country adoption**

Domestic Adoption	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 the issuance of the adoption decree takes place in the Philippines.	Applies to adoption of a Filipino child in a foreign country, where the petition for adoption is filed, the supervised trial custody 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	A. Filipino Citizens

<ol style="list-style-type: none"> <li>1) Of legal age;</li> <li>2) In possession of full civil capacity and legal rights;</li> <li>3) Of good moral character;</li> <li>4) Has not been convicted of any crime involving moral turpitude;</li> <li>5) Emotionally and psychologically capable of caring for children;</li> <li>6) In a position to support and care for his/her children in keeping with the means of the family;</li> <li>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</li> <li>8) Permanent resident of the Philippines.</li> </ol> <p>B. Aliens</p> <ol style="list-style-type: none"> <li>1) Same qualifications as above, and in addition:</li> <li>2) His/her country has diplomatic relations with the Republic of the Philippines;</li> <li>3) His/her government allows the adoptee to enter his/her country as his/her adopted son/daughter;</li> <li>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</li> <li>5) Has been certified by his/her diplomatic or consular office or any appropriate 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 citizen seeks to adopt a relative within the 4<sup>th</sup> 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 4<sup>th</sup> degree of consanguinity or affinity of the Filipino spouse.</li> </ol>	<ol style="list-style-type: none"> <li>1) Permanent resident of a foreign country;</li> <li>2) Has the capacity to act and assume all rights and responsibilities of parental authority under Philippine laws;</li> <li>3) Has undergone the appropriate counseling from an accredited counselor in country of domicile;</li> <li>4) Has not been convicted of a crime involving moral turpitude;</li> <li>5) Eligible to adopt under Philippine laws;</li> <li>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;</li> <li>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;</li> <li>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;</li> <li>9) Possesses all the qualifications and none of the disqualifications provided in the ICAA and in other applicable Philippine laws;</li> <li>10) At least 27 years of age at the time of the application; and</li> <li>11) At least 16 years older than the child to be adopted at the time of application, unless (a) adopted is the parent by nature of the child to be adopted; or (b) adopter is the spouse of the parent by nature of the child to be adopted.</li> </ol> <p>B. Aliens</p> <ol style="list-style-type: none"> <li>1) At least 27 years of age at the time of the application;</li> <li>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;</li> <li>3) Has the capacity to act and assume all rights and responsibilities of parental authority under his national laws;</li> <li>4) Has undergone the appropriate counseling from an accredited counselor in his/her country;</li> <li>5) Has not been convicted of a crime involving moral turpitude;</li> <li>6) Eligible to adopt under his/her national law;</li> <li>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;</li> <li>8) Agrees to uphold the basic rights of the child as embodied under Philippine laws, the UN</li> </ol>
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	<p>Convention on the Rights of the Child, and to abide by the rules and regulations issued to implement the provisions of the ICAA;</p> <p>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</p> <p>10) Possesses all the qualifications and none of the disqualifications provided in the ICAA and in other applicable Philippine laws.</p>
<b>Requirement of Joint Adoption by Spouses</b>	<b>Requirement of Joint Adoption by Spouses</b>
<p>General rule: husband and wife shall jointly adopt; otherwise, the adoption shall not be allowed.</p> <p>Exceptions:</p> <ol style="list-style-type: none"> <li>1) If one spouse seeks to adopt the legitimate son/daughter of the other;</li> <li>2) If one spouse seeks to adopt his/her own illegitimate son/daughter but the other spouse must give his/her consent;</li> <li>3) If the spouses are legally separated from each other.</li> </ol>	<p>Rule: if the adopter is married, his/her spouse must jointly file for the adoption.</p>
<b>Procedure</b>	<b>Procedure</b>
<p><u>Where to file application:</u> In the Family Court of the province or city where the prospective parents reside.</p> <p><u>After filing:</u> The petition shall not be set for hearing without a case study report by a licensed social worker.</p> <p><u>Supervised Trial Custody:</u></p> <ol style="list-style-type: none"> <li>a) Temporary parental authority is vested in prospective adopter;</li> <li>b) Period is at least 6 months, but may be reduced by the court <i>motu proprio</i> or upon motion;</li> <li>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 4<sup>th</sup> 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 4<sup>th</sup> degree of consanguinity</li> </ol>	<p><u>Where to file application:</u> 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.</p> <p><u>After filing:</u> (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.</p> <p><u>Supervised Trial Custody:</u></p> <ol style="list-style-type: none"> <li>a) This process takes place outside of the country and under the supervision of the foreign adoption agency;</li> <li>b) For a period of 6 months;</li> <li>c) If unsuccessful, ICAB shall look for another prospective applicant. Repatriation of the child is to be resorted only as a last resort;</li> <li>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.</li> </ol>

<p>or affinity of the Filipino spouse.</p> <p><u>Decree of Adoption</u>: Issued by Philippine Family Court.</p> <p><u>Consent Required</u>: 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 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 or 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.</p>	<p><u>Decree of Adoption</u>: Issued by a foreign court.</p> <p><u>Consent Required</u>:</p> <p>(1) Written consent of biological or adopted children above 10 years of age, in the form of sworn statement is required to be attached to the application to be filed with the FC or ICAB;</p> <p>(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.</p>
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### Domestic Adoption Act (RA 8552; AM 02-06-02-SC)

#### 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 Philippine 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*).

#### **Writ of 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 (*Ballentine's Law Dictionary, 2<sup>nd</sup> 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 [Oct. 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, Aug. 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 (*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, Jan. 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.

### 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 unequivocally:
  - (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; <i>(Lee Yick Hon vs. Collector of Customs, 41 Phil. 563)</i>	Requires the respondent to appear and show cause why the peremptory writ should not be granted

**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, May 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, Nov. 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***

<b>Writ of <i>Habeas Corpus</i></b>	<b>Writ of <i>Amparo</i></b>	<b>Writ of <i>Habeas Data</i></b>
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.
<u>Who may file petition:</u>  By the party for whose relief it is intended, or by some person on his behalf.	<u>Who may file (in order):</u> 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 4 <sup>th</sup> civil degree of consanguinity or affinity; c) Any concerned citizen, organization, association or institution, if no known member of immediate family.	<u>Who may file (in order):</u> 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 4 <sup>th</sup> civil degree of consanguinity or affinity.
<u>Where to file:</u> RTC, enforceable within its area of jurisdiction. CA or SC, enforceable anywhere in the Philippines.	<u>Where to file:</u> RTC, Sandiganbayan, CA, SC; Writ is enforceable anywhere in the Philippines.	<u>Where to file:</u> RTC, SC, CA, Sandiganbayan; 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.
<u>When issued:</u> Forthwith when a petition therefor is presented and it appears that the writ ought to issue,	<u>When issued:</u> 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.	<u>When issued:</u> 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.
<u>Contents of verified petition:</u> (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	<u>Contents of verified petition:</u> 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,	<u>Contents of verified petition:</u> 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

<p>the person who is served with the writ shall be deemed the person intended;</p> <p>(c) The place where he is so imprisoned or restrained, if known;</p> <p>(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</p>	<p>specifying names, personal circumstances and addresses of investigating authority or individuals, as well as manner and conduct of investigation together with any report;</p> <p>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</p> <p>e) The relief prayed for.</p> <p>f) May include general prayer for other just and equitable reliefs.</p>	<p>databases, government office, and the person in charge, in possession or in control of the data or information, if known;</p> <p>e) Reliefs prayed for, which may include the updating, rectification, suppression or destruction of the database or information or files kept by respondent;</p> <p>f) In case of threats, relief may include a prayer for an order enjoining the act complained of; and</p> <p>g) Such other reliefs as are just and equitable.</p>
<p><u>Contents of return:</u></p> <p>a) Whether he has or has not the party in his custody or power, or under restraint;</p> <p>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;</p> <p>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;</p> <p>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.</p>	<p><u>Contents of return:</u></p> <p>a) Lawful defenses;</p> <p>b) Steps or actions taken to determine whereabouts of aggrieved party;</p> <p>c) All relevant information pertaining to threat, act or omission against aggrieved party;</p> <p>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.</p>	<p><u>Contents of return:</u></p> <p>a) Lawful defenses such as national security, state secrets, privileged communications, confidentiality of source of information;</p> <p>b) Disclosure of data/info about petitioner, nature of data/info, purpose of collection;</p> <p>c) Steps or actions taken by respondent to ensure security and confidentiality of data or information;</p> <p>d) Currency and accuracy of data or information;</p> <p>e) Other allegations relevant to resolution of the proceedings.</p> <p>* A general denial of the allegations in the petition is not allowed.</p>
	<p><u>Effects of failure to file return:</u> The court, justice or judge shall proceed to hear the petition <i>ex parte</i>.</p>	<p><u>Effects of failure to file return:</u> The court, justice or judge shall proceed to hear the petition <i>ex parte</i>, granting the petitioner such relief as the petition may warrant unless the court in its discretion requires petitioner to submit evidence.</p>
	<p><u>Procedure for hearing:</u></p>	<p><u>Procedure for hearing:</u></p>

	<p>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.</p> <p>The hearing shall be from day to day until completed and given the same priority as petitions for <i>habeas corpus</i>.</p>	<p>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.</p>
	<p><u>Interim reliefs available before final judgment:</u></p> <p>a) Temporary Protection Order - protected in a government agency or by an accredited person or private institution capable of keeping and securing their safety;</p> <p>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;</p> <p>c) Production Order - to require respondents to produce and permit inspection, copying or photographing of documents, papers, books, accounts, letters, photographs, objects or tangible things that contain evidence.</p>	(Not applicable)
	<p><u>Effect of filing criminal action:</u> 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 <i>amparo</i>.</p>	<p><u>Effect of filing criminal action:</u> 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 <i>habeas data</i>.</p>
<p><u>Appeal:</u> To the SC under Rule 45, within 48 hours from notice of judgment (<i>Tan Chin Hui vs. Rodriguez, GR 137571, Sept. 21, 2000</i>). A writ of <i>habeas corpus</i> does not lie where petitioner has the remedy of appeal or <i>certiorari</i> 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</p>	<p><u>Appeal:</u> To the SC under Rule 45, within 5 days from notice of adverse judgment, to be given the same priority as <i>habeas corpus</i> cases.</p>	<p><u>Appeal:</u> To the SC under Rule 45, within 5 days from notice of judgment or final order, to be given the same priority as <i>habeas corpus</i> and <i>amparo</i> cases.</p>

irregularities in the proceedings of a court having jurisdiction over the person and the subject matter ( <i>Galvez vs. CA, GR 114046, Oct. 24, 1994</i> ).		
	<p><u>Quantum of proof:</u>          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.</p>	

**Rules on Custody of Minors and Writ of *Habeas Corpus* in Relation to Custody of Minors (AM No. 03-04-04-SC)**

- (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*).

**Writ of Amparo (AM No. 07-9-12-SC)**

Coverage; Distinguish from habeas corpus and habeas data; Who may file; Contents of return; Effects of failure to file return; Procedure for hearing; Institution of separate action; Effect of filing of a criminal action; Consolidation; Interim reliefs available to petitioner and respondent; Quantum of proof in application for issuance of writ of *Amparo*

- (1) See table above.

### Differences between Amparo and search warrant

Writ of Amparo	Search Warrant
SEC. 6. <i>Issuance of the Writ.</i> - 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. <i>Requisites for issuing search warrant.</i> - 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.

### Omnibus waiver rule

*Defenses Not Pleaded Deemed Waived.* – All defenses shall be raised in the return, otherwise, they shall be deemed waived (*Sec. 10*).

### 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) See table above.

### Instances when petition 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*).

### 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	By a person interested in any acts, event, order or decree

	having direct and personal interest in the correction	
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 ( <i>Republic vs. Valencia, 141 SCRA 462</i> ).
<p>Grounds:</p> <p>(a) Name is ridiculous, dishonorable or extremely difficult to write or pronounce;</p> <p>(b) Change is a legal consequence of legitimation or adoption;</p> <p>(c) Change will avoid confusion;</p> <p>(d) One has continuously used and been known since childhood by a Filipino name and was unaware of alien parentage;</p> <p>(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</p> <p>(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 (<i>Republic vs. Hernandez, 68 SCAD 279</i>); <i>Republic vs. Avila, 122 SCRA 483</i>).</p>	<p>Grounds:</p> <p>a) First name or nickname is found to be ridiculous, tainted with dishonor or extremely difficult to write or pronounce;</p> <p>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;</p> <p>c) Change will avoid confusion.</p>	<p>Grounds:</p> <p>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.</p>
Order for hearing to be published once a week for three consecutive weeks in a	Petition shall be published at least once a week for two consecutive weeks in a	Order shall also be published once a week for three consecutive weeks in a

newspaper of general circulation in the province.	newspaper of general circulation. Also to be posted in a conspicuous place for ten consecutive days.	newspaper of general circulation in the province, and court shall cause reasonable notice to 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

- (g) When the name is ridiculous, dishonorable or extremely difficult to write or pronounce;
- (h) When the change is a legal consequence of legitimation or adoption;
- (i) When the change will avoid confusion;
- (j) When one has continuously used and been known since childhood by a Filipino name and was unaware of alien parentage;
- (k) 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
- (l) 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*).

#### 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*).

### **Cancellation or Correction of Entries in the Civil Registry (Rule 108)**

#### **Entries subject to cancellation or correction under Rule 108, in relation to RA 9048**

- (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*).

### **Appeals in Special Proceeding (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**

Distinguish Jurisdiction over subject matter from jurisdiction over person of the accused

Jurisdiction over 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 ( <i>MRR vs. Atty. General</i> )

- (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*).

**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*)

**Jurisdiction of Criminal courts**

Court	Original	Exclusive Appellate
<b>Supreme Court</b>	<p><u>Exclusive:</u> Petitions for certiorari, prohibition and mandamus against the CA and Sandiganbayan.</p> <p><u>Concurrent:</u> 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; c) with Sandiganbayan: petitions for mandamus, prohibition, certiorari, <i>habeas corpus</i>, injunction and ancillary writs in aid of its appellate jurisdiction and over petitions of similar nature, including <i>quo warranto</i> arising or that may arise in cases filed or which may be filed under EO Nos.</p>	<p><u>By Appeal:</u> a) from the RTC in all criminal cases involving offenses for which the penalty is <i>reclusion perpetua</i> or life imprisonment, and those involving other offenses which, although not so punished, arose out of the same occurrence or which may have been committed by the accused on the same occasion; b) Automatic review where death penalty is imposed.</p> <p><u>By Petition for Review on Certiorari:</u> a) from the Court of Appeals; b) from the Sandiganbayan; c) from the RTC where only an error or question of law is involved.</p>

	1, 2, 14 and 14-A.	
<b>Court of Appeals</b>	<p><u>Exclusive:</u> Actions for annulment of judgments of the RTC</p> <p><u>Concurrent:</u> 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.</p>	<p><u>By Appeal:</u> From the RTC in cases commenced therein, except those appealable to the SC or the Sandiganbayan;</p> <p><u>By Petition for Review:</u> From the RTC in cases appealed thereto from the lower courts and not appealable to the Sandiganbayan</p>
<b>Sandiganbayan</b>	<p><u>Exclusive:</u> 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; c) Criminal cases filed pursuant to and in connection with EO Nos. 1, 2, 14, and 14-A,</p>	<p><u>By Appeal:</u> a) from the RTC in cases under PD 1606, as amended by PD 1861, whether or not the cases were decided by them in the exercise of their original or appellate jurisdictions;</p>
<b>Regional Trial Courts</b>	All criminal cases which are not within the exclusive jurisdiction of any court, tribunal or body.	All cases decided by lower courts in their respective territorial jurisdictions.
<b>Metropolitan, Municipal and Municipal Circuit Trial Courts</b>	<p><u>Original:</u> a) Violations of city or municipal ordinances committed within their respective territorial jurisdictions; 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; and 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</p>	<p style="text-align: center;"><b>Summary Procedure</b></p> <p>a) Traffic violations; b) Violations of the rental law; c) Violations of city or municipal ordinances; and d) All other offenses where the penalty does not exceed 6 months imprisonment and/or P1,000 fine, irrespective of other penalties or civil liabilities arising therefrom, and in offenses involving damage to property through criminal negligence where the imposable fine does not exceed P10,000.</p>

	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.	
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### When injunction may be issued to restrain criminal prosecution

- (1) General Rule: Criminal prosecution may not be restrained or stayed by injunction.
- (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)*).

### 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*).
- (1) 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 (*Secs. 1 and 7, Rule 112*).

#### Who may file them, crimes that cannot be prosecuted *de officio*

- (a) 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*).

- (b) Art. 344 of the Revised Penal Code refers to crimes which cannot be prosecuted *de officio*: 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 of 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 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 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 EO 1, 2, 14 and 14-A, issued in 1986."

### 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 wherein 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.

### **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*).

### **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**

- (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 when 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*).

### **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*).

### **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*).

### **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.

#### **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

#### **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 -
  - 1) Civil action suspended, in whatever stage it may be found before judgment on the merits, until final judgment is rendered in the criminal action.
  - 2) Civil action may, upon motion of the offended party, be consolidated with the criminal action in the court trying the criminal action
    - a) Evidence already adduced in the civil action shall be deemed automatically reproduced in the criminal action
    - b) 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.
  - 3) 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*).

Rule 3, Sec. 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 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.

Rule 3, Sec. 20. *Action on contractual money claims.* – 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.

Rule 87, Sec. 1. *Actions which may and which may not be brought against executor or administrator.* - No action upon a claim for the recovery of money or debt or interest thereon shall be commenced against the executor or administrator; but actions 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 him.

Rule 39, Sec. 7. *Execution in case of death of party.* - In case of the death of party, execution may issue or be enforced in the following manner:

- (a) In case of the death of the judgment obligee, upon the application of his executor or administrator, or successor in interest;
- (b) In case of the death of the judgment obligor, against his executor or administrator or successor in interest, if the judgment be for the recovery of real or personal property, or the enforcement of the lien thereon;
- (c) In case of the death of the judgment obligor, after execution is actually levied upon any of his property, the same may be sold for the satisfaction of the judgment obligation, and the officer making the sale shall account to the corresponding executor or administrator for any surplus in his hands.

### 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 of civil actions.

Exceptions:

- (a) independent civil actions
- (b) 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 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, Aug. 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, Jan. 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 proprio* 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 (*Niñal vs. Badayog, GR 133778, March 14, 2000*).

### **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*).

### **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, Aug. 4, 1994*). It is also cured by submitting himself to arraignment (*People vs. Hubilo, 220 SCRA 389*).

#### **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]*).

### 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, Oct. 3, 2005*).

### 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 proprio* 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*).

#### **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, April 7, 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*).

### 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*).

### 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 be used in making an arrest. The person arrested shall not be subject to a greater restraint than is necessary for his detention (*Sec. 2*).

### 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 112 (*Sec. 5*).

### 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*).

#### 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*).



## 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*).

### 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, April 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*).

## 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 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 137681, Jan. 31, 2002*).
- (2) 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, Feb. 8, 1994*).
- (3) 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, April 18, 1995*).

### **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*, '07 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, Jan. 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 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).
- (3) 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.

### **Rights of the Accused (Rule 115)**

#### **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*).

### **Rights of persons under Custodial Investigation**

- (1) The rights of an accused person under in-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, July 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, May 11, 1999; People vs. Principe, GR 135862, May 2, 2002*).

### **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 double

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*).

#### **Accused plead 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 length 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, Mar. 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, April 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, Jan. 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*).

#### **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.

### 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;
    - 1) 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.
    - 2) By service of the sentence;
    - 3) By amnesty, which completely extinguishes the penalty and all its effects;
    - 4) By absolute pardon;
    - 5) By prescription of the crime;
    - 6) By prescription of the penalty;
    - 7) By the marriage of the offended woman in
      - a) Seduction
      - b) abduction or
      - c) 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; (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;	(1) Insufficiency of evidence

	<p>(e) That it does not conform substantially to the prescribed form;</p> <p>(f) That more than one offense is charged except when a single punishment for various offenses is prescribed by law;</p> <p>(g) That the criminal action or liability has been extinguished;</p> <p>(h) That it contains averments which, if true, would constitute a legal excuse or justification; and</p> <p>(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 (<i>Sec. 3</i>).</p>	
Effect if granted	<p>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 (<i>Sec. 5</i>).</p> <p>The remedy of prosecution is to amend the information to correct the defects thereof, except on the grounds of (g) and (j); of the prosecution may appeal the quashal of information or complaint</p>	<p>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.</p>
Effect if denied	<p>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 denial of the motion to quash (<i>Lalican vs. Vergara, 276 SCRA 518</i>).</p>	<p>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 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 (<i>De Carlos vs. CA, 312 SCRA 397</i>).</p>
Remedies if denied	<p>The order denying the motion to quash is interlocutory and therefore not appealable, nor can it be the subject of a petition for <i>certiorari</i>.</p>	<p>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 <i>certiorari</i> before judgment.</p>

- (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
- (2) 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, Jan. 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*).

#### Double Jeopardy

- (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, Aug. 10, 1985; Navallo vs. Sandiganbayan, 53 SCAD 294, July 18, 1994*).

- (1) 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*).

### **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'être* 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. Lacosn, GR 149453, April 1, 2003*).

### **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, 5<sup>th</sup> 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*).

### **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**

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.”*

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.

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.

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-affle 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-affle 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.

#### Trial (Rule 119)

- (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 dated Sept. 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, Sept. 1, 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*).



### **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*).

### **Demurrer to Evidence**

- (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*).

### **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*).

### **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*).

**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*).

**New Trial or Reconsideration (Rule 121)**

MNT or MR in Criminal Cases	MNT or MR in Civil Cases
Either on motion of accused, or the court motu proprio with consent of the accused	Must be upon motion of a party, can't be motu proprio
Grounds for MNT - errors of law or irregularities committed during the trial, or newly discovered evidence	Grounds for MNT - FAME, or newly discovered evidence
Ground for MR - error of law or 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
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### 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*).

### 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*).

### 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*).

### Application of *Neypes* Doctrine in Criminal Cases

- (1) If the motion is denied, the movants has 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, Sept. 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

### **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*).

### **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*).

### **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 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*).

**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*).

**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 ( <i>Sec. 1, Rule 126</i> ).	Arrest is the taking of a person into custody in order that he may be bound to answer for the commission of an offense ( <i>Sec. 1, Rule 113</i> ).
<u>Requisites:</u> 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 ( <i>Sec. 4, Rule 126</i> ).	<u>Requisites for arrest warrant issued by RTC judge under Sec. 5, Rule 112:</u> (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

	<p>(d) In case of doubt on the existence of probable cause</p> <ol style="list-style-type: none"> <li>1) The judge may order the prosecutor to present additional evidence within 5 days from notice; and</li> <li>2) The issue must be resolved by the court within 30 days from the filing of the complaint of information</li> </ol>
<p><u>Search or seizure without warrant, when lawful:</u></p> <ol style="list-style-type: none"> <li>(a) Consented search;</li> <li>(b) As an incident to a lawful arrest;</li> <li>(c) Searches of vessels and aircrafts for violation of immigration, customs and drug laws;</li> <li>(d) Searches of moving vehicles;</li> <li>(e) Searches of automobiles at borders or constructive borders;</li> <li>(f) Where the prohibited articles are in plain view;</li> <li>(g) Searches of buildings and premises to enforce fire, sanitary and building regulations;</li> <li>(h) "Stop and frisk" operations;</li> <li>(i) Exigent and emergency circumstances (in times of war and within the area of military operation)</li> </ol>	<p><u>Arrest without warrant, when lawful:</u></p> <ol style="list-style-type: none"> <li>(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;</li> <li>(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</li> <li>(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 (<i>Sec. 5, Rule 113</i>).</li> </ol>

**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*).

**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 (*20<sup>th</sup> Century Fox Film Corp. vs. CA, GR 76649-51, 08/19/88*). 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*).

### 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*).

### 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. Salangit, 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*).

### 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*).

**a. 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. Pano, 147 SCRA 500*).

**b. 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, 07/25/94*).

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*).

**c. 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*).

**d. 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*).

**e. 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*).

**f. 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*).

**g. Enforcement of Custom Laws** - For the enforcement of the customs and tariff laws, person deputized by the Bureau of Customs can affect 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 (*9Sec. 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 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 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.

### **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.

## 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 authorize3d 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. EVIDENCE (Rules 128 - 134)

### I. 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 *suces 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*).

A matter may also be proved by means of affidavit, such as in motions based on facts not appearing on record, in cases covered by the Rules on Summary Procedure, and those filed in administrative or quasi-judicial bodies.

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*).

#### 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*).

#### Evidence in Civil Cases Versus 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 ( <i>Sec. 1, Rule 133</i> ).	The guilt of the accused has to be proven beyond reasonable doubt ( <i>Sec. 2, Rule 133</i> ).
An offer of compromise is not an admission of any liability, and is not admissible in evidence against the offeror ( <i>Sec. 27, Rule 130</i> ).	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 ( <i>Sec. 27, Rule 133</i> ).
Generally, there is no presumption for or against a	The accused enjoys the presumption of innocence.

party. Exception: in some civil cases such as in a contractual suit against the carrier, there exists a presumption against the defendant.	
These differences constitute exceptions to the rule that the rules of evidence shall be the same in all courts and in all proceedings ( <i>Sec. 2, Rule 128</i> ).	

**Proof versus Evidence**

Evidence	Proof
Medium of proof	Effect and result of evidence
Means to the end	End result

**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.

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

**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, 5<sup>th</sup> 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, 3<sup>d</sup> 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 negating 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.

**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 (*Balck'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*).

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*).

#### **a. 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*).

#### **b. 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;
- (l) 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 rules 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.

### 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]*).

### Quantum of Evidence (Weight and Sufficiency of Evidence [Rule 133])

- (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]*).
- a. **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]*).
  - b. **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]*).
  - c. **Substantial evidence** - is that which is required to reach a conclusion in administrative proceedings or to establish a fact before administrative 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*).

- d. **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, 5<sup>th</sup> 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]*).

## II. Judicial Notice and Judicial Admissions

### What Need Not be Proved (Rule 129)

#### Matters of Judicial Notice

- a. **Mandatory** -- 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*).
- b. **Discretionary** -- 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.

- a. **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 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.

- b. **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 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).

### 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, 03/29/74).
- (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, 01/28/61).
- (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*). They 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).

### III. Rules of Admissibility (Rule 130)

#### A. 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 (*Tiglaio 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.

## 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).

## 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*).

## Chain of Custody in Relation to Section 21 of the Comprehensive Dangerous Drugs Act of 2002

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:

- (1) 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;
- (2) 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;
  - (3) 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;
  - (4) 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;
  - (5) 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
  - (6) 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;
  - (7) 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.

### **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) or 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 proprio* 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 or 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 chain 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*).

## B. 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*).

### 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

- (2) The requisites for admissibility of documentary evidence are as follows:
  - (f) 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;
  - (g) The object must be competent - It should not be excluded by law or the rules;
  - (h) 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;
  - (i) The authentication must be made by a competent witness; and
  - (j) The object must be formally offered in evidence.

### Best Evidence Rule

#### 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, 11<sup>th</sup> 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 the 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*).

## Rules on Electronic Evidence (A.M. No. 01-7-01-SC)

### a. Meaning of electronic evidence; electronic data message

- (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*).

### Parol Evidence Rule (Rule 130)

#### a. 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 prohibits evidence *aliunde* 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*).

#### b. When parole 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.

**c. 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 by 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)**

**a. Meaning of authentication**

- (1) Authentication is the process of evidencing the due execution and genuineness of a document.

**b. 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.

**c. 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 makerAny 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*).

**d. 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*).

**e. 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*).

**f. 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*).
- (4) *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*).
- (5) *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*).

#### **g. 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*).

#### **h. 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*).

#### **i. 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*).

#### **j. 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.

#### **k. 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*).

#### **l. 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*).

#### **m. 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*).

### **C. Testimonial Evidence**

#### **1. 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.*).

#### **2. Competency Versus Credibility of a Witness**

Competency	Credibility
Means the legal fitness or ability of a witness to be heard on the trial of a cause ( <i>Bouvier's Law Dictionary</i> ).	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 ( <i>Wharton's Criminal Evidence</i> ).	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 ( <i>US vs. Buncad, 25 Phil. 530</i> ).	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 ( <i>Gonzales vs. CA, 90 SCRA 183</i> ).

### 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, 02/22/96*).

#### **b. 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 (*Se. 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*).

#### **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**

- (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.

<b>Marital Disqualification (<i>Sec. 22</i>)</b>	<b>Marital Privilege (<i>Sec. 24</i>)</b>
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 of 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.

#### **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.

#### **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*).

#### **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, 07/08/86*).
- (3) 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*).
- (4) 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.

### A. 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*).

## 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*).

Direct examination	Direct examination is the examination-in-chief of a witness by the party presenting him on the facts relevant to the issue ( <i>Sec. 5</i> ).	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 ( <i>Sec. 6</i> ).	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 ( <i>Sec. 7</i> ).	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 ( <i>Sec. 8</i> ).	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 ( <i>Sec. 9</i> ).	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.

- (1) Cross-examination of a witness is the 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.

**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*).
- (2) 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, 5<sup>th</sup> 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 chance 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, 2<sup>nd</sup> 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*).

### Admissions and Confessions (Rule 130)

Admission	Confession
An act, declaration or omission of a party as to a relevant fact ( <i>Sec. 26, Rule 130</i> ).	The declaration of an accused acknowledging his guilt of the offense charged, or of any offense necessarily included therein ( <i>Sec. 33, Rule 130</i> ).
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 ( <i>Black's Law Dictionary, 5<sup>th</sup> Ed.</i> ).	It is a statement by the accused that he engaged in conduct which constitutes a crime ( <i>29 Am. Jur. 708</i> ).
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 ( <i>Estrada vs. Desierto, 356 SCRA 108</i> ).	

### ***Res Inter Alios Acta Rule***

- (1) *Res inter alios acta alteri nocere debet* means that “things done to strangers ought not to injure those who are not parties to them” (*Black’s Law Dictionary, 5<sup>th</sup> Ed.*). It has two branches, namely:
  - (a) The rule that the rights of a party cannot be prejudiced by 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.

### **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.

#### 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.

#### Confessions

- (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 vitiates 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*).

#### **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**

*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*).

#### **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, 9<sup>th</sup> Ed.*).

#### **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 which 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.

### **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.

### **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 3 <sup>rd</sup> 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.

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 <i>res gestae</i> is the startling occurrence;	The <i>res gestae</i> 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.
<u>Reason for admissibility:</u> 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.	<u>Reason for admissibility:</u> The motive, character and object of an act are frequently indicated by what was said by the person engaged in the act.

<p><b>Requisites for admissibility:</b></p> <ul style="list-style-type: none"> <li>(a) There must be a startling occurrence;</li> <li>(b) The statement must relate to the circumstances of the startling occurrence;</li> <li>(c) The statement must be spontaneous;</li> </ul>	<p><b>Requisites for admissibility:</b></p> <ul style="list-style-type: none"> <li>(a) Act or occurrence characterized must be equivocal;</li> <li>(b) Verbal acts must characterize or explain the equivocal act;</li> <li>(c) Equivocal act must be relevant to the issue;</li> <li>(d) Verbal acts must be contemporaneous with equivocal act.</li> </ul>
<p><b>Factors to consider to determine whether statements offered in evidence as part of <i>res gestae</i> have been made spontaneous or not:</b></p> <ul style="list-style-type: none"> <li>(a) The time that has elapsed between the occurrence of the act or transaction and the making of the statement;</li> <li>(b) The place where the statement was made;</li> <li>(c) The condition of the declarant when he made the statement;</li> <li>(d) The presence or absence of intervening occurrences between the occurrence and the statement relative thereto;</li> <li>(e) The nature and circumstances of the statement itself.</li> </ul>	

### 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 treatises

- (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 evidence 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 of 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, 2<sup>nd</sup> 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 (*920 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, 11<sup>th</sup> 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 (*932 CJS 411*).
- (7) Common subjects of expert testimony: handwriting, typewritten documents, fingerprints, ballistics, medicine, value of properties and services,

### 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*).



## Character Evidence

- (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*).

## **Rule on Examination of a Child Witness (A.M. No. 004-07-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 proprio* 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 proprio* 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) If it 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 be 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 proprio* 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)*).

## IV. 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*).

### 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*).

### 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

### 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*).

## V. Supreme Court Rulings as of December 2010

### VI. (see annexes)

## PART V.

## REVISED RULES ON SUMMARY PROCEDURE

### A. 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*).

### B. 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 proprio* 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*).

### C. 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 defenses shall appear at the preliminary conference (Sec. 7).

## PART VI.

### KATARUNGANG PAMBARANGAY

(Secs. 399-422, LGC)

#### A. 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.

#### B. 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 litere*;
    - 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 proprio* refer the case to the *lupon* concerned for amicable settlement (*Sec. 408, RA 7160*).

### C. 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*).

### D. 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.

### E. 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*).

### F. 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*).

**PART VII.**  
**RULE OF PROCEDURE FOR SMALL CLAIMS CASES**  
*(AM No. 08-8-7-SC, as amended)*

**A. 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 (P100,000.00) exclusive of interest and costs.
- (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.

**B. 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*).

### C. 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*).

### D. 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*).

### E. 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).

#### F. 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).

## PART VIII. 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 balanced 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, Part 1*).
- (2) The concept of continuing mandamus was originally enunciated in the case of *Concerned Residents of Manila Bay vs. MMDA, GR 171947-98, Dec. 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.* To the SC or CA.
- (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.

#### **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 auxiliary 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)**

- (2) 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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### REFERENCES

The foregoing is a compilation of reviewers by the following authors, to whom this bar examinee is exceedingly grateful:

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